

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

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

ITA No.197/Coch/2018 : Asst.Year 2014-2015

M/s.Thrikodithanam Service Co-operative Bank Limited Thrikodithanam P.O. Changanacherry-685 105. <b>PAN : AAATT6067A.</b>	Vs.	The Income Tax Officer Ward 4 Thiruvalla.
(Appellant)		(Respondent)

Appellant by : Sri.M.S.Venkitachalam.

Respondent by : Smt.A.S.Bindhu

<b>Date of Hearing : 18.09.2018</b>	<b>Date of Pronouncement : 24.09.2018</b>
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**ORDER**

**Per George George K., JM**

This appeal at the instance of the assessee is directed against CIT(Appeals)'s order dated 21.02.2018. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:-

1. *The learned CIT (Appeals) erred in assessing the income amounting to Rs. 51,73,842/- without allowing deduction u/s 80P allowable on the entire income of the assessee.*

2. *The CIT (Appeals) was not justified in concluding that the appellant is not eligible for deduction u/s 80P as the deduction was not claimed in the original return of income.*

3. *The lower authorities erred in not allowing the deduction u/s 80P allowable to PACS on the basis of the order of the Honable' High Court of Kerala in Chirakkal Service Co-Operative Bank Limited Vs. CIT dated 15.02.2016 (2016) 286 CTR 0439.*

4. *The learned CIT (A) erred in not allowing the rebate claimed u/s 80P subsequent by which the appellant failed to claim in his original return.*

*For these and other grounds to be adduced at the time of hearing it is prayed that the assessment and demand raised against us may kindly be quashed."*

3. Brief facts of the case are as follows:-

The assessee is a co-operative society, registered under the Kerala Co-operative Societies Act. It is engaged in the business of providing loan and advance to the members as well as accepting deposits from them. For the assessment year 2014-2015, return of income was filed claiming a loss of Rs.5,07,73,510. The loss was due to claiming deduction u/s 36(1)(vii) of the I.T.Act, being 10% of the aggregate average advance. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 27.12.2016, wherein the deduction claimed u/s 36(1)(vii) of the I.T.Act was denied stating that the said deduction was available to the scheduled banks and not to a primary agricultural credit society. During the course of assessment, the assessee had filed a revised computation statement claiming deduction u/s 80P of the I.T.Act. The assessee had also filed a certificate from the Joint Registrar, Kottayam, stating that the assessee is a primary agricultural credit society registered under the Kerala Co-operative Societies Act, 1969. However, the Assessing Officer denied the deduction claimed u/s 80P of the I.T.Act for the reason that no such claim was made in the return of income filed. It was also stated that the return filed was beyond the

due date and for these reasons, the claim u/s 80P was denied.

4. Aggrieved by the assessment order denying the benefit of deduction u/s 80P, the assessee filed an appeal to the first appellate authority. The CIT(A) by referring the judgment of the Hon'ble jurisdictional High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. & Ors. [(2016) 384 ITR 490 (Ker.)]* held that since the assessee has not filed the original return of income claiming deduction u/s 80P(2) of the I.T.Act, the said claim of deduction cannot be allowed.

5. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. The learned Counsel for the assessee submitted that during the course of assessment proceedings, the assessee has filed a revised computation statement and had specifically made the claim of deduction u/s 80P of the I.T.Act, and therefore, going by the dictum laid down by the judgment of the Hon'ble jurisdictional High Court (supra), deduction u/s 80P(2) has to be allowed. The learned Departmental Representative strongly supported the orders passed by the Income-tax authorities.

6. We have heard the rival submissions and perused the material on record. Admittedly, in this case the assessee is a primary agricultural credit society registered under the Kerala Co-operative Societies Act, 1969. A certificate to the above said effect from the Joint Registrar, Kottayam, functioning under the Kerala Co-operative Societies Act, 1969 is on

record. It is also an undisputed fact that during the course of assessment the assessee had submitted a revised computation statement claiming deduction u/s 80P of the I.T.Act. These facts are evident from the assessment order. The relevant portion of the assessment order is reproduced below:-

*"During the course of assessment, the assessee submitted a Revised Computation Statement claiming deduction u/s 80P considering the society as a Primary Agricultural Credit Society. The assessee also submitted a certificate from the Joint Registrar, Kottayam that the Co-operative Society is a Primary Agricultural Credit Co-operative Society functioning as per the provisions of the Kerala Co-operative Societies Act, 1969. However in the original Return of Income, the assessee has not claimed deduction u/s 80P and also the Return of Income has been filed beyond due date. Therefore the claim of deduction u/s 80P is rejected."*

6.1 From the above, it is clear that the assessee had made specific claim during the course of assessment when it was found its claim of deduction u/s 36(1)(vii) was denied. The Hon'ble jurisdictional High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. & Ors. (supra)* at para 21 of its judgment, had categorically held that mere belated filing of return beyond the stipulated time u/s 139(1) or 139(4) or 142(1) or u/s. 148 cannot be a ground to deny the benefit of deduction u/s 80P(2) of the I.T.Act. It was held by the Hon'ble jurisdictional High Court that when assessment is pending in the statutory hierarchy of adjudication, the claim of deduction can be made at any stage of such proceedings and the claim of deduction u/s 80P of the I.T.Act. has to be entertained.

6.2 In the instant case, as mentioned earlier, the assessee had made the claim of deduction u/s 80P(2) of the I.T.Act during the course of assessment proceeding, which was again reiterated before the first appellate authority. The assessee's case stands on a better footing than a belated claim being made before the appellate authorities. Therefore, going by the dictum laid down by the Hon'ble jurisdictional High Court judgment in the case of *The Chirikkal Service Co-operative Bank Ltd. & Others (supra)*, we are of the view that the deduction claimed u/s 80P(2) of the I.T.Act ought to have been considered on merits, especially when the said claim was made by the assessee during the course of assessment proceedings. Since the claim of deduction u/s 80P(2) was not considered by the Income-tax authorities, we restore the issue to the file of the Assessing Officer to consider the claim on merits. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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 to :-

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

AR/ITAT-Cochin