

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

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

ITA No.634/Coch/2019 : Asst.Year 2014-2015

ITA No.636/Coch/2019 : Asst.Year 2016-2017

&

SA No.89/Coch/2019 : Asst.Year 2014-2015

SA No.91/Coch/2019 : Asst.Year 2016-2017

M/s.The Mayyanad Regional Co-operative Bank Limited, C/o.Jayapradeep V., Advocate, 134, KHCCA Chamber Complex, High Court, Ernakulam – 682 031. PAN : AADAT7783M.	Vs.	The Income Tax Officer Ward 4 Kollam.
(Appellant / Applicant)		(Respondent)

Assessee by : Sri.Alen P Dev, Advocate

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

Date of Hearing : 11.12.2019	Date of Pronouncement : 16.12.2019
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ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 05.09.2019. The assessee has also preferred stay applications seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2014-2015 and 2016-2017.

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 assessment orders u/s 143(3) of the I.T.Act. The A.O. disallowed the deduction u/s 80P of the I.T.Act claimed by the assessee. 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) dismissed the appeals of the assessee holding that the assessee is not eligible for deduction u/s 80P(2) of the I.T.Act and the interest income received from other banks and treasuries. The CIT(A) relied on the judgment 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].

4. Aggrieved by the orders of the CIT(A), the assessee has filed these appeals before the ITAT raising following identical grounds:-

A. The Assessment Order and the Appellate Order are highly illegal, arbitrary and against all principles of law and natural justice.

B. The Appellant Society is a Primary Agricultural Credit Society, with an object to provide financial accommodation to members, for agricultural purposes.

C. The interest income received from Banks and Treasury, is also to be exempted. The Hon'ble High Court of Kerala vide its judgment dated 18.10.2019 in WP(C) No.9434/2019 has already considered the issue and exempted the interest accrued on the deposits, made to the District Co-operative Banks, from being exigible to income tax.

D. The Assessing Officer has illegally taken the interest accrued on the deposits of the Appellant Society, with the District Co-operative Banks and the Treasury. The above said deposits are done, only to comply with the directions of the State Government. So the impugned Assessment Order and the Modified Appellate Order, are illegal.

E. The Assessing Officer did not conduct an "enquiry" into the "factual situation" of the Appellant Society. Hence, the impugned Order is highly illegal, in the light of the Full Bench Decision of this Hon'ble Court, reported in 2019 (2) KLT 597 (FB).

F. As per the said decision, it is the bounden duty of the Respondent to conduct a 'detailed enquiry', into the factual situation of the Individual Primary Society.

G. Those deposits are not intended to make profit; but it is done to comply with the statues only, being a Primary Co-operative Society.

H. Being a Primary Co-operative Society, the Appellant is entitled to get exemption, from paying tax for the entire amount of income of the Appellant, under Section 80P of the Income Tax Act, 1961.

I. The impugned Orders will definitely shatter the very

foundation of the Society, and thousands of members would be put to unending misery and deep financial loss.

J. The First Appellate Authority has simply upheld the Assessment Order, without applying mind.

K. Hence, this Hon'ble Tribunal may be pleased to set aside the impugned Orders."

5. The learned AR relied on the grounds raised. Further it was submitted that the CIT(A) has erred in out-rightly rejecting the claim of the assessee. It was submitted that it is necessary for the Assessing Officer to examine the activities of the assessee in the light of the judgment of the Full Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* and decide the issue whether the assessee was entitled to deduction u/s 80P(2) of the I.T.Act.

6. The learned Departmental Representative 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) has out-rightly rejected the appeals of the assessee 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.

7.3 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 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 16th day of December, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 16th 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