

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

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

ITA No.646/Coch/2019 : Asst.Year 2010-2011
ITA No.647/Coch/2019 : Asst.Year 2011-2012
ITA No.648/Coch/2019 : Asst.Year 2012-2013
ITA No.649/Coch/2019 : Asst.Year 2013-2014
ITA No.650/Coch/2019 : Asst.Year 2014-2015
ITA No.651/Coch/2019 : Asst.Year 2015-2016
&
SA No.100/Coch/2019 : Asst.Year 2010-2011
SA No.101/Coch/2019 : Asst.Year 2011-2012
SA No.102/Coch/2019 : Asst.Year 2012-2013
SA No.103/Coch/2019 : Asst.Year 2013-2014
SA No.104/Coch/2019 : Asst.Year 2014-2015
SA No.105/Coch/2019 : Asst.Year 2015-2016

M/s.The Punnukkannoor Service Co-operative Bank Limited, No.2722, Society Junction, Perumpuzha Kollam – 691 504. PAN : AACAT9318B.	Vs.	The Income Tax Officer Ward 2 Kollam.
(Appellant / Applicant)		(Respondent)

Assessee by : Sri.Sabu C.S., CA
Revenue by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 16.12.2019	Date of Pronouncement : 06.01.2020
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ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against various orders of the CIT(A), all dated 03.09.2019. The assessee has also preferred stay applications

seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2010-2011 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 year 2010-2011 to 2015-2016, the returns of income were filed on 28.11.2017 declaring income of Rs.Nil, after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed an orders u/s 143(3) r.w.s. 147/144 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 an 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 notices. 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. The rectification order of the Honourable CIT (Appeals) is erroneous on the facts and in the law. That the appellant denies his liability to be assessed at a total income of Rs. 16,62,100/- against returned income of Rs NIL and accordingly denies his liability to pay tax and interest demanded there on. The CIT(A) has not considered the written submission by the appellant's AR on 22.08.2019 in response to the letter from his office issued on 07.08.2019.

2. The CIT (A) has not considered the below points raised by the appellant before passing the rectification order disallowing appellant claim u/s 80P.

(a) The appellant is a Primary Agricultural Credit Society engaged in banking business providing credit facility to its members, registered under the Kerala Co-Operative Societies Act, working with in the rural areas of Punukkannoor Village, Elampalloor Panchayath, Perumpuzha, Kollam since 1947.

The members of the society are mainly rural agriculturist. The main activity of the society is to provide credit facility to its members for agriculture purpose and for purpose connected with agricultural activities and rural development.

(b) The working area of the society is confined only to the rural limits of Punukkannoor village.

(c) The members of the society are rural agriculturist.

(d) The society deals only with its members by accepting deposits and providing credit facilities between members.

(e) Category of Advances:

The following types of advances were given by the society

a. KCC (Kisan Credit Card)

b. MTL (Medium Term Loan)

c. CSOL (Co-Operative Society Own Loan)

d. Gold Loan and Gold Agriculture Loan

e. Employees Housing Loan

f) Majority of these advances, other than the employee's loans were given to the farmers who were members of the society for Agricultural and Rural development purpose. The society assists its members for meeting their requirements of Agriculture operations, startup of small business units and other rural development activities. MTNL and CSOL were categorized based on the repayment schedule. This can be verified from the Loan Register, Loan Application and allotment Letter and from the by-laws of the society.

g) The society is situated in a place/Village mostly inhabited by agriculturists. Since the area of operation of the bank is also restricted by bye-laws, the society can lend mostly to agriculturists only and not to others. A major portion of the advances by the society is classified in general category. A general category loan taken by an agriculturist will be for agricultural purpose only, though it gets classified under other heads due to technical reasons. 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. Though majority of the advances are agricultural in nature, the circumstances under which the appellant society and other societies are

forced to classify them as non-agricultural should also been considered in the right perspective. The main source of funds of the appellant society is collection of fund by way of fixed deposits, the rate of interest which will come to 8.5% to 10.5%. but for agricultural advances the appellant can collect interest at the rate of 7% only from the borrowers as per law. Since there is no effective mechanism for refinancing the agricultural loans of the societies by the apex banks, the appellant society will not be in a position to lend to agriculturists classifying the loan as agricultural per se, as fund collected at 10% will have to be lent for 7%. This is the situation which compels a primary agricultural society to classify a part of the agricultural loans lend by it in general category. Hence the appellant is a primary agricultural credit society factually and theoretically.

The Honorable High Court of Kerala in Mavilayi Service Co-Operative Bank Ltd,414 ITR 67 pronounce as " 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 Income Tax Act'. In the appellant case the assessing officer has not done an enquiry on the factual situation.

h) Principles of Mutuality :- The principles of mutuality assumes importance in co- operative societies case. The above principle applies so long as the society deals with only its members and not outsiders. This was elaborately discussed in Citizen Co-operative Society Lid. v. Asstt. CIT 2017 KHC 5350: (2017) 3971TR 1 (SC): 2017 TaxPub(DT) 2053 (SC) : (2017) 9 SCC 364 : AIR 2017 SC 5147 the Honourable Supreme Court pronounced as "It was also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of Co-operative Societies. With indulgence in such kind of activities by the appellant, it is remarked by the assessing officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a Co-operative Credit Society, which is not entitled to deduction under section 80P(2)(a)(1) of the Income Tax Act. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. In the assessment order, the assessing officer found that the assessee failed to satisfy the test of mutuality at the time of making payments. There is detailed discussion in this

behalf in the order of the assessing officer. The Apex Court found that those findings of facts have remained unshaken till the stage of the High Court. Once the aforesaid aspects are kept in mind the conclusion is obvious that the appellant assessee cannot be treated as a Co-operative Society meant only for its members and providing credit facility to its members. Therefore, the Apex Court held that the appellant society cannot claim the benefit under section 80P of the Income Tax Act".

The appellant case the credit facilities were extended only to the members who lives in a specified area, which is the operating territory of the Appellant hence principles of mutuality applies.

3. Allowability of Investment Income deduction u/s 80(P)(2)(d).

The extra funds generated from the operations of banking and not immediately required were kept as deposits with other banks mainly District Co-Operative Bank, Regional Rural banks and Government treasuries. The appellant total income from investment for the relevant AY was Rs. 5,77,500/- bifurcated as below.

Kollam Co-Operative Urban Bank	: Rs. 1,05,000/-
Kollam DCB	: Rs .4,72,500/-
Total	: Rs.5,77,500/-

The CIT (Appeals) has not considered the following judicial rulings while disallowing the interest income claimed by the appellant.

The following decisions of the Honorable Courts and ITAT's support the appellant's claim for deduction of its investment income u/s 80P)(2)(d).

a) In the case of "ITO Vs Shree Keshorai Patan Sahakari Sugar Mill (ITAT Jaipur)" the decision was as below (2018 TaxPub(DT) 1317 (Jp- Trib)

"A bare perusal of section 80P(2)(d) of the Act shows that to get the deduction under this section, a co-operative society is not required to prove anything except that the interest is earned from the investment made in FDRs with other Cooperative Society Therefore, the requirement of carrying on the banking business or other business was not mandatory

for the claim of benefit u/s 80P(2)(d) of the Act. In support of him dated 15 September 2016 in case of CIT vs. Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd. DB ITA Nos. 139/2002,20/2004,24/2004,27/2004. The Ld. AIR has also relied upon the decision of the Hon'ble Gujarat High Court in the case of Surat VankarSahakari Sangh Ltd. vs. ACIT 72 taxman.com169 (Guj.) as well as the decision of the Mumbai Bench of the Tribunal dated 15.01.2016 in case of Lands End and Co-operative Housing Society Ltd. vs. ITO in ITA No. 3566/Mum/2014. Hence, the Ld. AIR has contended that a co-operative bank is primarily a co-operative society and sub-classification of cooperative societies engaged in other business activity is only for providing the benefit u/s 80P of the Act whereas for the purpose of section 80P(2)(d) the deposits/investment made in the cooperative society includes cooperative banks.

b) Income Tax Appellate Tribunal-Mumbai in Shree Mahadeshwar Sahakari .. vs Income Tax Officer 21(2)(2), on 1 March 2019(I.T.A.No.374/Mum/2018)

"Section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term "co-operative society" had been defined under Sec. 2(19) of the Act, as under:-

"Co-operative society" means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;"

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec.

80P of the Act. but however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would duly be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

c) In Kerala State Co-operative Marketing Federation Ltd. and others v. Commissioner of Income Tax [(1998) 231 ITR 8.14J] the question that came up for consideration before the Apex Court was as to whether the assessee, which are Co-operative Societies, are entitled to deduction under Section 80P(2)(a)(3) of the IT Act, in respect of the purchases made from members societies. In that context, the Apex Court held that, the provisions under Section 80P are introduced with a view to encouraging and promoting growth of Co-operative sector in the economic life of the country and in pursuance of declared policies of the Government. The correct way of reading the different heads of exemption enumerated in that Section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a Co-operative society is exempted from tax, what has to be seen is to whether the income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax, notwithstanding that the conditions of another head of exemption are not satisfied. Income is not free from tax under that head and not satisfied of exemption.

d) In Pro CIT V. Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. (2019 Tax Pub (DT) 5423 (Raj-HC)) the decision was as below

"As per section 22 of the RRB Act, 1976, for the purpose of the Income Tax Act, 1961, a RRB shall be deemed to be a cooperative society. And in the absence of non-obstante clause, the mere fact that a restrictive condition contained under section 80P i.e. benefit of exemption would not apply to any cooperative bank other than Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank, would not alter the pre-existing situation. Hence, interest earned on the deposits made with RRB would be allowed as deduction under section 80P".

Based on the above judicial decisions the appellant is eligible to get exemption for its investment income from deposits with

other cooperative societies.

4. *For the above grounds and in light of the above mentioned judicial decisions the disallowance under appeal may kindly be deleted."*

5.1 The assessee has also raised additional grounds stating therein that the CIT(A) has erred in invoking the provisions of section 154 of the I.T.Act on a debatable issue. In support of the additional grounds, the learned AR had relied on the judgment of the Hon'ble Apex Court in the case of Mepco Industries Ltd. (Civil Appeal Nos.7662-7663 of 2009) wherein it was held that the provisions of section 154 of the I.T.Act can be invoked only in cases where there is a "mistake apparent from record".

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 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), 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 in the course of assessee's business 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.

7.3 As regards the additional grounds are concerned, the Hon'ble Kerala High Court in the case of *Kil Kotagiri Tea & Coffee Estates Co. Ltd. v. ITAT reported in 174 ITR 579* had held that when an authority has decided on the basis of a decision of the High Court which is subsequently reversed, there would be a rectifiable mistake coming within the section 154 of the Income-tax Act. The Larger Bench of the Hon'ble Kerala High Court has reversed the dictum laid down by the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)* by holding that the activities of the assessee has to be examined to determine whether the assessee is Co-operative society or co-operative bank. In the light of the Larger Bench judgment of the Hon'ble Kerala High Court, the original orders of the CIT(A) suffer from mistake apparent on record and the same have been rightly recalled by him by invoking the provisions of section 154 of the I.T.Act. It is ordered accordingly.

8. Since we have disposed of the appeals filed by the assessee, the Stay Applications filed by the assessee become infructuous and the same are dismissed as such.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes and the Stay Applications are dismissed.

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

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 06th January, 2010.
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