

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

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

ITA No.66/Coch/2019 : Asst.Year 2010-2011
ITA No.156/Coch/2019 : Asst.Year 2011-2012

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

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

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| Date of Hearing : 09.05.2019 | Date of Pronouncement : 16.05.2019 |
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against the consolidated order of the CIT(A) dated 24.10.2018. The relevant assessment years are 2010-2011 and 2011-2012. Since common issue is raised in these appeals, they were heard together and are being disposed off by this consolidated order.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming the denial of deduction u/s 80P(2) of the I.T.Act, for the reason that no return of income was filed by the assessee?

3. Briefly stated the facts of the case are as follows:

The assessee is registered as a primary agricultural credit society under the Kerala Co-operative Societies Act, 1969. For the assessment years 2010-2011 and 2011-1012 the Assessing Officer denied the benefit of deduction u/s 80P(2) of the I.T.Act on the ground that the assessee did not file the return of income. The view taken by the Assessing Officer was affirmed by the CIT(A).

4. Aggrieved by the order of the CIT(A), the assessee has filed these appeals for the assessment years 2010-2011 and 2011-2012, before the Tribunal. None was present on behalf of the assessee, however, a brief note was filed on behalf of the assessee stating that the assessee is a co-operative society and not a co-operative bank and entitled to deduction u/s 80P(2) of the I.T.Act. It was further submitted that the assessee was under bonafide belief that it being a co-operative society and the entire income being exempt was not bound to file any return of income. It was submitted that the return of income was filed subsequently for both the assessment years on 07.12.2018 and copy of the acknowledgement evidencing the filing of the returns of income was placed on record. assessee has also relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Bank Ltd.(384 ITR 490)* and submitted that having filed the returns of income, the assessee's claim of deduction u/s 80P(2) of the I.T.Act should be granted.

5. The learned Departmental Representative, on the other hand, strongly relied on the orders passed by the Income-tax authorities.

6. We have heard the learned Departmental Representative and perused the material on record. The assessee had submitted the returns of income filed on 07.12.2018 and copy of the acknowledgement evidencing the filing of the returns of income was placed on record. The Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)* held that the return of income whether filed belatedly before the appellate authority has to be considered for claiming deduction u/s 80P(2) of the I.T.Act. The Hon'ble High Court was considering the following questions of law:-

“(B) Whether the Tribunal is justified in denying the exemption under section 80P of the Income Tax 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 under section 139(1)/(4) or section 142(1) / 148 can be held as non est in law and invalid for the purpose of deciding exemption under section 80P of the Income Tax Act, 1961?”

6.1 In deciding the above questions, the Hon'ble High Court held as follows:-

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 here no 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 is 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 subsection 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. Here, questions 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 binding 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 est 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."

6.2 In view of the Hon'ble High Court judgment in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)*, the return of income though belatedly filed before the appellate authority, the same has to be taken into consideration and deduction has to be granted provided other conditions for grant of such is complied with by the assessee-society.

6.3 Further, the Full Bench of the Hon'ble High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT [ITA No.97/2016 order dated 19th March, 2019]* 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 assessee and determine whether its 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) of the I.T.Act in accordance with law.

8. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 16th day of May, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 16th May, 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