

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

Before Shri George George K, Judicial Member

ITA Nos.706 to 710/Coch/2019:AYs.2010-11 to 2014-15

M/s. Vadakkevila Service Co-operative Bank Ltd. No. 2292, Thattamala P.O., Vadakkevila, Kollam-691 020. PAN : AABAV 5781B]	Vs.	The Income Tax Officer Ward-4, Kollam.
(Appellant)		(Respondent)

Appellant by : Shri Prasad Vidhyadharan, CA
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 21.01.2020	Date of Pronouncement : 21. 01.2020
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ORDER

These appeals at the instance of the assessee are directed against the five different orders of the CIT(A), Trivandrum, all dated 03.09.2019, passed u/s. 154 r.w.s. 250 of the I.T.Act. The relevant assessment years are 2010-11 to 2014-15.

1.1 Since the issues involved in these appeals are common in nature, they were heard together and are being disposed off by this common, consolidated order.

2. There was a delay of 10 days in filing the appeals before the Tribunal. The Ld. AR has filed condonation petitions accompanied by affidavits stating that since the assessee was out of station, a delay of 10 days happened in filing the

appeals. It was submitted that there was no willful latches or omission on her part in this regard. Hence, it was prayed that the delay of 10 days may be condoned and the appeals admitted for adjudication.

2.1 I have gone through the condonation petition, explaining the reason for the delay in filing the appeals before the Tribunal. I find that there is good and sufficient reasons for belatedly filing the appeals. Hence, the delay of 10 days in filing the appeals is condoned and the appeals admitted for adjudication.

3. 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 2010-11 to 2014-15, the returns of income were filed, 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 for AYs 2010-11 to 2014-15, 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 the appeals before 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 notice. 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 common grounds:-

1. The order of the Assessing Officer is against facts, law and equity.

2. The Assessing Officer erred in holding that the appellant is not a primary agricultural society. As per the objectives of the Appellant, the primary objective is to give advances for agricultural purposes.
3. Since the appellant is a Primary Agricultural Credit Society deduction u/s. 80P of the IT Act was claimed in respect of its income from banking business.
4. Appellant further relied on the decision of Hon'ble High Court of Kerala in case of Kararinakam Service Co-operative Bank Ltd. in ITA No.25 of 2015 dated 15/02/2016 where in it was held that Primary Agriculture Credit Societies registered as such under the Kerala Co-operative Societies act and classified so under that Act are entitled to exemption of its income u/s. 80P(2) of the Act.
5. For these and other grounds to be further adduced at the time of hearing, the orders of the Assessing Officer may be modified to the extent appealed against.
6. The learned AR submitted that as per Part V of the Banking Regulations Act, a Primary Agricultural Credit Co-operative Society means a Co-operative Society, the primary object or principal business of which is to provide financial accommodation to its members for Agricultural purpose or for purpose in connection with Agricultural activities. It was submitted that the assessee- Bank was entitled for 80P deduction and for this the society must be a primary Agricultural Society and registered as such under the Kerala Co-operative Societies Act. According to the Ld. AR, a certificate was issued by the Joint Registrar of Co- operative Societies, Kollam to this effect. It was submitted that the assessee was registered under the Kerala Co-operative Societies Act 1969 as a Primary Agricultural Credit Co-operative Society and once it is classified as a primary Agricultural Credit Co-operative Society by the competent authority

under the Kerala Co-operative Societies Act as ruled by the Hon'ble High Court of Kerala. The Ld. AR submitted that the principal object of such a society was to undertake Agricultural Credit Activity and provide loans and advances for agricultural purposes. The rate of interest on such loans and advances was to be at the rate fixed by the Registrar of Co- operative Society under the Kerala Co-operative Societies Act and having its area of operation confined to a Village, Panchayath, or Municipality. The authority under the IT Act cannot probe into an issue of such matter relating to such an applicant. For this reason, it cannot but be held that the assessee is entitled to exemption from provision of Section 80P of the IT Act. The Ld. AR submitted that the assessee is entitled for exemption for its income under Section 80P(2) as claimed in the returns of income filed for the assessment year 2010-11 to 2014-15.

6.1 According to the Ld. AR, the Act permits deduction under Section 80P to a Primary Co-operative Society whose Primary objective is to provide financial accommodation to its members for agricultural purpose or for the purpose connected with the agricultural activities. The Ld. AR relied on the judgment of the Hon'ble High Court of Kerala in the case of the Kararinakam Service Co-operative Bank Ltd. in ITA No.25 of 2015 dt 15.02.2016 wherein it was held that the Primary Agricultural Credit Societies registered as such under the Kerala Co-operative Societies Act, and classified so under the Act are entitled to exemption of its income u/s. 80P(2) of the Act. The Ld. AR also relied on the judgment of the Hon'ble High Court of Kerala in the case of Madai Co-operative Rural Bank Ltd Vs ITO and Chirakkal Service Co-operative Bank Ltd Vs CIT.

6.2 In respect of any income by way of interest and dividends derived by the Co-operative Society from its investments with any other Co-operative Society, it was submitted that the whole of such income which was brought to tax as income from other sources is to be exempted from tax by virtue of the provisions of section 80P (2)(d) as ruled by the Hon'ble High Court of Kerala in the case of *Ottoor Service Co-operative Bank Ltd Vs ITO* in WP(c)No. 38566 of 2017 dt. 21.12.2017 wherein it was held the provisions of section 80P (2)(d) of the Act is applicable to the interest income earned from the surplus fund deposited with the District Co-operative Bank, Treasuries etc, which in turn is to be treated as income from the other sources and accordingly, be exempted. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income-tax authorities.

7. I 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 assessee and granted deduction u/s 80P(2) of the I.T.Act. Subsequently, the CIT(A) passed orders 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), I 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.

7.2 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-society before granting deduction u/s 80P of the I.T.Act on such

interest income. As regards claim of deduction u/s. 80P(2)(d), the assessee has to prove that interest income was received on account of investment with other co-operative societies. It is ordered accordingly.

8. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 21st day of January, 2020.

sd/-

(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 21st January, 2020.

GJ

Copy of the Order forwarded to :

1. M/s. Vadakkevila Service Co-operative Bank Ltd. No. 2292, Thattamala P.O., Vadakkevila, Kollam-691 020.
2. The Income Tax Officer, Ward-4, Kollam.
3. The CIT(A), Trivandrum
4. The Pr.CIT, Trivandrum
5. The DR, ITAT, Cochin
6. Guard file.

By Order

(Assistant Registrar)
I.T.A.T., Cochin

