

<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. No.48/Coch/2019
Assessment Year : 2015-16

The Income Tax Officer, Ward-2(1), Trivandrum.	<b>Vs.</b>	Peroorkada Service Co-operative Bank Ltd., D.No. 1412, T.C. 845/1, Peroorkada, Trivandrum-695 005. [PAN: AAAAP 3974B]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

C.O. No. 11/Coch/2019 (Arsg. out of I.T.A. No.48/Coch/2019)
Assessment Year : 2015-16

Peroorkada Service Co-operative Bank Ltd., D.No. 1412, T.C. 845/1, Peroorkada, Trivandrum-695 005. [PAN: AAAAP 3974B]	<b>Vs.</b>	The Income Tax Officer, Ward-2(1), Trivandrum.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

I.T.A. No.49/Coch/2019
Assessment Year : 2015-16

The Income Tax Officer, Ward-2(3), Trivandrum.	<b>Vs.</b>	Karakulam Service Co-operative Bank Ltd., Karakulam, Nedumangad, Trivandrum-695 564. [PAN: AAAAT 7698C]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR
<b>Assessee by</b>	Shri Amaljith P.J., CA

<b>Date of hearing</b>	12/03/2019
<b>Date of pronouncement</b>	12/03/2019

**ORDER**

Per CHANDRA POOJARI, AM:

These appeals filed by the Revenue are directed against the orders of the CIT(A), Kottayam dated 07/11/2018 and CIT(A), Trivandrum dated 27/11/2018 and pertain to the assessment year 2015-16. The assessee has also raised Cross Objection in C.O. No. 11/Coch/19 against the revenue appeal in ITA No. 48/Coch/2019.

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

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

4. Since the facts are similar in these appeals, we shall consider the facts as narrated in ITA No.48/Coch/2019. The facts of the case are that the assessee is a Co-operative Society engaged in banking business and filed its return of income for AY 2015-16. The gross total income for the year was shown at Rs. Nil after claiming deduction of Rs. 88,02,822/- u/s. 80P(2) of the I.T. Act. The

Assessing Officer passed an order u/s. 143(3) of the Act on 11/12/2017 and disallowed the deduction claimed by the assessee u/s. 80P(2) of the Act on the ground that the principal business carried out by the society is not according to the objectives of the primary agricultural credit society. Further, the Assessing Officer had also observed that the interest income received by the assessee from other Banks and Treasury is not eligible for deduction u/s. 80(P)(2) (d) as the interest income was received from other than co-operative society.

5. On appeal, the CIT(A) allowed the deduction u/s 80P(2) 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 our opinion, the issue is squarely covered in favour of the assessee by the above judgment of the Jurisdictional High Court cited supra. Accordingly, we do not find any infirmity in the order of the CIT(A) and confirm the same. This ground of appeals of the Revenue is dismissed.

9. The Revenue has also raised the ground with regard to interest income from other Banks and Treasury.

10. The facts of the case are that the Assessing Officer had held that the interest income received by the assessee from other Banks and Treasury is not eligible for deduction u/s. 80(P)(2) (d) of the Act as the interest income was received from other than co-operative society.

11. On appeal, the CIT(A) held that interest income earned by the PACS from other Banks and Treasury is eligible for deduction u/s. 80P of the Act by relying on the decision of this Tribunal in the case of Kizhathadiyoor Service Co-operative Bank Ltd. for AY 2009-10 in ITA No. 525/Coch/2014 dated 20/07/2016 wherein it was held that the interest income earned from the investment in Treasury and Banks is part of the banking activity and therefore, the said income is eligible for deduction u/s. 80P(2)(a)(i) of the Act.

12. We have heard the rival submissions and perused the record. We find that the issue whether the interest income earned by the PACS from other Banks and Treasury is eligible for deduction u/s. 80P of the Act is covered in favour of the assessee by the decision of this Tribunal in the case of Kizhathadiyoor Service Co-operative Bank Ltd. cited supra. In view of the above order of the Tribunal, we are inclined to dismiss this ground of appeals of the Revenue.

13. Since we have dismissed the appeals of the Revenue, the Cross Objection filed by the assessee in C.O. No. 11/Coch/2019 has become infructuous and the same is dismissed as infructuous.

9. In the result, both the appeals of the Revenue as well as the Cross objection filed by the assessee are dismissed.

Order pronounced in the open Court on this 12<sup>th</sup> March, 2019

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 12<sup>th</sup> March, 2019

GJ

Copy to:

1. Peroorkada Service Co-operative Bank Ltd., D. No. 1412, T.C. 845/1, Peroorkada, Trivandrum-695 005.
2. Karakulam Service Co-operative Bank Ltd., Karakulam, Nedumangad, Trivandrum-695 564.
3. The Income Tax Officer, Ward-2(1), Trivandrum.
4. The Income Tax Officer, Ward-2(3), Trivandrum.
5. The Commissioner of Income-tax(Appeals), Trivandrum.
6. The Pr. Commissioner of Income-tax, Trivandrum.

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

I.T.A. Nos.48 & 49/Coch/2019  
& C.O. No.11/Coch/2019

7. D.R. I.T.A.T., Cochin Bench, Cochin.
8. Guard File.

By Order

(ASSISTANT REGISTRAR)  
ITAT, Cochin Bench