

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.57/Coch/2018 : Asst.Year 2012-2013

ITA No.58/Coch/2018 : Asst.Year 2013-2014

The Income Tax Officer Ward - 4 Thiruvalla.	Vs.	M/s.The Nalunnakkal Service Co-operative Bank Limited, Nalunnakkal PO Changanacherry Kottayam <b>PAN : AAAAT6507E.</b>
(Appellant)		(Respondent)

CO No.24/Coch/2018 : Asst.Year 2012-2013

CO No.25/Coch/2018 : Asst.Year 2013-2014

M/s.The Nalunnakkal Service Co-operative Bank Limited, Nalunnakkal PO Changanacherry Kottayam	Vs.	The Income Tax Officer Ward - 4 Thiruvalla.
(Cross Objector)		(Respondent)

Revenue by : Smt.A.S.Bindhu  
Assessee by : Sri. M.K.Kurivilla

<b>Date of Hearing : 19.09.2018</b>	<b>Date of Pronouncement : 24.09.2018</b>
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**ORDER**

**Per Bench**

These appeals at the instance of the Revenue and the Cross Objections filed by the assessee are directed against separate orders of the CIT(A).

2. The only issue raised in these appeals is whether the assessee is entitled to deduction u/s. 80P(2)(a)(i) of the I.T.Act?

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 years under consideration, the assessee had filed returns of income after claiming deduction u/s. 80P of the I.T. Act. The assessments u/s. 143(3) of the Act were completed by denying the deduction u/s. 80P of the I.T. Act. The reasoning of the Assessing Officer for denying the claim of deduction u/s. 80P of the Act was that the assessee was primarily engaged in the business of banking and therefore, in view of the provisions of section 80P(4) of the I.T. Act which was inserted with effect from 01.04.2007, the assessee is not entitled to deduction u/s. 80P of the I.T. Act.

4. Aggrieved by the orders of the assessment, 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 Bank Ltd.* (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.

5. Aggrieved by the orders of the CIT(A), the Revenue has filed the present appeals before us. The Departmental Representative relied on the grounds raised. The learned AR, on the other hand, submitted that the issue in question 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 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 short 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 been 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 Ad 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 substantial 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 of the Act. It is ordered accordingly.

7. The Cross Objections filed by the assessee is only supportive of the CIT(A)'s orders for grant of deduction u/s 80P(2). Since we have already dismissed the Revenue's appeals, the COs filed by the assessee become infructuous and the same are dismissed as infructuous.

8. In the result, the appeals filed by the Revenue and the Cross objections filed by the assessee are dismissed.

Order pronounced on this 24<sup>th</sup> day of September, 2018.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 24<sup>th</sup> September, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT (Appeals)-Kottayam.
4. The Pr.CIT Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**