

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. Nos.04-07/Coch/2019
Assessment Years : 2010-11, 2012-13, 2013-14 & 2015-16

The Income Tax Officer, Ward-5, Palakkad.	<b>Vs.</b>	The Ayalur Service Co-operative Bank Ltd., Ayalur, Nemmara, Palakkad-678 510. [PAN: AABAT 3148E]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR
<b>Assessee by</b>	Shri R, Rajendran, FCA

<b>Date of hearing</b>	25/02/2019
<b>Date of pronouncement</b>	01/03/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

All these appeals filed by the Revenue are directed against the common order of the CIT(A), Thrissur dated 25/10/2018 and pertain to the assessment years 2010-11, 2012-13, 2013-14 and 2015-16.

2. Common issues are raised in these appeals. Hence, they were heard together and are being disposed of by this consolidated order.

3. The first issue raised in these appeals is with regard to granting of deduction u/s 80P(2) of the Income-tax Act, 1961.

4. The facts of the case are that the assessee is a Primary Agricultural Credit Society (PACS) registered under the Kerala Co-operative Societies Act, 1969 and registered with Registrar of Co-operative Societies, Kerala. Its main activity is that of accepting deposits and lending money. It filed its returns of income for assessment years 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16 as detailed under:

Asst. Year	Date of filing of return	Income returned	Deduction claimed u/s. 80P
2010-11	16.7.2015	42,010/-	17,94,109/-
2012-13	16.7.2015	1,17,340/-	28,71,836/-
2013-14	28.11.2014	1,24,840/-	58,25,827/-
2014-15	28.11.2014	1,07,480/-	46,16,804/-
2015-16	19.01.2016	5,66,280/-	69,06,157/-

During the assessments, the Assessing Officer noted that the assessee society was actually doing the business of banking. The Assessing Officer observed that the primary object or principal business of the assessee was not providing financial accommodation to its members for agricultural purposes or for the purposes connected with agricultural activities. Therefore, the society loses all the characteristics of a Primary Agricultural Society. Therefore, the Assessing Officer denied deduction u/s. 80P(2) of the Act.

5. On appeal, the CIT(A) allowed the deduction u/s 80P of the Act by placing reliance on the judgment of the Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. and others vs. CIT (384 ITR 490).

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

7. We have heard the rival submissions and perused the material on record. Admittedly, similar issue was considered by the Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. (2016) vs. CIT (384 ITR 490) wherein it was held as under:

*"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 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 sub-section 4 of that section. In this view of the matter, the appeals succeed.*

*17.. In the light of the aforesaid, we answer substantia 1 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. In view of the order of the Jurisdictional High Court cited supra, we are inclined to dismiss the appeals filed by the Revenue.

9. The next issue in ITA Nos. 04-06/Coch/2019 is with regard to disallowance made under section 40(a)(ia) of the Act for non deduction of tax at source u/s. 194A on the interest payment Rs.10,000/- and more to the depositors.

10. The facts of the case are that the Assessing Officer made disallowance u/s. 40(a)(ia) in all the three years by observing that no tax has been deducted from the interest payments made to the depositors.

11. On appeal, the CIT(A) observed that once it is held that the assessee is a Primary Agricultural Society, the provisions of section 194A(3)(viii) are squarely applicable and as per the section, no deduction of tax at source is required to be made on the interest payment to depositors held with Primary Agricultural Credit Society. Therefore, the CIT(A) deleted the disallowance u/s. 40(a)(ia) of the Act made by the Assessing Officer.

12. Against this, the Revenue is in appeal before us.

13. We have heard the rival submissions and perused the record. We find that this issue is squarely covered by the order of this Tribunal in the case of ITO vs. Kuthannur Service Co-operative Bank Ltd. & Ors. in ITA No. 467/Coch/2018 & Ors. dated 29/11/2018 wherein it was held as under:

*"7. As regards the issue of disallowance of interest u/s 40(a)(ia) of the I.T. Act, we find that the issue is covered in favour of the assessee by the ITAT order in case of Kadachira Service Co-op Bank Ltd. (supra). The relevant finding of the ITAT reads as follows:-*

*"33. We have considered the rival submissions on either side and also perused the material available on record. The main contention of the taxpayers is that the taxpayer was registered as co-operative societies under the Kerala Co-operative Societies Act and classified as primary agricultural co-operative societies. We find that this issue was considered*

*by the Kerala High Court in the case of Moolamattom Electricity Board Employees Co-operative Bank Ltd., in [1999] 238 ITR 630/106 Taxman 242 (Ker). The Kerala High Court, after considering the provisions of section 194A of the Income-tax Act found that for the purpose of understanding the cooperative society, the meaning that is given in section 2(19) of the Income-tax Act has to be considered and not otherwise. The co-operative societies are not controlled and governed by RBI and they are registered under the provisions of the State Co-operative Societies Act. There-fore, the Kerala High Court found that the co-operative societies are exempt from provisions of section 194A of the Act. A similar view was taken by the Kerala High Court in the case of ITO v. Thodupuzha Urban Co-operative Bank Ltd. [2003] 264 ITR 36/132 Taxman 284 (Ker.). In this case before us also, admittedly, the taxpayers are registered under the Kerala State Co-operative Societies Act and no approval was obtained from the RBI for carrying out the banking activities. Therefore, for all practical purposes, the taxpayers have to be treated as primary agricultural cooperative societies within the meaning of section 2(19) of the Income-tax Act. In view of the above, as found by the jurisdictional High Court, the taxpayers are exempt from deduction of tax at source u/s 194A of the Act. Accordingly, we are unable to uphold the orders of lower authorities. Hence, the orders of lower authorities are set aside and the addition u/s 40(a)(ia) is deleted."*

*7.1 Further, the Cochin Bench of the Tribunal in a recent order, in the case of ACIT v. Kodungallur Town Co-operative Bank Ltd. [ITA Nos.527-529 & 526/Coch/2017 - order dated 31.05.2018] held that the assesseees are not liable to deduct TDS u/s 194A of the IT Act on the interest paid to its own members. The relevant finding of the Tribunal reads as follows.-*

*"6.6 The Ld. AR placed heavy reliance on the judgments of the Jurisdictional High Court in the cases of Moolamattom Electricity Board Employees Cooperative Bank Ltd. & others (supra) and Thodupuzha Urban Co-operative Bank Ltd. and another (supra). In these cases, it was an admitted fact that the assesseees are co-operative societies. Hence, the Jurisdictional High Court came to the conclusion that sub-clause(a) of clause (vii) of sub-section (3) of section 194A was applicable. But in the present case, the assesseees are not cooperative society but co-operative bank carrying on banking business with the approval of the Reserve Bank of India and as such, the assesseees are not liable to deduct TDS under section 194A of the I.T. Act on the interest paid to its own members. On the other hand, the present assesseees are liable to deduct TDS on the interest payments to its non members only. This ground of the appeals of the Revenue is partly allowed."*

8. *In view of the orders of the Tribunal in case of Kadachira Service Co-op. Bank Ltd. and Kodungallur Town Co-operative Bank Ltd. (supra), which are similar to that of the issue under consideration, we hold that the assesseees are not liable to deduct TDS u/s 194A of the IT Act on the interest paid to its own members. It is ordered accordingly.*

14. In view of the above order of the Tribunal, we are inclined to confirm the order of the CIT(A) on this issue. Accordingly, this ground of the Revenue in ITA Nos. 04-06/Coch/2019 are also dismissed.

15. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open Court on this 01<sup>st</sup> March, 2019.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: , 2019

GJ

Copy to:

1. The Ayalur Service Co-operative Bank Ltd., Ayalur, Nemmara, Palakkad-678 510.
2. The Income Tax Officer, Ward-5, Palakkad.
3. The Commissioner of Income-tax(Appeals), Thrissur.
4. The Pr. Commissioner of Income-tax, Thrissur.
5. D.R. I.T.A.T., Cochin Bench, Cochin.6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin