

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

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

ITA No.603/Coch/2019 : Asst.Year 2011-2012

M/s.Chempazhanthy Service Co-operative Bank Limited, C/o.Vijayaraghavan & Devi Advocates, High Court Road Kochi – 682 031. PAN : AAAAC3024D.	Vs.	The Income Tax Officer Ward 2(1) Thiruvananthapuram.
(Appellant)		(Respondent)

SA No.78/Coch/2019 : Asst.Year 2011-2012

M/s.Chempazhanthy Service Co-operative Bank Limited, C/o.Vijayaraghavan & Devi Advocates, High Court Road Kochi – 682 031.	Vs.	The Income Tax Officer Ward 2(1) Thiruvananthapuram.
(Applicant)		(Respondent)

Assessee by : Sri.Santhosh P.Abraham, Advocate

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

Date of Hearing : 05.12.2019	Date of Pronouncement : 09.12.2019
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against the order of the CIT(A) dated 10.12.2018. The assessee has also preferred a stay application seeking to stay the recovery of outstanding tax arrears. The relevant assessment year is 2011-2012.

2. The brief facts of the case are as follow:

The assessee is a co-operative society registered under the Kerala Co-operative Societies Act, 1969. For the assessment year 2011-2012, the return of income was filed on 11.01.2012 declaring income of Rs.Nil, after claiming

deduction u/s 80P of the I.T.Act. The Assessing Officer passed an order u/s 143(3) of the I.T.Act vide order dated 29.11.2017 disallowing the claim of deduction u/s 80P of the I.T.Act. The reasoning of the Assessing Officer to disallow the claim of deduction u/s 80P(2) of the I.T.Act was that the assessee was doing the business of banking, and therefore, in view of insertion of section 80P(4) of the I.T.Act with effect from 01.04.2007, the assessee will not be entitled to the deduction u/s 80P(2) of the I.T.Act. The Assessing Officer also disallowed the claim of deduction with regard to interest income received by the assessee on investments made with District Co-operative Banks.

3. Aggrieved by the order of assessment denying the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) allowed the appeal by holding that the assessee was eligible for deduction u/s 80P of the I.T.Act. The interest income received from other banks and treasury also was allowed as deduction u/s 80P(2)(a)(i) of the I.T.Act. In allowing the appeal of the assessee, the CIT(A) followed the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT* [(2016) 384 ITR 490 (Ker.).

4. Subsequently, the CIT(A) issued notice u/s 154 of the I.T.Act proposing to rectify his order passed, in view of the subsequent judgment of the Full 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 assessee objected to the issuance of notice. However, the CIT(A) rejected the objections raised by the assessee and passed an order u/s 154 of the I.T.Act, disallowing the claim of the assessee u/s 80P(2) of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal raising the following grounds:-

"A. The Orders of the assessing officer as well as the appellate authority passed u/s 154 of the Act to the extent of objections made herein after, are against the facts and circumstances of the case and is opposed to the provisions of law.

B. The authority below went wrong in initiating proceedings u/s 154 on the basis of the subsequent decision of the jurisdiction of the High Court. The appellate authority had invoked the jurisdiction u/s 154 disregarding the fact that the department have the right of appeal against the order passed u/s 250, and without verifying whether the department had filed an appeal against the order. The assessing authority had filed appeal against the order of the CIT Appeal before this Hon'ble Tribunal (ITA No.146/Coch/2019) and this Hon'ble Tribunal allowed the appeal for statistical purposes on 20.5.2019.

C. The appellate authority did not properly considered the issue raised before him regarding the disallowance of the exemption claimed u/s 80P, while passing the order u/s 154.

D. The authorities below went wrong in disallowing the certificate issued by the statutory authority under the Kerala Co-operative Societies Act.

E. The appellate authority ought to have considered the claim of the appellant u/s 80P and the reasoning given by them, misinterpreting the provisions of Sec. 80P(4) and its explanation is opposed to the facts and law. The restrictive provision under Banking Regulation Act is no way applicable to the facts of the case and the authorities below ought not to have rejected the claim of the appellant on unsustainable grounds.

F. The authorities below should have state cogent reasons for discrediting the classification certificate issued by the statutory authority. The classification is issued by the statutory authority on the basis of the principal object provided in the bye-laws. If there is any violation regarding the same classification will be changed. The principle object of the appellant is to undertake agricultural credit activities and provided loans and advances for agricultural purposes.

G. Without prejudice to the arguments stated above, the appellant is a members co-operative society and are only doing the trading activities with its members and the learned assessing officer has not made any contention that the society is doing trading activities with non members. Since the trading activities are with members alone any income derived from the activities are exempt under mutuality concept and the deduction u/s 80P is not required for such income. The learned assessing officer has not considered the same while making the additions.

H. The assessing authority as well as the appellate authority went wrong in finding that deduction claimed u/s 80 P{2} of the IT Act, for which a party does not take in interest earned on deposits made with district co-operative bank. As per section 80P(2) deduction is available in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative bank being a Central Society as defined u/s 2(d) of the KCS Act, the authorities below committed a gross mistake in holding that District Co-operative Bank is not a co-operative society as envisaged u/s 80P(2).

I. Without prejudice to the above grounds it is respectfully submitted that even though the authority below relied on the decision of the High Court of Kerala (Full Bench) in the case of Mavilayil Service Co-operative Bank Ltd., did not followed the directions in the decision regarding the determination of the classification.

For the reasons stated in the above and also the grounds urged at the time of final hearing, it is just and necessary to set aside the Annexure A1 Assessment Order as well as Annexure A3 Order in Appeal to the extent of objections made herein above."

6. The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income-tax authorities.

7. We have heard the rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT [(2016) 384 ITR 490 (Ker.)]* had held that when a certificate has been issued to an assessee by the Registrar of Co-operative Societies characterizing it as primary agricultural credit society, necessarily, the deduction u/s 80P(2) of the I.T.Act has to be granted to the assessee. However, the Full Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* had reversed the above findings of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT (supra)*. The Larger Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (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 The CIT(A) had initially allowed the appeal of the assessee and granted deduction u/s 80P(2) of the I.T.Act. Subsequently, the CIT(A) passed order u/s 154 of the I.T.Act, wherein the claim of deduction u/s 80P of the I.T.Act was denied, by relying on the 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 (supra)*. The CIT(A) ought not to have rejected the claim of deduction u/s 80P(2) of the I.T.Act without examining the activities of the assessee-society. The Full Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT (supra)* had held that the A.O. 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. In view of the dictum laid down by the Full Bench of the Hon'ble jurisdictional High Court (supra), we restore the issue of deduction u/s 80P(2) to the files of 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 accordingly grant deduction u/s 80P(2) of the I.T.Act.

7.2 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 in ITA No.525/Coch/2014 (order dated 20.07.2016)*, had 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 (supra)* and examine the activities of the assessee-society before granting deduction u/s 80P of the I.T.Act on such interest income. It is ordered accordingly.

8. Since we have disposed of the appeal filed by the assessee, the Stay Application filed by the assessee becomes infructuous and the same is dismissed as such.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes and the Stay Application is dismissed.

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

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

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

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Thiruvananthapuram.
4. The Pr.CIT, Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin