

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

Before Shri George George K, Judicial Member

ITA No.585/Coch/2019 : Asst.Year 2015-2016

M/s.Pidavoor Service Co-operative Bank Limited, Pidavoor Post, Pathanamthitta, Kollam – 689 685. PAN : AACAP7516M.	Vs.	The Income Tax Officer Ward 4 Kollam.
(Appellant)		(Respondent)

Appellant by : Sri.Santhosh P.Abraham, Advocate

Respondent by : Sri.Shantom Bose

Date of Hearing : 02.01.2020	Date of Pronouncement : 06.01.2020
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 03.09.2019, passed u/s 154 r.w.s. 250 of the I.T.Act. The relevant assessment year is 2015-2016.

2. At the very outset, I noticed that the CIT(A) in the original order dated 17.12.2018 had allowed the deduction u/s 80P(2) of the I.T.Act claimed by the assessee. The CIT(A) in allowing the deduction u/s 80P of the I.T.Act, 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.)*. The CIT(A) later issued notice u/s 154 of the I.T.Act in view of the Larger Bench judgment of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT [ITA No.97/2016 order dated 19th March, 2019]* for denying deduction u/s 80P(2) of the I.T.Act. The assessee objected to the proposed rectification u/s 154 of

the I.T.Act. However, the objections raised by the assessee was rejected and the CIT(A) passed an order u/s 154 of the I.T.Act denying the benefit of deduction u/s 80P(2) of the I.T.Act, originally allowed in his order dated 17.12.2018.

3. As against the original order of the CIT(A) dated 17.12.2018, the Revenue had filed an appeal to the ITAT. The ITAT in its order dated 20.05.2019 had set aside the CIT(A)'s order dated 17.12.2018 and allowed the appeal of the Revenue by restoring the issue to the Assessing Officer. The ITAT directed the A.O. to examine the activities of the assessee-society and to 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)*. The relevant finding of the Tribunal in its order dated 20.05.2019 in ITA No.146/Coch/2019 reads as follow:-

"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."*

4. In view of the above order of the Tribunal, the CIT(A)'s order dated 17.12.2018 was not in existence as on the date of issuance of notice u/s 154 of the I.T.Act. Therefore, the CIT(A) cannot rectify his original order dated 17.12.2018. Hence, the CIT(A)'s order dated 03.09.2019 passed u/s 154 r.w.s. 250 of the I.T.Act is quashed. It is ordered accordingly.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 20th 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