

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

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

ITA No.577/Coch/2019 : Asst.Year 2015-2016

&

SA No.56/Coch/2019 : Asst.Year 2015-2016

M/s.Nadakkal Service Co-operative Bank Limited, No.1874, P.O.Kalluvathukkal Kollam – 691 578. PAN : AABAT3582G.	Vs.	The Income Tax Officer Ward 4 Kollam.
(Appellant / Applicant)		(Respondent)

Assessee by : Sri.Jojo, CA

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

Date of Hearing : 16.12.2019	Date of Pronouncement : 16.12.2019
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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 03.09.2019. The assessee has also preferred a stay application seeking to stay the recovery of outstanding tax arrears. The relevant assessment year is 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 return of income was e-filed on 09.03.2018 declaring income of Rs.Nil, after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed assessment order u/s 143(3) r.w.s. 147 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 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) dismissed the appeal 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 order of the CIT(A), the assessee has filed this appeal before the ITAT raising following grounds:-

"A. The petitioner is a small Co-operative Society operating among fishermen and eligible for deduction under Sec.80P(2)(a)(i) of the income Tax Act 1961.

B. The petitioner does not belong to a Co-operative Bank and therefore, eligible for deduction u/s 80P in the light of the

clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT.

C. The Commissioner (Appeals) has allowed the appeals of the petitioner for the previous years from AY 2010-11 to 2014-15 allowing S.80 P deduction. The petitioner is eligible for S.80P deduction for AY 2015-16 also on the same ground for which the petitioner was allowed deduction u/s 80P by the same appellate authority. Therefore, appellate order is issued without going to the merit of the case and is to be set aside.

D. This Hon'ble Court in the light of the judgment of the Full Bench in Mavilayi Service Co-operative Bank Ltd Vs. Commissioner of Income Tax, Calicut (2019 (2) KHC 287 (FB) has stayed collection of tax disallowed by the respondents. The same issue is also pending before the Hon'ble Supreme Court.

E. Interest from investments of surplus fund is deductible u/s 80P (2) (a) (i). The Hon'ble SUPREME COURT OF INDIA (2007) 289 ITR 6 (SC)- Nawanshahar Central Co-operative society Vs Income Tax Officer held that interest from investments from District Co-operative is deductible u/s 80P (2) (a) (i). Therefore, the disallowance on interest income by the 2nd respondent is illegal and arbitrary.

F. The petitioner does not belong to a Co-operative Bank and therefore, eligible for deduction u/s 80P in the light of the clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT.

G. The Assessing Officer erred in understanding the basics of Section BOP of the IT Act, 1961. Entire Section only speaks about the deduction in respect of income of co-operative societies. Section 80P (2) of the IT Act, 1961 gives the list of activities that can be carried out by the Societies such as the appellant society which are eligible for deduction u/s 80P. The appellant society is falling under Section 80P(2)(i) i.e., carrying on the business of banking or providing credit facilities to its members. There is no dispute about the activities carried on by the appellant society as far the Assessing Officer is concerned. There is confusion only in reading the provision of Section 80P(4) which were introduced with effect from 01.04.2007 by Finance Act, 2006. The provision of Section BOP (4) only states that this provision shall not apply to any Co-operative Bank but applies only for

a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. The department did not have any problem till this provision of Section 80P(4) was introduced from 01.04.2007 in allowing all the facilities of deduction under Section 80P(2(i)). The Assessing Officer started disallowing 80 P only from the Financial year 2009-10 and confused totally about the provision of Section 80P (4). This sub-section is also made under the principal section 80P which speaks only about deduction in respect of income of co- operative societies. The law only says to whom it does not apply or applies. The appellant fail to understand, if the Assessing Officer has crossed all the known cannons of law by failing to understand the basics of a provision in the enactment.

H. The learned Assessing Officer ought to have appreciated that the appellants case squarely fell under CSDT Circular No. 18/2015 (F.No.27 9/Misc.140/2015/ITJ) dated 02-11-2015. He ought to have noted that CBDT Circulars are bin ding on the assessing officers.

I. The appeal is to be allowed by setting aside the order of the Commissioner of Appeals Thiruvananthapuram."

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 appeal 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 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 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