

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

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

ITA No.513/Coch/2018 : Asst.Year 2007-2008
ITA No.514/Coch/2018 : Asst.Year 2008-2009
ITA No.515/Coch/2018 : Asst.Year 2009-2010
ITA No.516/Coch/2018 : Asst.Year 2012-2013
ITA No.517/Coch/2018 : Asst.Year 2013-2014

The Income Tax Officer Ward 2(3) Kozhikode.	Vs.	M/s.Chelannur Service Co-operative Bank Ltd. No.F 1242, P.O.Chelannur Kozhikode – 673 616 PAN : AABAT6195R.
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR
Respondent by : Smt.K.Parvathy Ammal

Date of Hearing : 07.02.2019	Date of Pronouncement : 07.02.2019
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ORDER

Per Chandra Poojari, AM:

All these appeals filed by the Revenue are directed against common order of the CIT(A), dated 10.08.2018. The relevant assessment years are 2007-2008, 2008-2009, 2009-2010, 2012-2013 and 2013-2014.

2. Common issue is raised in these appeals. Hence they were heard together and disposed of by this consolidated order.

3. The only issue raised in these appeals is with regard to granting of deduction u/s 80P of the Income-tax Act, 1961.

4. The brief facts of the case are that the assessee is a primary agricultural credit society registered under the Kerala Co-operative Societies Act, 1969. During the course of assessment proceedings, the Assessing Officer observed that the primary object or principal business of the assessee is not providing financial accommodation to its members for agricultural purposes or for the purposes connected with agricultural activities, therefore, the society losses all the characteristics of a Primary Agricultural Society. Hence, the A.O. held that the assessee is not entitled for deduction u/s 80P(2) of the I.T.Act. However, the CIT(A) allowed the deduction u/s 80P of the Act by placing reliance on the earlier order of the Tribunal in assessee's own case for assessment year 2010-2011 in ITA No.143/Coch/2015 dated 26.09.2017.

5. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us.

6. We have heard the rival submissions and perused the material on record. Admittedly, similar issue was considered by the Tribunal in assessee's own case (supra). The relevant finding of the Tribunal reads as under:-

“6. We have heard the rival parties and perused the material on record. The Hon’ble High Court in the case of Chirakkal Service Cooperative Bank Ltd (supra) had held that the Tribunal was not justified in denying the benefit of deduction u/s 80P of the Act on the mere ground of belated filing of return

of income. The Hon'ble High Court was considering the following substantial question of law: "B Whether the Tribunal is justified in denying the exemption u/s 80P of the I T Act 1961 on the mere ground of belated filing of return by the assessee? C. Whether a return filed by the assessee beyond the period stipulated u/s 139(1)/(4) or section 142(1)/148 can be held as non-est in law and invalid for the purpose of deciding exemption u/s 80P of the I T act, 1961?" 6.1 In considering the above substantial question of law, the Hon'ble High Court rendered the following findings: "18. Questions B & C relate to denial of exemption on ground referable to belated filing of return, that is to say, returns filed beyond the period stipulated under section 139(1) or section 139(4) as the case may be as well as section 142 (1) or section 148, as the case may be. There are no cases among these appeals where returns were not filed. There are cases where claims have been made along with the returns and the returns were filed within time. Still further, there are cases where returns were filed belatedly, that is to say, beyond the period stipulated under sub section 1 or 4 of section 139; and there are also returns filed after the period with reference to sections 142(1) and 148 of the I T Act. 19. Section 80A(5) provides that where the assessee fails to make a claim in his return of income for any deduction, inter alia, , under any provision of chapter VIA under the heading "C-Deductions in respect of certain incomes", no deduction shall be allowed' to him thereunder. Therefore, in cases where no ITA No. 143/C/2015 4 returns have been filed for a particular assessment year, no deductions shall be allowed. This embargo in section 80A(5) would apply, though section 80p 1 S not included in section 80AC. This is so because, the inhibition against allowing deduction is worded in quite similar terms in sections 80A(5) and 80AC, of which section 80A(5) is a provision inserted through the Finance Act 33/2009 with effect from 1.4.2013 after the insertion of section 80AC as per the Finance Act of 2006 with effect from 1.4.2006. This clearly evidences the legislative intendiment that the inhibition contained in sub section 5 of section 80A would operate by itself. In cases where returns have been filed, the question of exemptions or deductions referable to section 80P would definitely have to be considered and granted if eligible. 20 Hence, question would arise as to whether belated returns filed beyond the period stipulated under section 139(1) or section 139(4) as well as following sections 142(1) and 148 proceedings could be considered for exemption. If those returns

are eligible to be accepted in terms of law, going by the provisions of the statute and the governing bind precedents, it goes without saying that the claim for exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration. 21 When a notice under section 142(1) is issued, the person may furnish the return and while doing so, could also make claim for deduction referable to section 80P. Not much different is the situation when pre-assessment enquiry is carried forward by issuance of notice under section 142 (1) or when notice is issued on the premise of escaped assessment referable to section 148 of the IT Act. This position notwithstanding, when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. Under such circumstances, the Tribunal was not justified in denying exemption under section 80P of the IT Act on the mere ground of belated filing of return by the assessee concerned. A return filed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non-existent in law and invalid for the purpose of deciding exemption under section 80P of the IT Act. We thus, answer substantial questions of law Band C formulated and enumerated above. “ITA No. 143/C/2015 5 6.2 The Assessing Officer nor the CIT(A) had the benefit of the judgment of the Hon’ble Jurisdictional High Court in the case of Chirakkal Service Cooperative Bank Ltd (supra) wherein it is categorically held that mere belated filing of return of income will not disentitle the assessee from claiming of benefit of deduction u/s 80P(2) of the Act. Therefore, we are of the view that the Assessing Officer has to consider the dictum laid down by the Hon’ble jurisdictional High Court in the case of Chirakkal Service Cooperative Bank Ltd (supra) and take a decision in accordance with law as expeditiously as possible. We make it clear that if other conditions are satisfied for claiming the benefit u/s 80P(2) of

the Act, mere belated filing of return shall not be a ground for denying the said benefit. It is ordered accordingly.

7. In view of the order of the Tribunal for assessment year 2010-2011, in assessee's own case, we are inclined to dismiss the appeals filed by the Revenue.

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

Order pronounced on this 07th day of February, 2019.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 07th February, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin