

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

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

ITA No.265/Coch/2019 : Asst.Year 2011-2012

The Income Tax Officer Ward 2(3) Trivandrum..	Vs.	M/s.Aryanad Service Co- operative Bank Ltd. Bank Building, Aryanad Post, Trivandrum-695 542 PAN : AAAAA9521F.
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR
Respondent by : Sri.Arun Raj S.

Date of Hearing : 18.07.2019	Date of Pronouncement : 01.08.2019
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against CIT(A)'s order dated 05.03.2019. The relevant assessment year is 2011-2012.

2. Two issues are raised in these appeals – (i) whether the assessee is entitled to deduction u/s 80P of the I.T.Act; (ii) whether the interest income received on investments can be treated as 'income from business' and granted deduction u/s 80P of the I.T.Act.

3. Brief facts of the case are as follows:

The assessee in this case is a registered as co-operative societies under the Kerala State Co-operative Societies Act, 1969. The assessment was completed in the 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 a co-operative bank and not a co-operative society. Further the interest received from the investments were denied deduction u/s 80P of the I.T.Act by treating the same as income from 'other sources'.

4. Aggrieved by the orders of the assessment, the assessee filed appeal 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. As regards interest received on investments, the CIT(A) held that the same should be assessed as 'income from business' since these investments were made in the course of business of the assessee. It was concluded by the CIT(A) that such interest income was entitled to deduction u/s 80P of the I.T.Act. In holding so, the learned CIT(A) relied on the order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited in ITA No.525/Coch/2014* (Order dated 20.07.2016).

5. Aggrieved by the order of the CIT(A), the Department has filed the present appeal before the Tribunal. The grounds raised in this appeal read as follows:

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 is eligible for deduction u/s 80P(2)(a)(i) 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 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 80 P to the respondent assessee while computing the total income was irregular in nature and also against law.*

(ii) *Recently, the Full bench of the Hon'ble High Court of Kerala has over ruled the decision of M/s.Chirakkal SCB (on which CIT(A) relied upon) that the co-operative society which had been granted registration by the Registrar of Co-op Society is entitled to the benefit of sec 80P and that the Income tax authority cannot go into the availability of the exemption u/s 80P is no more good law. It is also held that the decision of the Division bench in Perinthalmanna SCB has been declared to be the correct position in law.*

(iii) *The Honble High Court of Kerala in the case of Perinthalmanna service Cooperative Bank Ld reported in (2014) 363 ITR 68 (Kerala) has held that "with introduction of section 80P(4) necessarily, an enquiry has to be conducted into factual situation whether co-operative bank is conducting business as a primary agricultural and rural development Bank and depending upon transactions, Assessing officer has to extend benefits available, and he would not merely look at the registration certificate issued under the relevant Co-operative Societies Act or at nomenclature of cooperative bank".*

(iv) *Ld. CIT(A) ought to have considered the judgement of Honble Supreme Court in the case of Citizen Co-operative society Ltd Vs 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 grab 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).

(v) The Ld.CIT(A) ought to have seen that the Honble Supreme Court in the case of Sabarkhanta Zilla Kharid Vechar Sangh Ltd. Vs CIT reported in 203 ITR 1027 (SC) has held that eligible deduction u/s 81(1)(d) (substituted by section 80P by Finance (No.2) Act, 1967 w.e.f. 01.04.1968) 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 and gains of business of such societies etc. but would be limited to the profits generated from agricultural activities alone performed by such assessee."

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 the 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(a)(i)?

(ii) in not duly considering that Trivandrum District 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), 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 appeal. 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 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.

8. As regards the interest on the investments with Co-operative Banks and other Banks, the co-ordinate Bench order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited (supra)* held that interest income earned from investments with treasuries and banks is part of banking activity of the assessee, and therefore, the said interest income was eligible to be assessed as 'income from business' instead of 'income from other sources'. However, as regards the grant of deduction u/s 80P of the I.T.Act on such interest income, the Assessing Officer shall follow the law laid down by 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] and examine the activities of the assessee-society before grant of deduction u/s 80P of the I.T.Act. It is ordered accordingly.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on this 01st day of August, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 01st August, 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