

<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.218/Coch/2019
Assessment Year : 2014-15

The Income Tax Officer, Ward-2(4), Thrissur.	<b>Vs.</b>	M/s. Peechi Service Co-operative Bank Ltd., Peechi Road Junction, 410L Kallery Building, Pattikad P.O., Thrissur-680 652. [PAN: AABAP 9771B]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

I.T.A. No.219/Coch/2019
Assessment Year : 2015-16

The Income Tax Officer, Ward-2(4), Thrissur.	<b>Vs.</b>	M/s. Pullur Service Co-operative Bank Ltd., Pullur Post, Railway Station Road, Thrissur-680 683. [PAN: AABAP 6391H]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR
<b>Assessee by</b>	None

<b>Date of hearing</b>	18/06/2019
<b>Date of pronouncement</b>	18/06/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

These appeals filed by different assessees are directed against the different orders of the CIT(A), Thrissur and pertain to the assessment years 2014-15 and 2015-16.

2. None appeared on behalf of the assessee. However, we proceed to decide the appeals on merits after hearing the Ld. DR.

3. Since the issue involved in these appeals is common, they were heard together and are being disposed of by this common order. We shall take up the grounds of appeal taken by the Revenue in ITA No. 218/Coch/2019 which reads as follows:

1. The order of the Ld. Commissioner of Income Tax (Appeals), Thrissur in ITA No. 1337/16-17 dated 24.01.2019 for the Assessment Year 2014-15 is erroneous in law, facts and circumstances of the case.

2. The learned Commissioner of Income-tax (Appeals) has erred in deleting the disallowance of deduction of Rs. 71,18,060/- claimed by the assessee under section 80P(2) (a) (i) of the Act solely on the basis of the decision of the Hon'ble Kerala High Court in the case of M/s Chirakkal Service Co-operative Bank & others in ITA No. 212 of 2013 without perusing the facts of the case in detail.

3. The learned Commissioner of Income-tax (Appeals) ought to have appreciated the fact that the Hon. High Court of Kerala has based its decision on allowing deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 on the certificate issued by the competent authority (as defined in the The Kerala Co-operative Societies Act, 1969 (KCS Act)) for classifying a cooperative society as Primary Agricultural Credit Society.

4. The learned CIT(A) has erred in equating a society registered as a Primary Agricultural Credit Society under KCS Act to a Primary Agricultural Credit Society under the Banking Regulation Act and Income-tax Act, 1961 and thereby allowing deduction under section 80P(2)(a)(i) of the Income-tax Act, 1961 without perceiving the difference in definition of a Primary Agricultural Credit Society in the two Acts.

5. The Ld. CIT(A) ought to have considered the decision of the jurisdictional Hon. High Court in the case of M/s. Perinthalmanna Service Co-operative Bank (363 ITR 268) wherein it has been held that with the introduction of section 80P(4) of the Act, deduction u/s 80P(2) cannot be allowed merely on the strength of certificate of registration as "Primary Agricultural Credit Society."

6. The learned CIT (Appeals) ought to have seen that the Hon. Supreme Court in the case of Sabarkhanta Zilla Kharid Vechar Sangh Ltd. Vs. CIT reported in 203 ITR 1027 (SC) had held that 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 assessees.

7. The learned CIT (appeals) ought to have seen that the above decision of the Hon. Apex Court is in sharp contrast to the decision of the Hon. High Court of Kerala in the case of M/s. Chirakkal Service Co-operative Bank & others in ITA No. 212 of 2013, that held that the authorities under the Income Tax Act cannot probe into question whether the assessee co-operative 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 Cooperative Societies Act, 1969.

8. The learned CIT (Appeals) ought to have considered the reference order of Hon'ble High Court of Kerala to a larger Bench in ITA Nos. 97 of 2016 dated 09.07.2018 in view of two conflicting decisions of the two separate benches of the Hon'ble High Court of Kerala in the cases of M/s Chirakkal Service Co-operative Bank & others and M/s.Perinthalmanna Service Co-operative Bank.

9. For these and other grounds that may be urged at the time of hearing, the order of the CIT (A) may be set aside and that of the Assessing Officer be restored.

10. The appellant craves leave to add or amend any ground of appeal before it is finally disposed off.

4. The facts of the case as narrated in ITA No. 218/Coch/2019 are that the assessee is a Primary Agricultural Credit Society (PACS) under the Kerala Co-operative Societies Act, 1969 and registered Joint Registrar of Co-operative Societies (General), Thrissur. Its main activity is that of accepting deposits and lending money. The assessee filed its return of income for the assessment year 2014-15 on 29/03/2016 at Rs.71,18,060/- 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 on the ground that the assessee was doing banking activities outside

the purview of Banking Regulation Act, 1961 and it was not according to the objectives of the primary agricultural credit 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 ITO vs. M/s. Maruthonkara Service Co-operative Bank Ltd. (ITA No. 474/Coch/2017) wherein it was held that decision of M/s. Citizen Co-operative Society Ltd. vs. ACIT is not applicable to primary agricultural credit societies. 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 for both the assessment years .

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

Order pronounced in the open Court on this 18<sup>th</sup> June, 2019.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 18<sup>th</sup> June, 2019

GJ

Copy to:

1. M/s. M/s. Peechi Service Co-operative Bank Ltd., Peechi Road Junction, 410L Kallery Building, Pattikad P.O., Thrissur-680 652.

2. M/s. Pullur Service Co-operative Bank Ltd., Pullur Post, Railway Station Road, Thrissur-680 683.

I.T.A. Nos.218&219/Coch/2019

3. The Income Tax Officer, Ward-2(4), Thrissur.
4. The Commissioner of Income-tax(Appeals), Thrissur.
5. The Pr. Commissioner of Income-tax, Thrissur.
6. D.R., I.T.A.T., Cochin Bench, Cochin.
- 7.. Guard File.

By Order

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