

<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. Nos.151 to 153/Coch/2019
Assessment Years : 2011-12, 2014-15 & 2015-16

The Income Tax Officer, Ward-2(2), Trivandrum.	<b>Vs.</b>	M/s. Nellimood Service Co-operative Bank Ltd., Nellimood P.O., Trivandrum-695 524. [PAN: AACAN 4201B]
<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 the assessee are directed against the different orders of the CIT(A), Trivandrum dated 17/12/2018 and pertain to the assessment years 2011-12, 2014-15 and 2015-16.

2. None appeared on behalf of the assessee nor any adjournment application filed before the Tribunal. However, we proceed to decide the appeals on merits after hearing the Ld. DR.

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) The present appeal involves substantial question of law on the issue of deduction u/s. 80P of the Act:

(i) The Ld. CIT(A) ought to have noticed 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.

(ii) The case of M/s. Chirakkal Service Co-operative Bank Ltd. on which the Ld. CIT(A) relied upon is contested by the Department and the issue has been referred to a full bench by the Hon'ble High Court of Kerala, the decision of which is still awaited.

(iii) The Ld. CIT(A) ought to have considered 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).

(iv) The Ld. CIT(A) ought to have considered 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.

(3) The present appeal involves substantial question of law on the issue of eligibility of interest income earned by the Appellant from other Banks and Treasury, as whether on facts and in the circumstances of the case, the order of CIT(A) is correct:

(i) 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)?

(ii) in not duly considering that Nellimood Service 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 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?

(iv) in not duly considering the decision of the Apex Court in 322 ITR 283 in the case of M/s Totgars Co-operative Sales Society.

4. 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 2011-12, 2014-15 & 2015-16 declaring total income for the years 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 for AY 2011-12 vide order passed order u/s. 144 r.w.s. 147 of the Act dated 04.03.2016 and for AY's 2014-15 and 2015-16 vide order passed u/s. 143(3) of the Act 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, for the AY's 2014-15 and 2015-16, 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 14<sup>th</sup> 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 for the assessment years 2014-15 & 2015-16 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. We also make it clear that this ground of appeal was also raised for the assessment year 2011-12 which is not emanating from the order of the CIT(A).

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 for both the assessment years.

11. In the result, the appeal filed by the Revenue is 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. Nellimood Service Co-operative Bank Ltd., Nellimood P.O., Trivandrum-695 524.
2. The Income Tax Officer, Ward-2(2), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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