

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

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

ITA No.89/Coch/2019 : Asst.Year 2009-2010

ITA No.90/Coch/2019 : Asst.Year 2013-2014

ITA No.91/Coch/2019 : Asst.Year 2014-2015

ITA No.92/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward - 4 Tirur.	Vs.	M/s.The Elamkulam Service Co-operative Bank Ltd., Kunnakkavu P.O. Perinthalmanna Malappuram - 679 340. PAN : AAAAE3476F.
(Appellant)		(Respondent)

ITA No.84/Coch/2019 : Asst.Year 2008-2009

ITA No.85/Coch/2019 : Asst.Year 2009-2010

ITA No.86/Coch/2019 : Asst.Year 2013-2014

ITA No.87/Coch/2019 : Asst.Year 2014-2015

ITA No.88/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward - 4 Tirur.	Vs.	M/s.The Angadipuram Service Co-operative Bank Ltd., Angadipuram Perinthalmanna Malappuram - 679 321. PAN : AADAT7950J.
(Appellant)		(Respondent)

ITA No.181/Coch/2019 : Asst.Year 2008-2009

ITA No.182 /Coch/2019 : Asst.Year 2009-2010

ITA No.183/Coch/2019 : Asst.Year 2013-2014

ITA No.184/Coch/2019 : Asst.Year 2014-2015

ITA No.185/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward - 4 Tirur.	Vs.	M/s.The Pulamanthole Service Co-operative Bank Ltd., Pattambi Road Pulamanthole Malappuram - 679 323. PAN : AABAP5757F.
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR
Respondents by : Sri.Hamid Hussain K.P.

Date of Hearing : 19.06.2019	Date of Pronouncement : 20.06.2019
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ORDER

Per Bench :

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

2. The solitary issue raised in these appeals is whether the assesseees are entitled to deduction u/s 80P of the I.T.Act?

3. Brief facts of the case are as follows:

The assesseees in these cases are registered as co-operative societies under the Kerala State Co-operative Societies Act, 1969. The assessment was completed in assesseees case 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 assesseees as co-operative bank and not co-operative society.

4. Aggrieved by the orders of the assessment, the assessee filed appeal 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.

5. Aggrieved by the orders of the CIT(A), the Department has filed the present appeals before the Tribunal. The common grounds raised in these appeals read as follows:

1. In view of the recent decision of the Hon'ble High Court of Kerala in ITA No : 97 of 2016 dated 09.07.2018, referring the issue of deduction u/s. 80P to a larger bench, isn't the order of CIT(A) against law and the facts and circumstances of the case?

2. A division bench of Hon'ble High Court of Kerala vide order in ITA No : 4 of 2014 dated 31.01.2014 in the case of M/s Perinthalmanna Service Co-Operative Bank Ltd had upheld the order of the Commissioner of income Tax revising the order of the assessing officer in which the assessing officer had granted deduction u/s. 80P merely looking at the registration certificate provided by the Registrar of the Kerala Co-Operative Societies. The Court held that the Assessing Officer has to complete the assessment proceedings after conducting an enquiry and not by merely looking at the registration certificate provided by the Registrar. Whereas, vide order No : 212 of 2013 & Ors, the High Court in the case of M/s Chirakkal Service Co-Operative Bank Ltd had ruled that the assessee was classified as Primary Agricultural Credit Society by the competent authority under the Kerala Co-operative Societies Act, it has necessarily to be held that the principal object of such society is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes. The authorities under the Income Tax Act cannot probe into any issue or such matter relating to such assesses. However, when the case was again taken for hearing in the case of other assesseees, the Hon'ble High Court of Kerala vide order in ITA No : 97 of 2016 dated 09.07.2018 cited has held that since two contrary decisions of benches of equal strength exists for the same issue, the issue should be referred to a larger bench relying on the decision of the Apex Court in the case of M/s Victory Aqua Farm Ltd. Therefore, the issue of deduction u/s. 80P has not attained finality. In this scenario, isn't the order of the CIT(A) relying on the decision of one division bench of the Hon'ble High Court in the case of M/s Chirakkal Service Co-Operative Bank Ltd without merits when there existed another division bench decision of the High Court which was favourable to the revenue?

3. The CIT(A) should have appreciated the fact that the Hon'ble Apex Court in the case of M/s The Citizen Co-Operative

Society Limited Vs Assistant Commissioner of Income Tax, Circle- 9(1), Hyderabad has decided the issue of deduction u/s. 80P in favour of the revenue as the assessee society did not satisfy the principle of mutuality which also applies squarely to the assessee society. In view of this, order of CIT(A) against law and the facts and circumstances of the case?

4. The Commissioner of Income Tax (Appeals) placing reliance on the decision of the Honourable High Court of Kerala in the case of M/s Chirakkal Service Co-op Bank Ltd. & others in ITA 212 of 2013, had held that the assessee is eligible for deduction u/s 80P of the Income Tax Act solely on the basis that it has been registered and classified as a Primary Agricultural Credit Society by the Competent Authority under the Kerala Co-operative Societies (KCS) Act. As against this, the Honourable Supreme Court has while deciding in the case of The Citizen Co-Operative Society Limited Vs Assistant Commissioner of Income Tax, Circle- 9(1), Hyderabad had taken into consideration the activities of the assessee society and not relied only on the certificate of registration issued by the Central Registrar of Co-operative societies. In view of this, is not the decision of the CIT(A) against the prevailing positions of law that differentiates between de jure and de facto positions and which permits the principle of penetration of the corporate veil to determine the true nature of the activities of the cooperative society?

5. The learned CIT(Appeals) ought to have seen that the above Apex Court's decision is in sharp contrast to the decision of the Kerala High Court in the case of M/s Chirakkal Service Co-operative Bank & others in ITA 212 of 2013 that held that the authorities under the Income Tax Act cannot probe into the question of whether the assessee Cooperative society is a primary agricultural credit society once it is registered and classified as primary agricultural credit society by the competent authorities under the provisions of the Kerala Co operative Societies Act, 1969 .

6. The learned CIT(Appeals) ought to have seen that the Honourable Supreme Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd Vs CIT reported in 203 ITR1027 (SC) had held that the eligible deduction under Section 80P of the Income Tax Act, 1961 in respect of Co-operative societies /banks doing both agricultural and non agricultural activities should not be 100% of the gross profits of such societies etc. but should be limited to the profits generated from agricultural activities alone performed by such assesseees.

7. *The judicial ratios in the cases of Rodier Mill Employees Co-op Stores Ltd. Vs CIT 135 ITR 355 (Mad), CIT Vs Kerala State Co-operative Marketing Federation Ltd.[1998] 234 ITR 301(Ker) and Kerala State Co-operative Agricultural Rural Development Bank Ltd. Vs ACIT [ITA No.506/Coch/2010 & S.P. No.67/Coch/2010 hold that carte blanche deductions u/s 80P are not available to cooperative societies merely on the basis of professed agricultural credits on the basis of mere registration and classification. In view of this, is not the decision of the CIT(A) without merits?*

8. *For these and other grounds that may be urged at the time of hearing, it is requested that the order of the CIT(A) may be set aside and that of the Assessing Officer restored."*

6. The learned Departmental Representative relied on the grounds raised in the 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 19th March, 2019]*. The learned Counsel for the assesseees, on the other hand, supported 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 assessee 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. It is ordered accordingly.

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

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

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 20th June, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin