

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

I.T.A. No. 138/Coch/2019
Assessment Year : 2015-16

The Income Tax Officer, Ward-2(1)/O/o Addl. CIT, Range-2, Trivandrum.	Vs.	M/s. Ulloor Service Co-operative Bank Ltd., Pongummoodu, Medical College P.O., Trivandrum-695 011. [PAN:AAAAU 1448F]
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Smt. A.S. Bindhu, Sr. DR
Assessee by	None

Date of hearing	13/05/2019
Date of pronouncement	20/05/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the Revenue is directed against the order of the CIT(A), Trivandrum dated 17/12/2018 and pertain to the assessment year 2015-16.

2. None appeared on behalf of the assessee. However, we proceed to take up the appeal exparte.

3. The Revenue has raised the following grounds of appeal:

1) The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that *"the appellant is eligible for deduction under section. 80P(2)(a)(i) 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 Cooperative 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 and whether on the facts and in the circumstances of the case, the order of C1T(A) is correct:

(i) in 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) in not duly considering that Trivandrum District Cooperative Bank Ltd is apex bank and not Co-operative Society and cannot be equated with PACs or PCARDB u/s 80P(4) r.w.s 80P?

(iii) in considering the fact that reserve/provision is neither actual expenses nor ascertain liability and not entitled to deduction u/s. 80P(2)?

(iv) 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)?

(v) in not duly considering that the assessee has invested surplus funds like an ordinary investor and it has to be taxed as income from other sources?

(vi) in not duly considering the judgment of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT, Circle-9(I), 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 garb 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).

(vii) in not duly considering the 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 Perinthalmanna Service Co-operative Bank.

(c) 234 ITR 201 (Kerala) in the case of CIT Vs 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.

4. 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 on 27.03.2016 declaring total income for the year at Rs. Nil after claiming deduction under section 80P of the I.T. Act. The Assessing Officer denied the deduction claimed by the assessee u/s. 80P of the Act vide order passed order u/s. 143(3) of the Act dated 07.12.2017 on the ground that the principal business carried out by the society was 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 was not eligible for deduction under section 80(P)(2)(d) as the interest income was received from other than co-operative society.

5. On appeal, the CIT(A) held that the issue of eligibility of Primary Agricultural Credit Society to claim deduction u/s. 80P was covered in favour of the assessee by the judgment of the High Court of Kerala in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT in 384 ITR 490. The CIT(A) also relied on the decision of the ITAT, Cochin Bench in the case of Kararikanam Service Co-operative Bank Ltd. for AY 2009-10 in ITA No.293/Coch/2013 dated 14th October, 2016. Following the above judgments, as the assessee is a registered Primary Agricultural Credit Co-

operative Society, the CIT(A) held that the assessee is eligible for deduction u/s. 80P of the Act.

6. Against this, the Revenue is in appeal before us. The Ld. DR relied on the order of the Assessing Officer.

7. We have heard the Ld. DR. In our opinion, the issue was considered by the Jurisdictional High Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT reported in ITA No.97/2018 dated 19.03.2019 wherein it was held that the Assessing Officer is not obliged to grant deduction by merely looking at the certificate of registration issued by the competent authority under the Co-operative Societies Act. Instead, he has to conduct an enquiry into the factual situation as to the activities of the assessee and arrive at a conclusion whether the benefits of section 80P can be extended or not. Thus, the Full Bench overruled the earlier judgment of the Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT (384 ITR 490). The Full Bench had followed the judgment of the Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT reported in 397 ITR 1 (SC). In view of the latest judgment of the Jurisdictional High Court cited supra, this issue is remitted to the file of the Assessing Officer with the direction to examine the actual activities carried on by the assessee so as to grant deduction u/s. 80P of the Act. Accordingly, the issue in dispute is remitted to the file of the Assessing Officer for fresh consideration in

accordance with the above direction. This ground of appeal of the Revenue is partly allowed for statistical purposes.

8. The next issue is with regard to deduction u/s. 80P(2)(a)(i) of the Act. This issue was allowed by the CIT(A) in the light of the order of the Tribunal in the case of Kizhathadiyoor Co-operative Bank Limited for AY 2009-10 in ITA No. 525/Coch/2014, order 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 under section 80P(2)(a)(i) of the Act.

9. Against this, the Revenue is in appeal before us. The Ld. DR relied on the order of the Assessing Officer.

10. We have heard the Ld. DR. With regard to the interest income earned by the assessee from other Banks and Treasury on which deduction u/s. 80P(2)(i)(a) of the Act is to be granted, there is no dispute that the assessee has made investments in the course of banking activities and such interest income was received on investments made with cooperative banks and other scheduled banks. The co-ordinate bench of the Tribunal in the case of Kizhathadiyoor Co-operative Bank Limited cited supra had held that such interest income received by the assessee should be assessed as "income from business" instead of "income from other sources". In view of the order of the co-ordinate bench, we hold that the CIT(A) is

justified in holding that interest income received by the assessee should be assessed as "income from business".

10.1 As regards grant of deduction u/s. 80P(2)(i)(a) of the Act, the Assessing Officer shall follow the law laid down by the Larger Bench of the Jurisdictional High Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT cited supra and examine the actual activities of the assessee so as to grant deduction u/s. 80P(2)(i)(a) of the Act. Accordingly, we remit this issue to the file of the Assessing Officer for fresh consideration in accordance with the above direction. Thus, this ground of appeal of the Revenue is partly allowed for statistical purposes.

11. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on this day of 20th May, 2019.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 20th May, 2019

GJ

Copy to:

1. M/s. Ulloor Service Co-operative Bank Ltd., Pongummoodu, Medical College P.O., Trivandrum-695 011.
2. The Income Tax Officer, Ward-2(1)/O/o Addl. CIT, Range-2, Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.

4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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