

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

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

ITA No.401/Coch/2018 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(2) Kozhikode.	Vs.	M/s.Chombal Service Co- operative Bank Limited, Vadakara, Kozhikode. <b>PAN : AAAAT6777E.</b>
(Appellant)		(Respondent)

ITA No.402/Coch/2018 : Asst.Year 2015-2016

The Income Tax Officer Ward –2 (2) Kozhikode.	Vs.	M/s.Edacheri Service Co- operative Bank Limited, Edacheri P.O., Vadakara Kozhikode. <b>PAN : AAAAE1191K.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR

Respondent by : Sri.V.S.Narayanan

Date of Hearing : 29.11.2018	Date of Pronouncement : 30.11.2018
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**ORDER**

**Per George George K, JM :**

These appeals at the instance of the Revenue are directed against two separate orders of the CIT(A). The relevant assessment year is 2015-2016. Since common issue is raised in these appeals, they were heard together and disposed off by this consolidated order.

2. The brief facts of the case are as follows:

The assesseees in these cases are Primary Agricultural Credit Society (PACS) registered under the Kerala Co-operative Societies Act, 1969. For the assessment year 2014-15,

assessments were completed in the case of these assessees by denying the benefit of deduction u/s 80P(2) of the I.T. Act. The Assessing Officer denied the claim of deduction u/s 80P(2) of the Act for the reason that the assessees cannot be considered as Primary Agricultural Credit Society as they were engaged in the business of banking and only negligible percentage of loans disbursed by the assessees was for agricultural purposes.

3. Aggrieved by the denial of deduction u/s. 80P(2) of the Act, the assessees preferred appeals to the first appellate authority. The CIT(A) decided the issue in favour of the assessees by following the judgment of the Hon'ble Jurisdictional High Court in the case of *Chirakkal Service Co-operative Bank Ltd. vs.CIT reported in 384 ITR 490* and the order of the Cochin Bench of the Tribunal in the case of *ITO v. M/s.Maruthonkara Service Co-operative Bank Ltd.* [ITA No.489/Coch/2017 – order dated 03.08.2018].

4. Aggrieved by the orders of the CIT(A), the Revenue has filed the present appeals before the Tribunal. The learned Departmental Representative relied on the grounds raised by the Revenue.

5. Sri. V.S.Narayanan, the learned AR, submitted that the issue in question is squarely covered in favour of the assessees by the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Bank Ltd. vs.CIT reported in 384 ITR 490*.

6. We have heard the rival submissions and perused the material on record. An identical issue was considered by this Tribunal in the case of Nannambra Service Co-operative Bank Ltd. in ITA Nos. 436-438/Coch/2016 dated 08.02.2018. The Tribunal followed the judgment of the Hon'ble High Court of Kerala in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)*. The Tribunal also distinguished the judgment of the Hon'ble Apex Court in the case of *The Citizens Co-operative Society Ltd. v. ACIT* reported in 397 ITR 1 (SC) strongly relied on by the Revenue in the instant case. The relevant finding of the Tribunal in the case of Nannambra Service Co-operative Bank Ltd. reads as follow:-

*"7. We have heard the rival submissions and perused the material on record. An identical issue was considered by this Tribunal in the case of Edanad-Kannur Service Co-operative Bank Ltd. and others in I.T.A. Nos. 431 to 433/Coch/2017 & others dated 10/01/2018. The Tribunal followed the judgment of the Hon'ble High Court of Kerala in the case of Chirakkal Service Co-operative Bank Ltd. (supra). The Tribunal held that the judgment of the Hon'ble Apex Court in the case of The Citizens Co-Operative Society Limited vs Assistant Commissioner of Income Tax, reported in 397 ITR 1 (SC) is not applicable to the facts of the case. The relevant finding of the Tribunal dated 10/01/2018 is reproduced below:*

*"8. I have heard the rival submission and perused the material on record. The undisputed facts are that the assesseees in these cases are all primary agricultural credit society and they are registered as such under the Kerala Cooperative Societies Act. The Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Limited & Ors. (supra) had categorically held in para 17 page 14 of the judgment that when a primary agricultural credit Society is registered as such under the Kerala Co-operative Societies Act, 1969, such society is entitled to the benefit of deduction u/s 80P(2) of the Income-tax Act. 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?"*

8.1 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 Cooperative 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 visualize as due reciprocative legislative exercise by the Parliament recognizing 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 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 subsection 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."*

8.2 In the instant case, the assessee's are all primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The certificate has been issued by the Registrar of Cooperative Societies to the above said effect and the same is on record. The Hon'ble High Court, in the case cited supra, had held that primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of deduction u/s 80P(2). Since there is a certificate issued by the Registrar of Cooperative Societies, stating that the assessee is a primary agricultural credit society, going by the judgment of the Hon'ble jurisdictional High Court, assessee is entitled to deduction u/s 80P(2). However, the Revenue's contention is that the Hon'ble Apex Court in the case of Citizens Cooperative Society Ltd. (supra) categorically decided when deposits are received from general public / nominal members or loans are disbursed to general public / nominal members, the assessee would be doing the business of banking and therefore, would not be entitled to deduction u/s 80P(2) of the Income-tax Act. In the context of the submission made by the Revenue let me examine whether the judgment of the Hon'ble Apex

Court in the case of Citizens Co-operative Society Ltd. (supra) has application to the facts of the present case.

9. The Hon'ble Apex Court judgment in the case of Citizen Co-operative Society (supra) Ltd. was rendered in the context of eligibility of a Credit Co-operative Society for deduction under section 80 P of the Act. The Apex Court, referring to the specific facts of the case held that the assessee therein is not entitled for deduction under section 80P of the Income-tax Act. In the aforesaid case, the Hon'ble Apex Court was not dealing with a case of eligibility of a Primary Agricultural Credit Society for deduction under section 80P of the Income-tax Act. The Hon'ble Supreme Court at Para 23 of the aforesaid judgment had emphasized that even after the amendment made to the provisions of section 80 P of the Act by insertion of section 80P(4) of the Income-tax Act, the Primary Agricultural Credit Society is eligible for deduction under section 80 P of the Act.

9.1 The assessee society in the case considered by the Hon'ble Supreme Court was established on 31-5-1997 and was registered under section 5 of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. Thereafter as the operations of the assessee had increased manifold and spread over states of Erstwhile, Andhra Pradesh, Maharashtra and Karnataka, the assessee-society got itself registered on 26.07.2005 under the Multi State Co-operative Societies Act, 2002 (MACSA)

9.2 The Hon'ble Apex Court in the aforementioned case specifically took note of the factual findings of the assessing officer (which was stated in para 15 of the judgment) referring to the bye laws and the provisions of Mutually Aided Cooperative Societies Act, 1995. The assessing officer was of the view that the assessee therein cannot admit 'nominal members' and most of the deposits were taken from such category of person (as they were not members as per the provisions referred). The Apex Court in para 25 of the Judgment has pointed out that the main reason for disentitling the assessee from getting the deduction provided under section 80 P of the Act is not sub-section (4) of the Act. On the contrary, the Hon'ble Apex Court held that the Credit Co-operative Society was not entitled for deduction u/s 80P of the Act for the reason of categorical finding of the A.O. that the activities of the assessee are in violation of the Provisions of the MACSA under which it is formed as the substantial

deposits were from 'nominal members' who are actually non-members as per the provisions of law referred. The Hon'ble Apex Court specifically took note of the fact that the assessee therein has carved out a category of 'nominal members' who are infact not the members in the real-sense. Therefore the deposits received from the carved out category viz nominal members who are not the members as per the provisions of the law referred to therein and without the permission of the Registrar of Societies was held to be violative of the provisions and were treated/proceeded with as deposits from the Public.

In other words, in the case before the Hon'ble Supreme Court, the finding on the principle of mutuality was arrived at interalia; on the factual finding that the assessee was receiving deposits mostly from a carved out category of member viz 'nominal member' who are not members as per the provisions of law referred,, and that most of the business of the assessee therein was with this carved out category of person and also granting loans to public and without the approval from the Registrar of the Societies.

9.3 As far as the Kerala Co-operative Societies Act which is applicable to the present cases are concerned, the definition of a 'member' as provided in Section 2(1) of the Kerala Cooperative Societies Act includes a nominal member. Section 2 (1) of the said Act is as follows:

*"Member" means a person joining in the application for the registration of a co-operative society or a person admitted to membership after such registration in accordance with this Act, the Rules and the Bye law and includes a nominal or associate member"*

9.4 The 'nominal member' is defined under 2(M) of the Kerala Co-operative Societies Act, 1969, which reads as follow: -

*"(m) nominal or associate member' means a member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in the bye-laws;"*

9.5 Therefore, in the present cases, the nominal members are members as provided in law and deposits

from such nominal members cannot be considered or treated as from the non-members or from public as was noted by the Apex Court judgment cited supra.

9.6 In this context, it is relevant to mention that the Hon'ble Supreme Court in the case of U.P. Co-operative Cane Union v. Commissioner of Income-tax (1999) 237 ITR 574 (SC)-para 8 of the judgment has observed as under:-

*"8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption, has been formed. It is, therefore, necessary to construe the expression "members" in Section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Co-operative Societies Act."*

9.7 The Bombay High Court in Jalgaon District Central v. UOI (2004) 265 ITR 423 (Bom) in the light of the above Supreme Court judgment had held that nominal member is also member under the Maharashtra Co-operative Societies Act and entitled for benefits under section 80P. [Para 17 to 20 of the judgment], as under:-

*"17. In case of M/s U. P. Co-op. Cane Union Federation Ltd., Lucknow (cited supra), the Supreme Court has held that the expression "Member" is not defined in the Income Tax Act. Since the Co-operative Society has to be established under the provisions of law made by the State Legislature in that regard, the expression "Member" in Section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of law enacted by the State Legislature under which the co-operative society claiming exemption has been formed. The Supreme Court has further observed that it is necessary to construe the expression "Member" in Section 80P(2)(a)(i) of the Act in the light of the definition of "Member" given under Section 2(n) of the U.P. Co-operative Societies Act, 1965.*

*18. The definition of "Member" given in Section 2(19) of the Maharashtra Co-operative Societies Act, 1960 takes within its sweep even a nominal member, associate member and sympathizer member. There is no distinction made between duly registered member and nominal, associate and sympathizer member.*

*19. In the case of K.K.Adhikari (cited supra), Division Bench of this Court has held that the definition of a Member under Section 2(19) of the Maharashtra Co-operative Societies Act, 1960 includes a nominal member or a sympathizer member. It is further held that notwithstanding the fact that a nominal member does not enjoy all the rights and privileges which are available to an ordinary member, his status is that of a member as defined in Section 2(19) of the Act.*

*20. Division Bench of this Court in the case of The Commissioner of Income Tax, Nasik (cited supra) has also taken a similar view that the definition of "Member" under section 2(19)(a) of the Maharashtra Co-operative Societies Act, 1960 includes a nominal member. It is further held by the Division Bench that there is nothing in Section 80P(2)(iii) of the Income Tax Act to the contrary."*

9.8 As per section 3 of the Banking Regulation Act, 1949 the provisions of Banking Regulation Act shall not apply to Primary Agricultural Credit Societies. The explanation to section 80P(4) states that 'Primary Agricultural Credit Society' and 'Co-operative Bank' will have the same meaning as provided in Part V of the Banking Regulation Act, 1949. The explanation provided after clause (ccvi) of section 5 r.w.s 56 of the Banking Regulation Act specifically provides that if any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final. The Reserve Bank of India, which is the competent authority as per the Banking Regulation Act, treats assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within the ambit of Banking Regulation Act. The Reserve Bank of India has given letters to the societies similar to assessee stating that they are Primary Agricultural Credit Societies and therefore in terms of section 3 of the Banking

Regulation Act are not entitled for banking license; (Copies of such letter from RBI are placed on record).

9.9 That being the case, the assessing officer was not competent and did not possess the jurisdiction to resolve / decide the issue as to whether the assessee was a 'Primary Agricultural Credit Society' or a 'Co-operative bank', within the meaning assigned to it under the provisions of the Banking Regulation Act and to take a contrary view especially in view of the Explanation provided after the clause (ccvi) of section 5 r.w.s Section 56 of the Banking Regulation Act.

9.10 In view of the aforesaid reasoning, I hold that the judgment of the Hon'ble Apex Court in Citizen Co-operative Society Ltd. is not applicable to the facts of the present case. According to me, the judgment of the Hon'ble jurisdictional High Court is identical to the facts of the present cases and is squarely applicable. Therefore, I hold that the CIT(A) has correctly allowed the claim of deduction in the above cases and I uphold the orders of the CIT(A). It is ordered accordingly.

10. In the result, these appeals filed by the Revenue are dismissed."

*7.1 The facts of the instant cases are identical to the facts considered by the Tribunal in the above cases. Following the order of the Tribunal in the above mentioned cases, we hold that the CIT(A) is justified in directing the Assessing Officer to grant deduction u/s. 80P(2) of the Act.*

*7.2 Before concluding, it has to be mentioned that the case law relied on by the Revenue in the grounds, additional grounds are not applicable to the facts of the present case. Undisputedly, the assessee is a primary agricultural credit society and is providing credit facilities to its members for agriculture and agriculture allied activities. The competent authority of Co-operative Department of Government of Kerala having been satisfied with the activities of the assessee, has classified the assessee as PACS (primary agricultural credit society). The Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Limited & Ors. (supra) has elaborately considered the issue and has categorically held that the certificate issued by the competent authority in this regard is binding and the income tax authorities have no right to probe further.*

*7.3. In Ground Nos. 4, 5 & 6 of the Memorandum of Appeal, it is mentioned that the CIT(A) has erred in not placing reliance*

*on the judgment of the Hon'ble Jurisdictional High Court in the case of M/s. Perinthamana Service Co-operative Bank Ltd. vs. CIT reported in 363 ITR 268. The Hon'ble High Court in the above mentioned case was disposing of the appeal filed by the assessee, challenging the order passed by the ITAT upholding the validity of the order passed by the Commissioner u/s 263 of the Act. In the said judgment, the Hon'ble High Court upheld the order of the ITAT, after directing the Assessing Officer to pass a fresh assessment order untrammelled by any of the views expressed by the revisionary authority. Whereas the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. (supra) was in respect of the assessment order passed by the Assessing Officer denying the deduction u/s. 80P and is identical to the facts of the present case.*

*7.4 Further the Reserve Bank of India, which is the authority under the Banking Regulations Act to decide as to whether a Co-operative Society is a Primary Agricultural Credit Society or not, has vide letter UBD(T) No. 438/12-01-008/2013-14 dated 25/10/2013 informed The Secretary, The Madai Co-operative Rural Bank Ltd. No. F.1233, Head Office, Payangadi Kannur-670303 and vide letter No. UBD(T) No.440/12-01-008/2013-14 dated 25/10/2013, The Kadirur Service Co-operative Bank Ltd. No.F 1262 HO – Kadirur, Kannur-670 642 that an institution registered as a Primary Agricultural Credit Society (PACS) is not entitled to obtaining a Banking License, which implies that an entity which is registered as a Primary Agricultural Credit Society cannot be a Bank. A copy of said letter is on record.*

*7.5 In the additional grounds of appeal, the Revenue has placed reliance on the judgment of the Hon'ble Apex Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. vs. CIT reported in 203 ITR 1027 (SC). In the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra), the assessee-society was effecting sales of agricultural inputs of both members as well as non members. The assessee claimed share of the gross profit out of the transactions with members as a deduction from the combined net profit. On the contrary, in the instant case, the assessee had extended credit facilities only to the members. The Revenue does not have a case that such credit facilities are extended to the outsiders. Therefore the income generated in the instant case is only out of the transaction with the members. Deduction u/s. 80P is allowed only for the said income. The assessee had claimed deduction u/s. 80P only in respect of net income which is derived by extending credit facilities to the members. For the aforesaid reasons, the judicial pronouncements relied on by the Revenue in the grounds and the additional grounds does not have application to the instant case. Therefore, we hold*

*that CIT(A)'s order is correct and in accordance with law. It is ordered accordingly."*

7. In view of the above finding of the Tribunal which had elaborately considered the judicial pronouncements on the said issue and had followed the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. (supra), we hold that the CIT(A) is justified in directing the Assessing Officer to grant deduction u/s. 80P(2) of the I.T. Act. It is ordered accordingly.

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

Order pronounced on this 30<sup>th</sup> day of November, 2018.

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

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

Cochin ; Dated : 30<sup>th</sup> November, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

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

BY ORDER,

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