

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

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

ITA No.157/Coch/2019 : Asst.Year 2012-2013

ITA No.221/Coch/2019 : Asst.Year 2013-2014

The Income Tax Officer Ward - 2(3) / Range - 2 Trivandrum.	Vs.	M/s.Anad Farmers Service Co-operative Bank Ltd., Anand Junction Nedumangad Thiruvananthapuram PAN : AAAAA5923D.
(Appellant)		(Respondent)

Appellant A.S.Bindhu, Sr.DR

Respondents by : --- None ---

Date of Hearing : 20.06.2019	Date of Pronouncement : 20.06.2019
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ORDER

Per George George K, JM :

These appeals at the instance of the Revenue are directed against different orders of the CIT(A). The relevant assessment years are 2012-2013 and 2013-2014. 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 assessee is entitled to deduction u/s 80P of the I.T.Act?

3. Brief facts of the case are as follows:

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

4. Aggrieved by the orders of the assessment, the assessee filed appeals 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. The learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that "the appellant is a registered Primary Agricultural Credit Co-operative Society (PACS) and is eligible for deduction under section 80P of the Act."

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

(i) The Id.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 Id.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) *Ld.CIT(A) ought to have considered the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative society Ltd. v. ACIT, Circle 9(1), 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 including in banking business per se that it cannot claim the benefit of section 80P(2)(a)(i).*

(iv) *The Id.CIT(A) ought to have considered the following case laws:-*

(a) *203 ITR 1027 (SC) in the case of Sabarkntha Zilla Kharid Vechan Sangh Ltd.*

(b) *363 ITR 68 (Kerala) in the case of Perunthalmanna Service Co-operative Bank Ltd.*

(c) *234 ITR 201 (Kerala) in the case of CIT v. Kerala State Co-operative Marketing Federation.*

3. *For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax (Appeals), Thiruvananthapuram on the above points 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]*. None was present on behalf of the assessee, however, we proceed to dispose off the appeals on merits.

7. We have heard the learned Departmental Representative 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) Thiruvananthapuram.
4. The Pr.CIT Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin