

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

I.T.A. No.158/Coch/2018
Assessment Year : 2014-2015

The Perunguzhi Service Co-operative Bank Ltd., Perunguzhi P.O., Chiryankkeezhu, Trivandrum-695 305. [PAN:AAAAP 8032C]	Vs.	The Income Tax Officer, Ward-2(5), Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

S.P. No.15/Coch/2018 (Arising out of I.T.A. No.158/Coch/2018)
Assessment Year : 2014-2015

The Perunguzhi Service Co-operative Bank Ltd., Perunguzhi P.O., Chiryankkeezhu, Trivandrum-695 305. [PAN:AAAAP 8032C]	Vs.	The Income Tax Officer, Ward-2(5), Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Dr. K.P. Pradeep, Adv.
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	08/07/2019
Date of pronouncement	09/07/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Trivandrum dated 21/02/2018 and pertains to assessment year 2014-15.

The assessee has also filed Stay Petition in S.P. No. 15/Coch/2018 seeking stay of outstanding demand as follows:

Tax	Rs. 88,07,365/-
Interest	<u>Rs. 61,59,215/-</u>
Total:	<u>Rs.1,49,66,580/-</u>

2. The assessee has raised the following grounds of appeal:

A. The orders of the assessing officer as well as the appellate authority to the extent of objections made herein after, are against the facts and circumstances of the case under consideration and hence opposed to the provisions of law.

B. The issue regarding the entitlement of deduction under Section 80P with respect to a co-operative society which is classified as Primary Agricultural Credit Society is covered by M/s Chirakkal Service Co-operative Bank Ltd reported in 384 ITR 490 (Kerala High Court). Hence the decision is binding on the assessing authority as well as the first appellate authority.

C. The issue with respect to the tax on interest earned from the deposit maintained with District Co-operative Banks and Government Treasuries are covered by the decision of this Hon'ble Tribunal in the case of M/s Puthupally Village Service Co-operative Bank as per the order dated 31-10-2016 in ITA No 279/Coch/2016. Hence the said decision is binding on the assessing authority as well as the appellate authority. Hence the estimation of income for Rs.23, 83, 514 is liable to be deleted.

D. It is settled law that eligibility for deduction/exemption cannot be overlooked on technical grounds, if the assessee otherwise proved its entitlement for the deduction/exemption. In the facts of the case under consideration the appellant is entitled for deduction under Section 80P but only on the technical, the deduction/exemption was denied, which is unreasonable and highly discriminatory.

E. The levy of interest under Section 234 A and 234B is also unsustainable as it is against the provisions of law and facts and circumstances of the case.

F. Section 80P clearly enables the co-operative society to claim gross total income and includes any income referred to in sub-section (2) as allowable deductions, As per clause (i) (a) of sub-section (2) a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is eligible for deduction. The claim of the appellant is fully justified going by the provision and decision rendered against the appellant is wholly unsustainable.

G. The estimation of income alleging deposit receipts are unexplained income taxable under Section 68 of the Income Tax Act, 1961 is highly unreasonable and illegal. Since the said receipts form part of the banking activities, it would come under the purview of deduction under Section 80P. It can be seen that the deposit register maintained by the appellant, as per the instructions from the Registrar of Co-operative Societies would reveal the details of income and the allegation that it is unexplained is highly vitiated and unreasonable.

3. Ground Nos. A, B and D were not pressed as they were general in nature and hence, they are dismissed as not pressed

4. Regarding Ground Nos. C and F, the facts of the case are that the Assessing Officer brought to tax a sum of Rs.23,83,514/- rejecting the claim of deduction made under section 80P(2) while treating the same as income from other sources. It was seen that the assessee Society ad surplus funds which in turn weren deposited with the district co-operative bank and was in receipt of interest income amounting to Rs.23,83,514/- over the deposits made with. According to the Assessing Officer, the said amount of interest was liable to be taxed under the head income from other sources since the assessee Society had invested the surplus fund as an ordinary investor. It was further observed that interest income received from such deposits cannot be said to be attributable to the main

activities of the assessee i.e carrying on business of providing credit facilities to its members. The Assessing Officer relied on the judgment of the Supreme Court in the case of Totgar's Co-operative Sales Society Ltd vs ITO (322 ITR 283) wherein it was held that "the assessee being Co-operative Society is engaged in providing credit facilities to its members or marketing agricultural produce of its members, interest earned by it by investing surplus funds in short term deposits would fall under the head Income from other sources taxable u/s 56 of the Act and it cannot be said to be attributable to the activities of the Society and therefore, the interest did not qualify for deduction under u/s.80P(2)(a)(i) of the IT Act". The Assessing Officer is of the further view that the benefit of section, 80P(2)(d) of the Act is allowable only in respect of any income by way of interest derived by the cooperative society from its investments with another cooperative society but not to the interest income earned from the district co-operative bank as in the case of the assessee. The Assessing Officer further relied on the decision of this Tribunal in ITA No11/Coch/2014/ dt.24.09.2014 in the case of Mutholy Service cooperative Bank Limited vs ITO wherein it was held that "We find no merit in the arguments of the assessee's counsel and the interest earned on fixed deposits with the Cooperative Bank cannot be considered as business income".

5. Before the CIT(A), it was submitted that they are not exclusively carrying on any banking business but a business of lending money to its members and

therefore, is covered u/s 80P(2). It was submitted that the Supreme Court in the case of M/s. Totgars Cooperative Sales Society Ltd cited supra was dealing with the case where the assessee apart from providing credit facilities to its members was also marketing agricultural produces grown by its members and sale consideration received from the marketing of agricultural produces of its members was retained by the assessee in that case and was invested in short term deposits and therefore, such interest income is liable to be taxed only u/s 28 of the Act and not u/s 56 of the Act. It was submitted that such amount retained by the assessee's society was shown as a liability in the balance sheet and therefore, to that extent interest income cannot be attributable neither to the activity mentioned in section 80P(2)(a)(i) or u/s 80P(2)(a)(iii). Hence, it was submitted that the judgment of the Supreme Court, cited supra would not apply to them. Thus, it was argued before the CIT(A) that the interest income which was brought to tax as income from other sources cannot be sustained and need be deleted.

5.1 The CIT(A) observed that the assessee is basically a Cooperative Society and is obligated to give loans and advances to its members and to earn interest thereon which in turn is to be exempted from tax as ruled by the Hon'ble High Court in the Chirackal Service Cooperative Bank Ltd vs CIT in ITA No.212/2013 dt.15.02.2016. But, the interest earned on fixed deposits the assessee had with district co-operative bank cannot be considered as business income since the

assessee society was not incorporated to do banking business and to invest the surplus fund in district co- operative bank and further, to earn interest thereon. This is because, the district co-operative bank is not a society as contemplated u/s 80P(2)(d) and therefore, the interest earned from the deposits the assessee had with the district cooperative bank amounting to Rs.23,83,5147- cannot be construed as regular business income. The CIT(A) referred to the judgment of the Supreme Court in the case of Totgar's Co-operative Sales Society Ltd. vs. ITO (322 ITR 283) wherein it was held that "The words " the whole of the amount of profits and gains of business" in section 80P(2) of the Income Tax Act, 1961 emphasise that the income in respect of which deduction is sought by a cooperative society must constitute the operational income and not the other income which accrues to the society". According to the CIT(A), in this case, the assessee sought exemption/deduction not from the operational income which they earned from loan and advances given to the members of the society but from the income which accrued from the surplus amount deposited with the district cooperative bank. Since regular business income alone is to be exempted from tax u/s 80P(2)(a)(i) of the Act, the interest received from the deposit the assessee had with the district co-operative bank shall necessarily be treated as income from other sources only and accordingly be brought to tax. The CIT(A) referred to para 10 of the judgment of the Supreme Court cited supra wherein it was stated that "..... The headnote to section 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Section

80P(1), *inter alia*, states that where the gross total income of a co-operative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee society. An income, which is attributable to any of the specified activities in section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in section 80P(2) of the Act". The CIT(A) observed that the assessee regularly invested funds not immediately required for business purposes and interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". According to the CIT(A), such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members and when the assessee provides credit facilities to its members, it earns interest income. From the above findings of the Supreme Court, cited *supra*, the CIT(A) observed that it could be made out that the words "the whole of the amount of profits and gains of business" in section 80P(2) of the Act emphasize that the income in respect of which deduction is sought by a co-operative society must constitute the operational income and not the other

income which accrues to the society. The interest income arising to a co-operative society carrying on the business of providing credit facilities to its members, on the surplus fund which is not required immediately for business purpose, from investment in short-term deposits, has to be taxed as income from other sources u/s 56 of the Act and such interest cannot be said to be attributable to the activities of the society, viz., carrying on the business of providing credit facilities to its members. According to the CIT(A), interest income of such society from amounts retained by it, in view of the Supreme Court decision, cannot be said to be attributable to the activity mentioned in section 80P(2)(a)(i) of the Act. Hence, the CIT(A) was of the view that the judgment of the Supreme Court cited supra squarely apply to the case of the assessee and accordingly, the interest earned from the investment made in the district co-operative bank is to be brought to tax under the head income from other sources. Hence, no exemption/deduction under the above mentioned section can be allowed.

5.2 The CIT(A) rejected the argument of the assessee that the interest earned from the investment with the district co-operative bank otherwise is to be exempted u/s 80P(2)(d) since interest was earned from district cooperative bank and not from another co-operative society as stipulated in the Act. According to the CIT(A), under the extant provision of the Act, exemption can be claimed only when deposit is made with another cooperative society which in turn is

registered under the Kerala Cooperative Societies Act and not with the district co-operative bank as done by the assessee. The CIT(A) relied on the decision of this Tribunal in the case of Mutholy Service Cooperative Bank Ltd vs ITO cited supra and held that the assessee can claim exemption only when investment is made in another cooperative society but not in the district cooperative bank.

5.3. The CIT(A) also rejected the argument of the assessee that the expenditure incurred for earning the said interest income of Rs.23,83,514/- shall necessarily be deducted as ruled by the Karnataka High Court in the case of Totgars Co-op. Sale Society Ltd vs Income Tax Officer (231 Taxmaan 794) since the entire expenditure incurred by the assessee Society had already been debited in the profit and loss account and nothing had been left out so as to claim the same at later stage in the event of taxing portion of its income under the head income from other sources. It is not the case of the assessee that they have maintained two different sets of books of account i.e one for regular business income and another for income from other sources. It is also not the case of the assessee that they have informed to the authority concerned that they have debited in the profit & loss account only the expenditure incurred for earning the interest income which they have earned from giving loans and advances to its members and no part of the expenditure incurred for earning the interest income which the Assessing Officer has treated as interest income from other sources, has ever been debited to the profit & loss account. It has never been the case of the

assessee that they have not at all claimed the expenditure corresponding to the expenditure incurred for earning the interest from the deposits they have had with the district co-operative bank. In view of this, the CIT(A) held that the judgment of the Karnataka High Court decision relied on by the assessee was not applicable to them.

5.4 Taking into account all the above, the CIT(A) was of the considered opinion that the interest income earned from the deposit the assessee had with the district cooperative bank as ruled by the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd vs ITO relied on by the Assessing Officer, is nothing but income from other sources against which no deduction u/s 80P(2)(a)(i) of the Act can be claimed by the assessee. As a result, the addition made of Rs.23,83,514/- was confirmed.

6. Against this, the assessee is in appeal before us.

7. The Ld. DR relied on the order of the CIT(A).

8. We have heard the rival submissions and perused the record. 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 vs. ITO for AY 2009-10 in ITA No.525/Coch/2014 vide order dated 20/07/2016 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 not justified in holding that interest income received by the assessee should be assessed as "income from other sources". In our opinion, it should be assessed as "income from business" only.

8.1 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. The same thing is applicable to deduction u/s. 80P(2)(d) also. Thus, this ground of appeal of the assessee is partly allowed for statistical purposes.

9. The next ground Ground No. G is with regard to estimation of income as unexplained income taxable u/s. 68 of the Act.

10. The brief facts of the case are that on verifying the financial statement audited by the Co-operative Department, the Assessing Officer noticed that there was an increase in fixed deposits received by assessee in cash during the year under consideration to the tune of Rs.2,95,51,858/-. The assessee was requested to furnish the details of such deposits received in cash to examine the correctness of the claim of interest paid. However, in the absence of the further details furnished by the assessee, the Assessing Officer relying on the decisions of the Hon'ble Supreme Court in the cases of A.Govindarajalu Mudaliar vs CIT and Kale Khan Mohammed Hanif vs CIT, brought to tax the said amount of Rs.2,95,51,858/- u/s 68 of the Act as unexplained cash credits.

11. Before the CIT(A) , it was submitted that the assessee being a co-operative society was keeping proper books of account which were subjected to audit as per Kerala Co-operative Societies Act and therefore there was no undisclosed transaction. It was submitted that the Assessing Officer did not make proper enquiry before making addition u/s. 68 of the Act. The assessee submitted that even renewal of the deposits was treated as unexplained cash credit. The assessee submitted that Section 68 of Income tax Act was not applicable to the deposits received by the co-operative societies and shall not be considered as unexplained cash credit for the failure to provide the details of depositors. Even if the deposits were treated as unexplained cash credits, deduction under section 80P was still available to the assessee. Hence, the addition made had no basis.

11.1 According to the CIT(A), Section 68 of the Act provides that where the assessee offers no explanation about the nature and source of the credits in the books of account, all the amounts so credited or where the explanation offered by the assessee is not satisfactory in relation to it then such credits may be charged to tax as income of the assessee. The CIT(A) observed that the burden lies on the assessee to prove the genuineness of credits and the conditions that are required to be established by the assessee thereby, are the identity of the creditors, genuineness of the transactions and the credit worthiness of the creditors and once these three essential requirements are prima facie proved by the assessee, the onus would shift to the Department. Here is the case, according to the CIT(A) opportunities were given to the assessee to establish the identity of the creditors, genuineness of the transactions and the credit worthiness of the creditors on 17.10.2016, 28.10.2016, and 15.12.2016. Instead of establishing the above mentioned conditions, the assessee failed to furnish further details. The CIT(A) observed that the assessee had not discharged the responsibility of explaining the source for the cash deposits made during the year under consideration under the extant provisions of the Income Tax Act. Without establishing the identity of the creditors, genuineness of the transactions and the credit worthiness of the creditors, the CIT(A) held that the assessee cannot claim that the cash deposits cannot be brought to tax and once the income is not brought to tax as earned

from regular business activities then, the said income is not entitled to the benefit of deduction u/s 80P(2)(a)(i) of the Act. According to the CIT(A), cash deposits received by the assessee during the year under consideration was nothing to do with the business income which alone can be considered for the exemption to be claimed u/s 80P(2)(a)(i), earned by the assessee and the unexplained cash credits which was brought to tax u/s 68 should necessarily be treated as income to be taxed but not as business income to be exempted u/s 80P(2)(a)(i). In view of all the above, the CIT(A) confirmed the decision of the Assessing Officer in making addition u/s 68 of the Act in the absence of explanation about the nature and source of the cash deposits received during the year under consideration. The CIT(A) relied on the latest decision of the Hon'ble High Court of Kerala in the case of CIT vs. Universal Empire Educational Society (393 ITR 502) wherein the income which was brought to tax u/s 68 of the Act in the absence of establishing the identity of the creditors, genuineness of the transactions and the credit worthiness of the creditors was confirmed.

12. Against this, the assessee is in appeal before us.

13. The Ld. DR relied on the order of the CIT(A).

14. We have heard the rival submissions and perused the record. Under section 68 of the Act, where any sum is found credited in the books of the

assessee maintained in any previous year and no explanation is offered by the assessee for the nature and source thereof, the sum so credited may be charged to income tax as the income of the assessee in that previous year. According to the provisions of section 68, what is required by the assessee is:

- a) identity of depositors.
- b) Source and genuineness of such credits is to be explained.

In the present case, the explanation of the assessee is that the deposits were received from the members of the Society/customers. It was submitted that the deposits were collected in the normal course of assessee's business and duly filled application of each deposit is available with the assessee. In our opinion, it is the duty of the assessee to prove the identity of the depositors to the satisfaction of the Assessing Officer. It is seen that the assessee has not furnished the details of names and addresses and PAN Nos. of the concerned depositors. In our opinion, the assessee has to fulfil the above requirements. However, we make it clear that the assessee, being a Co-operative Society, need not prove the creditworthiness and genuineness of the deposits, but it has to prove the identity of the depositors by furnishing proof of address and PAN details of the depositors to the satisfaction of the Assessing Officer as held by the Hyderabad Bench of the Tribunal in the case of ACIT vs. Citizen Co-operative Society Ltd. (54 SOT 196) (URO)(Hyd.). Accordingly, we remit this issue to the file of the Assessing Officer with a direction to the assessee to furnish the

identity of the depositors with PAN details before the AO and decide the issue in accordance with law.

14.1 Further, we make it clear that since the assessee's business is to accept deposits and lend advance inter alia with other activities, we are inclined to hold that income resulting on account of addition made u/s. 68 cannot be considered as income derived from business though it is income of the assessee. Even if the addition is made u/s. 68, it does not necessarily follow that such credit represents business income of the assessee as a general practice unless there is clear evidence that it represents business receipts. In the present case, it relates to granting of deduction with regard to profit/gain derived from business and unless it is proved that it is from business, deduction u/s. 80P cannot be granted. The contention of the assessee is not acceptable in view of the clear provisions of section 80P of the Act and the impugned additions cannot be said to be business receipts.

14.2 This is because the source of income is income from other sources and the Department does not have to locate any particular source of income. It is pertinent to place reliance on the judgment of jurisdictional High Court in the case of G.M. Chenna Basappa vs. CIT (34 ITR 576) (AP) wherein it was held that addition on account of unexplained cash credits which is altogether is from an unknown source and they are legally sustainable additions.

14.3 The Hon'ble Supreme Court also held in the case of CIT vs. Orissa Corporation Pvt. Ltd. (159 ITR 78) held that although section 68 provides that the previous year for which the books of account are maintained may be taken as the previous year for assessing the cash credit, it does not further provide that cash credit should necessarily be deemed to be the profit of the business for which the books are maintained. The cash credit may be assessed as business profit or as income from other sources as the case may be. There is no rule that the amount is credited in the business account, which must be taken as receipt from business. Whether the amount of credit u/s. 68 is income from business or income from other sources depends on the evidence and explanation furnished by the assessee.

14.4 It was held in the case of Laxmichand Baijnath vs. CIT (35 ITR 416) (SC) that if credits are found in business account of the assessee and the explanation as to the nature and source of account is rejected by the Income-tax authorities, such authorities are entitled to treat the credit as income from business. The said decision cannot be interpreted to mean that in all cases such credits must be treated as income from business. Merely because the assessee is running a business in which are found certain unexplained cash credits, it does not necessarily follow that such credits represent suppressed business receipts and there would be no error of law in regarding the unexplained cash credits as

income of the assessee from some independent and unknown sources unless there are strong reasons for connecting the unexplained cash credits with known sources of income of the assessee, there would be no alternative to treating them as income from other sources.

14.5 Reliance is also placed on the judgment of Supreme Court in the case of CIT vs. Deviprasad Viswanath Prasad (72 ITR 194) wherein it was held that when the assessee pleads that the impugned cash credits came out of suppressed profit, it is for him to prove that it is so. If these receipts are allowed by treating as business receipts, then the assessee will be entitled to set off of business expenditure against these receipts which is not permissible. The assessee's business is to accept deposits and lend advance inter alia with other activities. Being so, we are inclined to hold that the assessee is not entitled for deduction under section 80P of the Act on account of addition u/s. 68 of the Act. Thus, this ground of appeal of the assessee is partly allowed for statistical purposes.

S.P. No. 15/Coch/2018

15. Since assessee's appeal in ITA No.158/Coch/2018 has been disposed off, the above Stay Petition filed by the assessee is rendered infructuous and the same is dismissed as such.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purposes and the Stay Petition filed by the assessee is dismissed.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 9th July, 2019

GJ

Copy to:

1. The Perunguzhi Service Co-operative Bank Ltd., Perunguzhi P.O., Chiryankkeezhu, Trivandrum-695 305.
2. The Income Tax Officer, Ward-2(5), 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