

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

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

ITA No.690/Coch/2019 : Asst.Year 2012-2013

SA No.124/Coch/2019 : Asst.Year 2012-2013

M/s.Malayinkil Service Co-operative Bank Limited, C/o.Sri.Arun Raj S, Sivaraj Associates, Advocates, P.C.Chambers, Ashirbhavan Road, Kacheripady, Ernakulam-682 018. PAN : AABAM1559Q.	Vs.	The Income Tax Officer Ward 2(4) Trivandrum.
(Appellant / Applicant)		(Respondent)

ITA No.723/Coch/2019 : Asst.Year 2011-2012

SA No.125/Coch/2019 : Asst.Year 2011-2012

M/s.Kattakode Service Co-operative Bank Limited, C/o.Sri.Arun Raj S, Sivaraj Associates, Advocates, P.C.Chambers, Ashirbhavan Road, Kacheripady, Ernakulam-682 018. PAN : AAALT1613Q.	Vs.	The Income Tax Officer Ward 2(2) Trivandrum.
(Appellant / Applicant)		(Respondent)

Assessee by : Sri. Arun Raj, 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), both dated 03.09.2019 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.

2. There is a delay of 06 days and 14 days, respectively, in filing these appeals. The assessees have filed petitions for condonation of delay. We have perused the reasons stated for filing the appeals belatedly. We find that there is sufficient cause for the delayed filing of these appeals and no laches can be attributed to the assessee. Hence, we condone the delay and proceed to dispose of the same on merits.

3. 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 declaring income of Rs.Nil, 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 assessees on investments made with District Co-operative Banks.

4. Aggrieved by the orders of assessment denying the claim of deduction u/s 80P(2) of the I.T.Act, the assessees preferred appeals to the first appellate authority. The CIT(A) allowed the appeals by holding that the assessees were 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 assesseees, 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.).

5. 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 assesseees and passed orders u/s 154 of the I.T.Act, disallowing the claim of the assesseees u/s 80P(2) of the I.T.Act.

6. Aggrieved by the orders of the CIT(A), the assesseees have filed these appeals before the Tribunal raising the following identical grounds:-

1. *The order dated 3-9-2019 passed under section 154 r.w.s 250 of the Income Tax Act modifying the order dated 5-3-2019 and thereby dismissing the appeal filed by the appellant confirming the order passed by the Income Tax Officer, Ward- 2 (4), Trivandrum is highly illegal, arbitrary, unjustified and contrary to the law and facts of the case.*

2. *The CIT (Appeals) thoroughly erred in modifying the order dated 5-3-2019 and dismissing the appeal filed by the appellant holding that the order dated 27-12-2016 passed by*

the assessing officer is in accordance with the judgment dated 19-3-2019 passed by the Full Bench of the Honourable High Court of Kerala in Mavilayi Service Co-operative Bank Ltd Vs CIT and connected cases (ITA No. 97 of 2016 and connected cases).

3. *The CIT (Appeals) erred in confirming the order passed by the passed by the Income Tax Officer, Ward- 2 (4), Trivandrum disallowing the deduction claimed u/s 80 P (2) (a) of the Act.*

4. *The finding of the assessing officer that the appellant is not a Primary Agricultural Credit Society but a Co-operative Bank is illegal, arbitrary and baseless. The CIT (Appeals) ought to have considered the fact that the appellant is not a Co-operative Bank and there is no licence issued by RBI. The CIT (Appeals) failed to consider the matter in the right perspective.*

5. *The CIT (Appeals) ought to have noted that the assessing officer has categorically held that the assessee is engaged in the business of providing credit facility to its members, in which case, the assessee being a co-operative society providing credit facility to its members is entitled/ eligible for deduction under section 80 P (2) (a) (i) of the Act.*

6. *The CIT (Appeals) ought to have held that the Assessing Officer erred in holding that the interest income of the appellant received from M/ s Trivandrum District Co-operative Bank Ltd and M/ s Kerala State Co-operative Bank Ltd totaling to the tune of Rs.47,61,854/- is to be treated 'as income under the head 'Other Sources' which is to be taxed under section 56 of the Act. The CIT (Appeals) failed to consider the matter in the right perspective.*

7. *The CIT(Appeals) failed to note that interest earned from the deposit made in M/s.Trivandrum District Co-operative Bank Ltd and M/s.Kerala State Co-operative Bank Ltd are eligible for claiming deduction under section 80P(2) of the Act.*

For these and other grounds that may be urged at the time of hearing it is most respectfully prayed that this Honourable Tribunal may be pleased to set aside the order dated 3-9-2019 passed under section 154 r.w.s 250 of the Income Tax Act modifying the order dated 5-3-2019 and thereby to set aside the order dated 27-12-2016 of the Income Tax Officer, Ward- 2 (4), Trivandrum for the AY 2012-13 and to allow the appeal.

7. 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.

8. 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."

8.1 The CIT(A) had initially allowed the appeals of the assessees 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.

8.2 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 assesseees, 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.

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

10. In the result, the appeals filed by the assesseees 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.
4. The Pr.CIT, Trivandrum .
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin