IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

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

ITA No.431/Coch/2019 : Asst.Year 2013-2014
ITA No.432/Coch/2019 : Asst.Year 2014-2015
ITA No.433/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward – 2 (5) Thrissur.	Vs.	M/s.Thiroor Service Co-op. Bank Ltd. Thiroor P.O. Thrissur – 680 581. **PAN : AACAT4148B.**
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR
Respondent by : Sri.M.Ramdas, FCA

Date of Hearing : 28.08.2019	**Date of Pronouncement : 04.09.2019**

O R D E R

Per George George K, JM :

These appeals at the instance of the Revenue are directed against the consolidated order of the CIT(A) dated 20.03.2019. The relevant assessment years are 2013-2014, 2014-2015 and 2015-2016.

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 assessment was 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. The grounds raised in these appeals are identical, except variance in figures, therefore, grounds raised in ITA No.431/Coch/2019 is reproduced as follows:

> *"1. The order of the Ld. Commissioner of Income Tax (Appeals), Thrissur in ITA No. 596/16-17 dated 20.03.2019 for the Assessment Year 2013-2014 is erroneous in law, facts and circumstances of the case.*
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> *2. The learned Commissioner of Income-tax (Appeals) has erred in deleting the disallowance of deduction of Rs.3,46,09,932/- 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.*
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> *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.*
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> *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 Full Bench of the Hon'ble High Court of Kerala in ITA Nos.97, 135 of 2016, 3, 11, 12, 22, 25, 26, 32, 33, 55, 68, 69, 72, 73, 74, 75 & 76 of 2017 in the case of M/s.Vazhappally Service Co-operative Bank Ltd. & Othrs. Has over ruled the decision in the case of Chirakkal Service Co-operative Bank Ltd. (384 ITR 490) and held that the decision of the Division Bench in Perinthalmanna Service Co-operative Bank Ltd. (363 ITR 268) has been declared to be the correct position in law.

6. The jurisdictional Hon. High Court in the case of M/s.Perinthalmanna Service Co-operative Bank Ltd. 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."

7. 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.

8. 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]*.

7. The learned Counsel for the assessee relied on the order of the CIT(A). The learned Counsel has also submitted argument notes for all the assessment years under consideration. Since the argument notes are identical for all the years, except variance in figures, we reproduce the

argument note submitted by the assessee in the case of ITA No.426/Coch/2019 for the assessment year 2014-2015, as follows:-

> *"Your respondent is providing financial accommodation to its members only. The loans provided by the respondent is by way of direct agricultural loans, gold loans (which includes agri-gold loan also) and ordinary loans. The midterm loan and gold loan provided by the respondent are mostly for agriculture/ agriculture allied activities.*
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> *The assessing officer while calculating the percentage of agricultural advances to find out the nature of activity, he has only considered the loans disbursed during the year, without giving any merit to the total outstanding of the loans. The loan disbursed during the year is mainly gold loan which is short term in nature. Taking the transaction during the year alone in isolation is not proper for arriving at the percentage of agricultural loan, without considering the total advance outstanding.*
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> *The learned Commissioner of Income Tax (Appeals) has rightly deleted the disallowance of deduction of Rs.3,46,09,932/- claimed by the respondent under section 80P(2)(a)(i) of the Act after perusing the facts of the case in detail, point by point discussed by the Income Tax Officer. The learned CIT (Appeals) Thrissur appreciated the points raised by the appellant before him and reached the conclusion, that the appellant is eligible for deduction U/S 80(P) of the Act. The decision was not only based on the certificate issued by the competent authority as defined in the Kerala Co-operative Societies Act, 1969 (KCS Act)*
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> *The learned CIT (Appeals) has rightly equated 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. There are no differences in the definition of Primary Agricultural Credit Society in the Two Acts as pointed out by the learned Income Tax Officer.*
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> *The decision of Perinthalmanna Service Co-operative Bank Ltd (363 ITR 268) has no relevance in this case. The reason is that Revisional Authority in that case, issued show cause notice to assessee on the ground that Assessing Officer had not applied his mind with reference to the nature of business conducted by the assessee and lack of this exercise by the Assessing*

Officer definitely led to an erroneous order which was prejudicial to the interests of revenue. In the case of the respondent in this case, the Assessing Officer has discussed the points threadbare while framing his assessment order and the Commissioner of Income Tax (Appeals) Thrissur has come to the conclusion that the appellant is eligible for deduction u/s 80 P(2)(a)(i) of the Act on the Authorised representative of the assessee furnishing the whole details of the activities of the assessee and not merely on the basis of the decision of Hon'ble Kerala High Court in the case of Mis Chirakkal Service Co-operative Bank Ltd & Others in ITA No. 212 of 2013.

After the decision of the Hon'ble High Court of Kerala of the larger Bench in ITA No. 97/2016 dated 19.03.2019, there are no changes in the circumstances of the case as the assessing authority has considered the whole activities conducted by the assessee while framing the assessment order and the first appellate Authority while giving his order dated 28.02.2019 has considered all the points raised by the Assessing Authority.

Further the Reserve Bank of India, which is the authority under the Banking Regulations Act to decide as to whether a Co-operative Society is a Primary Agricultural Credit Society or not, has vide letter UBD(T) No. 438/12-01-008/2013/14 dated 25.10.2013 informed The Secretary, The Madai Co-operative Rural Bank Ltd. No. F 1233, Head Office, Payangadi Kannur - 670303 and vide letter No. UBD(T) No. 440/12-01-008/2013-14 dated 25.10.2013, The Kadirur Service Co-operative Bank Ltd., No. F 1262 HO-Kadirur, Kannur - 680642 that an institution registered as a Primary Agricultural Credit Society (P ACS) is not entitled to obtaining a banking License, which implied that an entity which is registered as a Primary Agricultural Credit Society cannot be a Bank. A copy of said letter is on record.

In the additional grounds of appeal, the Revenue has placed reliance on the judgment of the Hon 'ble Apex Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. CIT reported in 203 ITR 1027(SC). In the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra), the assessee society was effecting sales of agricultural inputs of both members as well as non members. The assessee claimed share of the gross profit out of the transactions with members as a deduction from the combined net profit.

On the contrary, in the instant case, the assessee had extended credit facilities only to the members. The revenue does not have a case that such credit facilities are extended to the outsiders. Therefore the income generated in the instant

case is only out of the transaction with the members. Deduction U/S 80P is allowed only for the said income. The assessee had claimed deduction U/S 80P only in respect of net income which is derived by extending credit facilities to the members. For the aforesaid reasons, the judicial pronouncements relied on by the revenue in the grounds and the additional grounds does not have application to the instant case.

Respondent having been classified as Primary Agricultural Credit Society 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 to the members, the rate of interest on such loans and advances to members to be at the rate fixed by the Registrar of Co-operative Societies under the KCS Act and having its area of operations confined to a Village, Panchayath or a Municipality. This is the consequence of the definition clause in section 2(oaa) of the KCS Act.

In the Circumstance the respondent in this case M/s Thiroor Service Cooperative Bank Limited No 4140, Mulankunnathukavu, Thrissur – 680 581 request this Hon'ble Bench of the Tribunal may please uphold the order of the Commissioner of Income Tax (Appeals) Thrissur and dismiss the second appeal of the department."

8. 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.*
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> *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.*
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> *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.*
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> *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."*

8.1 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.

9. In the result, the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced on this 04th day of September, 2019.

Sd/-	Sd/-
(Chandra Poojari)	**(George George K.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cochin ; Dated : 04th September, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
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