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| <b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>                         |
| <b>COCHIN BENCH, COCHIN</b>   |
| <b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b> |

|                                      |
|--------------------------------------|
| I.T.A. Nos.139 & 140/Coch/2018       |
| Assessment Years : 2011-12 & 2012-13 |

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| The Assistant Commissioner of Income-tax, Circle-1, Kottayam. | <b>Vs.</b> | M/s. The Kizhathadiyoor Service Co-operative Bank Ltd., Main Road, Pala, Kottayam.<br>[PAN : AAAAK 3240R] |
| <b>(Revenue-Appellant)</b>                                    |            | <b>(Assessee -Respondent)</b>   |

|                    |                            |
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| <b>Revenue by</b>  | Shri A. Dhanaraj, Sr. DR   |
| <b>Assessee by</b> | Shri Prasanth Srinivas, CA |

|                              |            |
|------------------------------|------------|
| <b>Date of Hearing</b>       | 12/07/2018 |
| <b>Date of pronouncement</b> | 23/07/2018 |

### **ORDER**

Per GEORGE GEORGE K., JUDICIAL MEMBER:

These appeals at the instance of the Revenue are directed against different orders of the CIT(A), Kottayam. The relevant assessment years are 2011-12 and 2012-13. Since the issues involved in these two appeals are common, they were heard together and are being disposed of by this common order.

2. In the Revenue's appeal in ITA No. 139/Coch/2018, though as many as five grounds are raised, all the grounds relate to the issue whether the CIT(A) was justified in directing the Assessing Officer to grant deduction u/s. 80P(2)(a)(i) of

the I.T. Act to the assessee-Society. In the Revenue's appeal in ITA No. 140/Coch/2015, apart from the ground raised in ITA No.139/Coch/2015, the Revenue has raised one more ground relating to eligibility of deduction u/s. 80P(2)(a)(i) on the interest earned on investment made with sub-treasuries and bank deposits.

3. Briefly stated the facts of the case are as follows:

The assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. For the assessment year 2011-12, the assessee had filed return of income on 29/09/2011, declaring income at Rs.10,48,200/- after claiming deduction amounting to Rs.1,74,13,703/- u/s. 80P of the I.T. Act. Subsequently, the assessee filed a revised return on 12/03/2013 declaring same income claiming deduction of Rs.38,53,801/- u/s. 80P of the Act. For the assessment year 2012-13, the assessee had filed return of income on 25/02/2014 declaring Nil income after claiming deduction u/s. 80P of the I.T. Act at Rs.1,25,23,142/-. The assessments u/s. 143(3) of the Act were completed for AYs 2011-12 and 2012-13 vide orders dated 27/03/2014 and 26/03/2014 respectively. The Assessing Officer did not allow the claim of deduction u/s. 80P(2) of the I.T. Act for both the years. The reasoning of the Assessing Officer to disallow the claim of deduction u/s. 80P of the Act was that the assessee was primarily engaged in the business of banking and by virtue of insertion of sub-section (4) to section 80P of the I.T. Act with effect from 1/4/2007, the assessee was not entitled to deduction u/s. 80P(2) of the Act for both the years .

4. Aggrieved by the denial of the benefit of deduction u/s. 80P(2) of the Act for both the assessment years, the assessee preferred appeals before the first appellate authority. The CIT(A), following the judgment of the Jurisdictional High Court in the case of Chirakkal Service Co-operative Society (384 ITR 490) held that the assessee is entitled to deduction u/s. 80P(2) of the I.T. Act and directed the Assessing Officer to allow deduction u/s. 80P of the Act. For AY 2012-13, as regards interest earned on investment with sub-treasuries and Banks, the CIT(A) followed the order of ITAT in assessee's own case for AY 2009-10 in ITA No. 525/Coch/2014 dated 20/07/2016.

5. Aggrieved by the orders of the Ld. CIT(A), the Revenue has filed the present appeals before us. The Ld. DR relied on the grounds raised. The Ld. AR on the other hand submitted that the issue in question whether the assessee is entitled to the benefit of deduction u/s. 80P(2) of the Act is squarely covered in favour of the assessee by the judgment of the Hon'ble High Court of Kerala in the case of Chirakkal Service Co-op Bank Ltd. reported in 384 ITR 490.

6. We have heard the rival submissions and perused the material on record. Admittedly, the assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The Hon'ble High Court of Kerala in the case of Chirakkal Service Co-op Bank Ltd. (supra) had held that a primary agricultural credit society, registered under the Kerala Cooperative Societies Act,

1969 is entitled to the benefit of deduction u/s. 80P(2). The Hon'ble High Court was considering the following substantial question of law:

*a) Whether on the facts and in the circumstances of the case under consideration, the Tribunal is correct in law in deciding against the assessee, the issue regarding entitlement for exemption under section 80P, ignoring the fact that the assessee is a primary agricultural credit society?*

6.1 In considering the above question of law, the Hon'ble High Court rendered the following findings:

*"15. Appellants in these different appeals are indisputably societies registered under the Kerala co-operative societies Act, 1969, for sort, KCS Act and the bye-laws of each of them, as made available to this court as part of the paper books, clearly show that they have been classified as primary agricultural credit societies by the competent authority under the provisions of that Act. The parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other things, the registration of a society under any State law relating to co-operative societies for the time being; it cannot but be taken that the purpose of the societies so registered under the State Law and its objects have to be understood as those which have been approved by the competent authority under such State law. This, we visualise as due reciprocative legislative exercise by the Parliament recognising the predominance of decisions rendered under the relevant State Law. In this view of the matter, all the appellants having sbeen classified as primary agricultural credit societies by the competent authority under the KCS Act, it has necessarily to be held that the principal object of such societies is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate 'of interest on such loans and advances to be at the rate fixed by the Registrar of co-operative societies under the KCS Act and having its area of operation confined to a village, panchayat or a municipality. This is the consequence of the definition clause in section 2(oaa) of the KCS Act. The authorities under the IT Act cannot probe into any issue or such matter relating to such applicants.*

*16. The position of law being as above with reference to the statutory provisions, the appellants had shown to the authorities and the Tribunal that they are primary agricultural credit societies in terms of clause (cciv)*

*of section 5 of the BR Act, having regard to the primary object or principal business of each of the appellants. It is also clear from the materials on record that the bye-laws of each of the appellants do not permit admission of any other co-operative society as member, except may be, in accordance with the proviso to sub-clause 2 of section 5(cciv) of the BR Act. The different orders of the Tribunal which are impeached in these appeals do not contain any finding of fact to the effect that the bye-laws of any of the appellant or its classification by the competent authority under the KCS Act is anything different from what we have stated herein above. For this reason, it cannot but be held that the appellants are entitled to exemption from the provisions of section 80P of the IT Act by virtue of sub-section 4 of that sect; on. In this view of the matter, the appeals succeed.*

*17. In the light of the aforesaid, we answer substantialia question 'A' in favour of the appellants and hold that the Tribunal erred in law in deciding the issue regarding the entitlement of exemption under section 80P against the appellants. We hold that the primary agricultural credit societies, registered as such under the KCS Act; and classified so, under that Act, including the appellants are entitled to such exemption."*

6.2 In view of the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd. (supra), we hold that the assessee-Society is entitled to the benefit of deduction u/s. 80P(2) of the Act for both the assessment years. It is ordered accordingly.

7. The only other ground in ITA No.140/Coch/2018 is with regard to the issue whether interest earned on investment with sub-treasuries and Banks was eligible for deduction u/s. 80P(2)(a)(i) of the I.T. Act.

7.1 We have heard the rival submissions and perused the material on record. The Tribunal had decided the issue in favour of the assessee in assessee's own

case in ITA No. 525/Coch/2014 (order dated 20/07/2016) concerning the assessment year 2009-10. In view of the above order of the Tribunal in assessee's own case, we hold that the CIT(A) is justified in directing the Assessing Officer to grant deduction in respect of interest income earned on investment in sub-treasuries and bank deposits u/s. 80P(2)(a)(i) of the Act.

8. In the result, the appeals filed by the Revenue are dismissed.

Pronounced in the open court on 23<sup>rd</sup> July, 2018

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 23<sup>rd</sup> July, 2018

GJ

Copy to:

1. M/s. The Kizhathadiyoor Service Co-operative Bank Ltd., Main Road, Pala, Kottayam.
2. The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin

