

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

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

ITA No.660/Coch/2019 : Asst.Year 2010-2011

SA No.122/Coch/2019 : Asst.Year 2010-2011

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

ITA No.714/Coch/2019 : Asst.Year 2013-2014

SA No.123/Coch/2019 : Asst.Year 2013-2014

M/s.Arthunkal Village Service Co-operative Bank Limited, No.3772, Arthunkal PO, Alappuzha – 688 530. PAN : AAAAT7864J.	Vs.	The Income Tax Officer Ward 5 Alappuzha.
(Appellant / Applicant)		(Respondent)

Assessee by : Smt.Swathy S., Advocate

Revenue by : Sri.Mrithunjaya Sharma, Sr.DR

Date of Hearing : 09.01.2020	Date of Pronouncement : 10.01.2020
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ORDER

Per George George K, JM :

These appeals at the instance of two different assessees, are directed against orders of the CIT(A), passed u/s 154 r.w.s. 250 of the Income-tax Act. The assessees have also preferred stay applications seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2010-2011 and 2013-2014.

2. The brief facts of the case are as follow:

The assessees are a co-operative societies registered under the Kerala Co-operative Societies Act, 1969. For the

assessment years under consideration, the returns of income were filed after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed orders u/s 143(3) 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 notices 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:-

"A. The Commissioner (Appeals) Kottayam ought to have considered that the issue whether the assessing officer shall probe into the activities of a Co-operative society to find out whether it is eligible for deduction u/s 80P of the Income Tax Act 1961 or will it be hit by Section 80P(4) is a matter to be decided by the Hon'ble Supreme Court in the appeals [SLP (Civil) Diary No. 27628/2019] filed by the Co-operative Societies in Kerala, against the reference order dated 19-03-2019 of the full bench of Hon'ble High Court of Kerala in the case Mavilayi Service Co-operative Bank Ltd., vs Income Tax Officer, Kannur and that the Apex court has issued notice on the prayer for stay of the order of High Court.

B. The Commissioner (Appeals) Trivandrum as well as the assessing Officer ought to have appreciated that even if the appellant is not a Primary Agricultural Credit Co-operative Society the appellant is not a Co-operative Bank and hence eligible for deduction u/s 80P of the Income Tax Act 1961 in the light of the clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT, New Delhi, which is binding on the Assessing Officer.

C. The view of the Commissioner (Appeals) Trivandrum as well as the assessing Officer that Primary Agricultural Credit Co-operative Societies only are eligible for deduction u/s Section 80(P) is diametrically opposite to the viewpoints expressed by various appellate authorities all over the country in the decisions mentioned below, to name a few.

(a) High Court of Karnataka in Bangalore Commercial Transport Credit Society Ltd - ITA NO: 598/2013 dated 27-06-2014

(b) High Court of Gujarat - Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 on 15-01-2014

(c) High Court of Karnataka - Income Tax Officer Vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot on 5th Feb 2014

(d) High Court of Bombay at Goa - Quepem Urban Co-operative Credit Society Ltd. vs Assistant Commissioner of Income-tax on 17-04-2015

(e) Madras High Court - The Commissioner of Income Tax vs Nlc Employees Co-Operative Society on 10 August, 2016

(f) ITAT, Panaji - Athani Taluka primary teachers Co-operative credit society Ltd. ITA NO. 06/PNJ/2014 on 04-07-2014

(g) ITAT, Poona - Jankalyan Nagri Sahakari Pat Sanstha Ltd. reported in 24 Taxmann.com (Pune Tribunal) 127

(h) ITAT, Ahamadabad - Jafari Momin Vikas Co-Op. Credit society on 31 October, 2012

(i) ITAT, Indore - Bhee Thrift & Credit Co- operative society on 6 August, 2012

(j) ITAT, Bangalore - Yeshwantpur Credit co-operative Society on 11 April, 2012

(k) ITAT, Ahmedabad-Sarvoday Credit cum Consumers Co-operative Society on 3 May, 2013

(l) ITAT, Pune - Jain Nagri Sahkari Pat Sanstha Department Of Income Tax on 14 September, 2012

(m) ITAT, Pune - Dharasur Mardini Nagar Sahakari on 20 November, 2012

(n) ITAT, Pune - Vardhman Nagari Sahakari Path Sansta on 22 November, 2012

(o) ITAT, Delhi- Palhawas Primary Agriculture Co-op. Society Ltd. Palhawas Distt., I.T.A.No.2368/Del/2011

(p) ITAT, Delhi - Dharuhera Primary Agriculture Co-op. society -I.T.A.No.2371/Del/2011

(q) ITAT, Mumbai - The Income Tax officer, Ward-20(2)(1), Mumbai -ITA No. 1820/MUM/2017 dated 02-08-2018

D. When there is no dearth of decisions of various High Courts and ITATs in India in which detailed discussions were made and conclusion arrived on the subject matter of eligibility for deduction u/s 80P, disallowance of claim under the said Section made by the Assessing Officer and the C.I.T. (Appeals) relying on unrelated decisions is denial of natural justice to the appellant.

E. The Appellant prays that the general outlook in the decisions of various High courts and ITATs across the country on the disallowance of claim for deduction u/s 80(P), adopted on the basis of CBDT clarification No. 133/06/2006-07 dated 19-05-2007 shall be taken into consideration while disposing this appeal petition.

F. The Assessing Officer ought to have seen that Appellant was eligible for deduction u/s 80P(2)(d) and 80P(2)(a)(i) in respect of interest income from investments with other Co-operative Banks and Government treasury.

G. The Appellant prays that the disallowance of claim for deduction u/s 80(P), addition made in respect of interest income may be deleted."

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 assesseees and granted deduction u/s 80P(2) of the I.T.Act. Subsequently, the CIT(A) passed order 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 assesseees 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-societies 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 10th day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 10th January, 2020.
Devadas G*

Copy of the Order forwarded to :

1. The Appellants.
2. The Respondent.
3. The CIT(A), Trivandrum/ Kottayam.
4. The Pr.CIT, Trivandrum / Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin