

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

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

ITA No.01/Coch/2019 : Asst.Year 2014-2015

ITA No.02/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 5 Palakkad.	Vs.	M/s.The Pallasana Service Co-operative Bank Limited, Pallasana Palakkad – 678 503. PAN : AAAAT4211B.
(Appellant)		(Respondent)

ITA No.03/Coch/2019 : Asst.Year 2012-2013

The Income Tax Officer Ward – 5 Palakkad.	Vs.	M/s.The Moolathara Service Co-operative Bank Limited 6/420, Meenakshipuram Chittur, Palakkad - 678 533. PAN : AABAT2650F.
(Appellant)		(Respondent)

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

Respondent by : Sri. R.Rajendran

Date of Hearing : 25.02.2019	Date of Pronouncement : 01.03.2019
-------------------------------------	---

ORDER

Per George George K, JM

These three appeals at the instance of the Revenue are directed against two separate orders of the CIT(A) in respect of two different assessees. The relevant assessment years in respect of M/s.The Pallasana SCB Limited are 2014-2015

and 2015-2016, and in respect of M/s.The Moolathara SCB Limited is 2012-2013.

2. The only identical issue raised in these appeals is whether the assessees are 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 assessees are primary agricultural credit societies registered under the Kerala Cooperative Societies Act, 1969. For the assessment years under consideration, the assessees had filed return's of income after claiming deduction u/s. 80P of the I.T. Act. The assessments were completed by denying the deduction u/s. 80P of the I.T. Act. The reasoning of the Assessing Officer's for denying the claim of deduction u/s. 80P of the Act was that the assessees were 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 assessees were not entitled to deduction u/s. 80P of the I.T.Act.

4. Aggrieved by the orders of the assessment, the assessees 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 assessees are 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. The CIT(A) has also held that the decision in the case of M/s.Citizen Co-operative

Society Ltd. v. ACIT, Hyderabad is not applicable to primary agricultural credit societies, in view of 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.474/Coch/2017 order dated 08.03.2018].

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 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 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(0aa) 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-societies are entitled to the benefit of deduction u/s. 80P of the Act. It is ordered accordingly.

6.3 Further, the decision of the Hon'ble Apex Court, relied on by the Revenue in the case of *Citizen Co-operative Society Ltd. v. ACIT*, is not applicable to Co-operative Societies registered as primary agricultural credit societies in Kerala, in view of the order of ITAT Cochin Bench in the case of *ITO v. M/s.Maruthonkara Service Co-operative Bank Ltd. [ITA No.474/Coch/2017 order dated 08.03.2018]*.

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

Order pronounced on this 01st day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 01st March, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin