

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

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

ITA No.75/Coch/2019 : Asst.Year 2013-2014

ITA No.76/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(1) Trivandrum.	Vs.	M/s.Vattiyoorkave Service Co-operative Bank Ltd. Vattiyoorkavu Trivandrum - 13 <b>PAN : AAAAV0521A.</b>
(Appellant)		(Respondent)

CO No.18/Coch/2019 : Asst.Year 2013-2014

CO No.19/Coch/2019 : Asst.Year 2015-2016

M/s.Vattiyoorkave Service Co-operative Bank Ltd. Vattiyoorkavu Trivandrum - 13	Vs.	The Income Tax Officer Ward – 2(1) Trivandrum.
(Cross Objector)		(Respondent)

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

Assessee by : Sri. Amaljith.

ITA No.77/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Nagaroor Service Co- operative Bank Ltd. Bank Building, Nagaroor Altharamoodu Trivandrum – 695 102 <b>PAN : AAAAN3291M.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.78/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Koduvazhannoor Service Co-operative Bank Ltd., Bank Building, Koduvazhannoor Post Trivandrum – 695 612. <b>PAN : AAAAK6275A.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.79/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(1) Trivandrum.	Vs.	M/s.Thonakkal Service Co-operative Bank Ltd. Kudavur Post Thonakkal Trivandrum – 695 313. <b>PAN : AABAT0018R.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.81/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(1) Trivandrum.	Vs.	M/s.Andoorkonam Service Co-operative Bank Ltd. Bank Building, Andoorkonam Trivandrum – 695 584 <b>PAN : AAAAA5990N.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

ITA No.94/Coch/2019 : Asst.Year 2014-2015  
ITA No.80/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(1) Trivandrum.	Vs.	M/s.Ayirooppara Farmers Service Co-operative Bank Ltd. Pothencode PO Trivandrum – 695 876 <b>PAN : AAAAA8288K.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : --- None ---

ITA No.95/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Madavoor Service Co- operative Bank Ltd. Bank Building, Madavoor, Pallickal P.O. Trivandrum – 695 602 <b>PAN : AAAAM5968M.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : --- None ---

ITA No.96/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Kadakkavoor Service Co-operative Bank Ltd. Bank Building, Kadakkavoor Post Trivandrum – 695 306. <b>PAN : AAAAA5990N.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : --- None ---

## ITA No.110/Coch/2019 : Asst.Year 2011-2012

The Income Tax Officer Ward – 2(3) Trivandrum.	Vs.	M/s.Mithirmala Service Co-operative Bank Ltd. No.2452, Mithirmala PO Trivandrum – 695 610 <b>PAN : AABAM1844L.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.113/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Attingal Municipal Town Service Co-operative Bank Ltd. No.T-437, Bank Building, Attingal PO Trivandrum – 695 101. <b>PAN : AAAAA7776J.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.114/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 4 Kollam.	Vs.	M/s.Kadakkal Service Co- operative Bank Ltd. Kadakkal P.O. Kollam – 691 536. <b>PAN : AAAAT2910R.</b>
(Appellant)		(Respondent)

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

Respondent by : Sri.Philip Joseph

## ITA No.120/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Pallickal Farmers Service Co-operative Bank Ltd. No.T-230, Bank Building, Pallickal, Kilimanoor PO, Chirayinkeezhu Trivandrum – 695 602. <b>PAN : AAAAP4843P.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.121/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Pazhayakunnummel Service Co-operative Bank Ltd. Bank Building, Kunnummel P.O. Trivandrum – 695 601. <b>PAN : AAAAP4867D.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

## ITA No.124/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(5) Trivandrum.	Vs.	M/s.Edava Service Co- operative Bank Ltd. No.3782, Bank Building, Edava P.O. Trivandrum – 695 311. <b>PAN : AAAAE2087Q.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

ITA No.125/Coch/2019 : Asst.Year 2014-2015

The Income Tax Officer Ward – 2(3) Trivandrum.	Vs.	M/s.Vembayam Service Co-operative Bank Ltd. No.3121, Konchira Post, Kanyakulangara, Vembayam Trivandrum – 695 615. <b>PAN : AAAAV4391G.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : --- None ---

ITA No.126/Coch/2019 : Asst.Year 2011-2012

ITA No.127/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2(3) Trivandrum.	Vs.	M/s.Vithura Service Co- operative Bank Ltd. No.1048, Bank Building, Vithura P.O. Nedumangad Trivandrum – 695 562 <b>PAN : AAAAV6101G.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : --- None ---

ITA No.129/Coch/2019 : Asst.Year 2011-2012

ITA No.130/Coch/2019 : Asst.Year 2012-2013

ITA No.131/Coch/2019 : Asst.Year 2013-2014

ITA No.132/Coch/2019 : Asst.Year 2014-2015

The Income Tax Officer Ward – 4 Kollam.	Vs.	M/s.The Nadakkal Service Co-operative Bank Ltd. Kalluvathukkal P.O. Kollam – 691 001. <b>PAN : AABAT3582G.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : Sri.R.Krishnan

## ITA No.133/Coch/2019 : Asst.Year 2013-2014

The Income Tax Officer Ward – 4 Kollam.	Vs.	M/s.The Uliyakovil Service Co-operative Bank Ltd.No.Q.1033, Ashramam P.O. Kollam – 691 002. <b>PAN : AAAAU8787B.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : Sri.Jayakumar S.

## ITA No.134/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 4 Kollam.	Vs.	M/s.The Adichanalloor Farmers Service Co- operative Bank Ltd. Adichanallor P.O. Kollam – 691 573. <b>PAN : AABAT5060H.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : Sri.R.Krishnan

## ITA No.142/Coch/2019 : Asst.Year 2011-2012

## ITA No.135/Coch/2019 : Asst.Year 2014-2015

The Income Tax Officer Ward – 2(3) Trivandrum.	Vs.	M/s.Anad Farmers Service Co-operative Bank Ltd. Anad Jn, Nedumangad Trivandrum – 695 544. <b>PAN : AAAAA5923D.</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : Sri.Thomas Abraham

ITA No.144/Coch/2019 : Asst.Year 2013-2014

The Income Tax Officer Ward – 2(2) Trivandrum.	Vs.	M/s.Naruvamoodu Service Co-operative Bank Ltd. Naruvamoodu P.O., Pallichal, Panchayath Trivandrum – 695 020. <b>PAN : AABAN8005G.</b>
(Appellant)		(Respondent)

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

Respondent by : --- None ---

Date of Hearing : 09.05.2019	Date of Pronouncement : 17.05.2019
------------------------------	---------------------------------------

**ORDER****Per George George K, JM**

These appeals at the instance of the Revenue are directed against different orders of the CIT(A). Since common issues are raised in the appeals, they were heard together and are being disposed off by this consolidated order.

2. Two issues are raised in these appeals – (i) whether the assessee is entitled to deduction u/s 80P of the I.T.Act; (ii) whether the interest income received on investments can be treated as ‘income from business’ and granted deduction u/s 80P of the I.T.Act.

3. Brief facts of the case are as follows:

The assessees in these cases are registered as co-operative societies under the Kerala State Co-operative Societies Act, 1969. The assessments were completed in the assessees’ cases by denying deduction claimed u/s 80P of the

I.T.Act. The Assessing Officer for denying the claim of deduction u/s 80P of the I.T.Act, treated the assessee as a co-operative bank and not a co-operative society. Further the interest received from the investments were denied deduction u/s 80P of the I.T.Act by treating the same as income from 'other sources'.

4. Aggrieved by the orders of the assessment, the assessee filed appeals before the first appellate authority. The CIT(A) by following the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (384 ITR 490)* allowed the claim of deduction u/s 80P of the I.T.Act. As regards interest received on investments, the CIT(A) held that the same should be assessed as 'income from business' since these investments were made in the course of business of the assessee. It was concluded by the CIT(A) that such interest income was entitled to deduction u/s 80P of the I.T.Act. In holding so, the learned CIT(A) relied on the order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited in ITA No.525/Coch/2014* (Order dated 20.07.2016).

5. Aggrieved by the orders of the CIT(A), the Department has filed the present appeals before the Tribunal. The grounds raised in these appeals are more or less identical. However, the difference would not make any distinction insofar as the adjudication of these appeals. Therefore, we reproduce the grounds raised in ITA No.75/Coch/2019 as follows:

1. *The Learned Commissioner of Income tax (Appeals), Thiruvananthapuram erred in concluding that "the appellant is eligible for deduction under section 80P of the Act on the business income including the interest income earned on the deposits with the other banks and the Treasury."*

2. *It is respectfully submitted that the respondent is essentially, a Co-operative bank and not merely a primary agricultural credit Society and hence the allowance of deduction u/s 80P to the respondent assessee while computing the total income was irregular in nature and also against law.*

3. *The present appeal involves substantial question of law as to whether on the facts and in the circumstances of the case,*

*(i) the order of CIT(A) deleting the additions made during the completion of assessment as per the provisions of Income tax Act, considering the provisions of section 80P(4) is correct?*

*(ii) the order of CIT(A) is correct in not duly considering that the interest income received from deposits made with banks cannot be attributable as profit and gains from out of providing credit facilities to its members u/s 80P(2)(a)(i)?*

*(iii) the order of CIT(A) is correct in not duly considering that the assessee has invested surplus funds like an ordinary investor and the interest income from such deposits has to be tax income from other sources and not eligible for deductor 80P?*

*(iv) the order of CIT(A) is correct in not duly considering that TDCB Ltd is apex bank and they are not Co-operative societies cannot be equated with PACs or PCARDB u/s 80P(4) r w s 80P?*

(v) *the order of CIT(A) is correct in not duly considering the judgement of Honble Supreme Court in the case of Citizen Co-operative society Ltd Vs ACIT, Circle-9(1), Hyderabad dated 08.08.2017 reported in 397 ITR 1(SC), wherein it has been held that if a cooperative society is violating the principle of mutuality in the grab of persons who actually are not real members and indulging in banking business per se that it cannot claim the benefit of section 80P(2)(a)(i).*

(vi) *the order of CIT(A) is correct in not duly considering following case laws:*

*(a) 203 ITR 1027 (SC) in the case of Sabargantha Zilla Kharid Vechar Sangh Ltd.*

*(b) 363 ITR 68(Kerala) in the case of Perunthalmanna Service Corporative Bank.*

*(c) 234 ITR 201 (Kerala) in the case of CIT V s Kerala State Co-operative Marketing Federation*

*(d) 322 ITR 283 in the case of M/s Totgars Co-operative Sales Society.*

*For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax (Appeals), Trivandrum on the above points may be set aside and that of the Assessing Officer restored."*

6. The learned Departmental Representative relied on the grounds raised in these appeals. Further, the learned DR placed reliance on the latest judgment of the Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT [ITA No.97/2016 order dated 19<sup>th</sup> March, 2019]*. The learned AR relied on the orders of the CIT(A).

7. We have heard the rival submissions and perused the material on record. The Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. (supra)* held that the Assessing Officer has to conduct an inquiry into the factual situation as to the activities of the assessee society to determine the eligibility of deduction u/s 80P of the I.T.Act. It was held by the Hon'ble High Court that the Assessing Officer is not bound by the registration certificate issued by the Registrar of Kerala Co-operative Society classifying the assessee-society as a co-operative society. The Hon'ble High Court held that each assessment year is separate and eligibility shall be verified by the Assessing Officer for each of the assessment years. The finding of the Larger Bench of the Hon'ble High Court reads as follows:-

*“33. In view of the law laid down by the Apex Court in Citizen Co-operative Society [397 ITR 1] it cannot be contended that, while considering the claim made by an assessee society for deduction under Section 80P of the IT Act, after the introduction of sub-section (4) thereof, the Assessing Officer has to extend the benefits available, merely looking at the class of the society as per the certificate of registration issued under the Central or State Co-operative Societies Act and the Rules made thereunder. On such a claim for deduction under Section 80P of the IT Act, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of Section 80P.*

33. In *Chirakkal* [384 ITR 490] the Division Bench held that the appellant societies 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 to be 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 and as such, they are entitled for the benefit of sub-section (4) of Section 80P of the IT Act to ease themselves out from the coverage of Section 80P and that, the authorities under the IT Act cannot probe into any issues or such matters relating to such societies and that, Primary Agricultural Credit Societies registered as such under the KCS Act and classified so, under the Act, including the appellants are entitled to such exemption.

34. In *Chirakkal* [384 ITR 490] the Division Bench expressed a divergent opinion, without noticing the law laid down in *Antony Pattukulangara* [2012 (3) KHC 726] and *Perinthalmanna* [363 ITR 268]. Moreover, the law laid down by the Division Bench in *Chirakkal* [384 ITR 490] is not good law, since, in view of the law laid down by the Apex Court in *Citizen Co-operative Society* [397 ITR 1], on a claim for deduction under Section 80P of the Income Tax Act, by reason of sub-section (4) thereof, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of Section 80P of the IT Act. In view of the law laid down by the Apex Court in *Citizen Co-operative Society* [397 ITR 1] the law laid down by the Division Bench *Perinthalmanna* [363 ITR 268] has to be affirmed and we do so.

*35. In view of the law laid down by the Apex Court in Ace Multi Axes Systems' case (supra), since each assessment year is a separate unit, the intention of the legislature is in no manner defeated by not allowing deduction under Section 80P of the IT Act, by reason of sub-section (4) thereof, if the assessee society ceases to be the specified class of societies for which the deduction is provided, even if it was eligible in the initial years."*

7.1 In view of the dictum laid down by the Full Bench of the Hon'ble High Court, the issue of deduction u/s 80P(2)(a)(i) is restored to the Assessing Officer. The Assessing Officer shall examine the activities of the respective assessees and determine whether their activities are in compliance with the activities of a co-operative society functioning under the Kerala Co-operative Societies Act, 1969 and grant deduction u/s 80P(2) in accordance with law.

8. As regards the interest on the investments with Co-operative Banks and other Banks, the co-ordinate Bench order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited (supra)* held that interest income earned from investments with treasuries and banks is part of banking activity of the assessees, and therefore, the said interest income was eligible to be assessed as 'income from business' instead of 'income from other sources'. However, as regards the grant of deduction u/s 80P(2) on such interest income, the Assessing Officer shall examine the assessee's activities whether it is in tune with the activities expected of a co-operative society registered under the Kerala Co-operative

Societies Act, 1969 and grant deduction on such interest income u/s 80P(2) of the I.T.Act. It is ordered accordingly.

9. In the case of ITA Nos.75 & 76/Coch/2019 the assessee has also filed cross objections (CO Nos.18 & 19/Coch/2019). The grounds raised in the cross objections are only supporting the order of the CIT(A). Since we have already disposed off the Revenue's appeals, the cross objections filed by the assessee is rendered infructuous and the same is dismissed as such.

10. In the result, the appeals filed by the Revenue are allowed for statistical purposes and the Cross Objections filed by the assessee are dismissed.

Order pronounced on this 17<sup>th</sup> day of May, 2019.

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

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

Cochin ; Dated : 17<sup>th</sup> May, 2019.  
Devdas\*

**Copy of the Order forwarded to :**

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

BY ORDER,

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