

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

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

ITA No.197/Coch/2019 : Asst.Year 2011-2012

ITA No.199/Coch/2019 : Asst.Year 2014-2015

The Income Tax Officer Ward – 5 Palakkad.	Vs.	M/s.Perumatty Service Co-operative Bank Ltd., Chittur P.O. Palakkad – 678 534. PAN : AAAAT4202A.
(Appellant)		(Respondent)

CO No.29/Coch/2019 : Asst.Year 2011-2012

CO No.31/Coch/2019 : Asst.Year 2014-2015

M/s.Perumatty Service Co- operative Bank Ltd., Chittur P.O. Palakkad – 678 534.	Vs.	The Income Tax Officer Ward – 5 Palakkad.
(Cross Objector)		(Respondent)

Revenue by : Smt.A.S.Bindhu, Sr.DR

Assessee by : Sri.B.Mohan, CA

Date of Hearing : 09.07.2019	Date of Pronouncement : 09.07.2019
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ORDER

Per Bench :

These appeals at the instance of the Revenue and cross objections preferred by the assessee are directed against common order of the CIT(A) dated 12.12.2018. The relevant assessment years are 2011-2012 and 2014-2015. 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 this case is registered as co-operative society under the Kerala State Co-operative Societies Act, 1969. The assessments were completed in assessee's 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 order of the CIT(A), the Department has filed the present appeals before the Tribunal. Identical grounds raised in these appeals, except variance in figure, read as follows:

"1. The order of the Ld. Commissioner of Income Tax (Appeals), Thrissur in ITA No. 1268/16-17 dated 12.12.2018 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.65,92,430/- 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 /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 Vechan 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 I 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 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 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 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.

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 assessee, on the other hand, supported the order 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 the 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. The grounds raised in the cross objections are only supporting the order of the CIT(A). Since we have already disposed off the Revenue's appeals, the cross objections filed by the assessee are rendered infructuous and the same are dismissed as such.

9. In the result, the appeals filed by the Revenue are allowed for statistical purposes and the cross objections filed by the assessee are dismissed.

Order pronounced on this 09th day of July, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 09th July, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin