

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

Before Shri George George K, Judicial Member

ITA No.580/Coch/2019 : Asst.Year 2013-2014

ITA No.581/Coch/2019 : Asst.Year 2014-2015

ITA No.582/Coch/2019 : Asst.Year 2015-2016

M/s.Pannivizha Service Co-operative Bank Limited, M.G.Road, Pannivizha Adoor, Pathanamthitta. PAN : AABAP9936C.	Vs.	The Income Tax Officer Ward 2 Kollam.
(Appellant)		(Respondent)

Appellant by : Sri.Krishnakumar K, CA

Respondent by : Sri.Shantom Bose

Date of Hearing : 02.01.2020	Date of Pronouncement : 06.01.2020
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ORDER

These appeals at the instance of the assessee are directed against separate orders of the CIT(A), all dated 03.09.2019, passed u/s 154 r.w.s. 250 of the I.T.Act. The relevant assessment years are 2013-2014 to 2015-2016.

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 years under consideration, the returns of income were filed declaring income of Rs.Nil, after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed orders u/s 143(3) r.w.s. 147 of the I.T.Act, 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 orders of assessment denying the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred appeals to the first appellate authority. The CIT(A) allowed the appeals 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 appeals 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 orders 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 orders 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 orders of the CIT(A), the assessee has filed these appeals before the Tribunal raising the following identical grounds:-

"1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in applying section 154 of the Income Tax Act on a debatable issue already decided by his office in favour of the appellant. On the ground that "where an order is made by an authority, on the basis of a particular decision, the reversal of such decision in further proceeding will justify a rectification of the order based on that decision".

In Mepco Industries Ltd (supra) (Civil Appeal Nos.7662-7663 of 2009) Honorable Apex Court has pronounced that section 154 can only apply to a "mistake apparent from the record. A "rectifiable mistake" is a mistake which is obvious and not something which has to be established by a long drawn process of reasoning or where two opinions are possible. A decision on a debatable point of law cannot be treated as a "mistake apparent from the record". If we apply the Honorable Apex Court decision in the appellant case it is undisputed fact that at the time of filing of the return of income or at the time of filing of appeal before the CIT(A), there was a conflict of opinion about the allowability of deduction u/s 80P. Respectfully following the decision of the Honorable Apex Court in the case of Mepco Industries Ltd (supra) the appellant hold that there is a conflict of opinion about allowability of section 80P between various higher judiciaries, and as such the mistake cannot be held to be a mistake apparent from the record to come under the ken of section 154 of the Act. Hence rectification of mistake by the CIT(A) under section 154 on an issue 80P allowability cannot be according to law even if it is based on a reversal of decision by an authority.

2. The Act permits deduction under section 80P to a primary co operative society which has its primary objective to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities. The appellant's primary objective is to provide financial accommodation to its members for agricultural purposes and is eligible for deduction under section 80P.

3. The observation by the Assessing Officer in this regard is that the agricultural finance by the society is only a small percentage of the total loans sanctioned is not true to facts.

4. On the above grounds and further points to be raised at

the time of hearing of appeal the appeal may be allowed and justice rendered."

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. I 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 appeals of the assessee and granted deduction u/s 80P(2) of the I.T.Act. Subsequently, the CIT(A) passed orders 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), I 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. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 06th day of January, 2020.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 06th January, 2020.
Devadas G*

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