

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

Before Shri Chandra Poojari, Accountant Member

ITA No.16/Coch/2020 : Asst.Year 2010-11

M/s. Thaniyam Panchayath Service Co-operative Bank Limited, Kizhuppillikkara, Thrissur-680 702. PAN : AAACAT 6387J]	Vs.	The Income Tax Officer Ward-2(5), Thrissur
(Appellant)		(Respondent)

ITA Nos.17&18/Coch/2020 : Asst.Year 2014-15 &
2015-16

M/s. Vallachira Service Co-operative Bank Limited, No.527 Vallachira P.O., Thrissur-680 562. PAN : AAAAV 9543J]	Vs.	The Income Tax Officer Ward-2(3), Thrissur
(Appellant)		(Respondent)

ITA Nos.09 to 12/Coch/2020 : Asst.Years 2010-11,
2013-14 to 2015-16

M/s. Varavoor Service Co-operative Bank Limited, R-299, Varavoor, Thrissur-680 585. PAN : AAABAV 1089N]	Vs.	The Income Tax Officer Ward-2(3), Thrissur
(Appellant)		(Respondent)

Appellant by : Shri M. Ramdas, FCA
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 12.02.2020 & 13/02/2020	Date of Pronouncement : 13.02.2020
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ORDER

These appeals at the instance of the assesseees are directed against the different orders of the CIT(A), Thrissur

passed u/s. 154 r.w.s. 250 of the I.T. Act. The relevant assessment year is 2010-11, 2013-14, 2014-15 and 2015-16.

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

The assesseees are a co-operative society registered under the Kerala Co-operative Societies Act, 1969. For the assessment years 2010-11, 2013-14, 2014-15 and 2015-16, the returns of income were filed after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed order 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 assesseees 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 assesseees will not be entitled to the deduction u/s 80P(2) of the I.T.Act.

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

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 the appeals before the Tribunal raising the following common grounds except for variation in figures. We will consider the grounds as raised in ITA No. 16/Coch/2020:-

1. The order of the Commissioner of Income Tax (Appeals), Thrissur u/s 154 r.w.s 250 of the 1T Act, 1961 is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.

2.

a. The Commissioner of income tax (Appeals), based on the Three judge bench decision of the Hon'ble High Court in the case of *Mavilayi Service Co-operative Bank Ltd vs. Commissioner of Income Tax. ITA No. 97 of 2016* and in 17 other cases on 19.03.2019, has proposed to rectify the appellate order passed by him dated 24.01.2019.

b. The Commissioner of Income Tax(Appeals) has concluded that the appellant is a Primary

Agricultural Credit Society and that the appellant is entitled to deduction u/s 80P(2)(a)(i) as mentioned in his order dated 24.01.2019.

c. The Commissioner of Income Tax (Appeals) has failed to appreciate that the Supreme Court has taken on record an SLP filed before it against the decision of Kerala High Court in the larger Bench dated 19.03.2019.

d. The first Appellate Authority has also erred in law and in fact is not allowing the claim of the appellant in section 80P(2)(d) of the Act while disposing of the proceedings u/s 154 of the Act dated 14.11.2019.

3. While filing the return of income for the assessment year, the appellant has claimed deduction u/s 80P(2)(a)(i) of the Act only on the whole income, instead of putting up the claim u/s 80P(2)(d) of the Act on the interest on investment. During the financial year relevant to assessment year 2010-11 your appellant has earned interest on investments, total amounting to Rs.48,52,609/- which includes Thrissur District Co-operative Bank amounting to Rs.47,65,339/-, RF Interest Rs.87,270/-. Relying upon the decision of Hon'ble High Court of Kerala in the writ petition in Oottor Service Co-operative bank Ltd. the interest received is also eligible for deduction u/s 80P(2)(d). The appellant therefore prays that;

a. The order u/s 154 of the Act of the first Appellate Authority is therefore to be cancelled, or

b. To allow the deduction claimed u/s 80P(2)(d) of the Act which was rejected by the first Appellate Authority during the proceedings u/s 154 of the Act, and

c. To pass such other consequential order as the Hon. Income Tax Appellate Tribunal may deem fit to render justice.

6. The learned AR filed detailed written submission challenging the order of the CIT(A) passed u/s. 154 of the I.T. Act.

6.1 The learned Departmental Representative strongly supported the orders of the Income-tax authorities. The Ld. DR also submitted that the Assessing Officers would be in a dilemma whether they have to follow the direction of the Larger Bench of the Kerala High Court in the case of Mavilayi Service Co-op Bank Ltd. vs. CIT supra or the direction of the Tribunal as whether the Department has to consider the PACS certificate issued by the co-op Dept also/alone. The Ld. DR prayed that the Tribunal may bring clarity in this regard.

7. I have heard the rival submissions and perused the material on record. The Ld. AR submitted that the issue in these appeals dealt by the CIT(A) in his orders is debatable. As such, the judgment of the Larger Bench of the Jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* does not cover his decision so as to rectify the earlier orders of the CIT(A) u/s. 154 of the I.T. Act. In my opinion, this argument of the Ld. AR is misconceived and the subsequent judgment of the

Jurisdictional High Court could be the reason to rectify the orders of the CIT(A) as held by the Hon'ble Kerala High Court in the case of *Kil Kotagiri Tea & Coffee Estates Co. Ltd. v. ITAT reported in 174 ITR 579*. In this case, the Jurisdictional High Court had held that when an authority has decided on the basis of a decision of the High Court which is subsequently reversed, there would be a rectifiable mistake coming within the section 154 of the Income-tax Act. The Larger Bench of the Hon'ble Kerala High Court has reversed the dictum laid down by the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)* by holding that the activities of the assessee has to be examined to determine whether the assessee is Co-operative society or cooperative bank. In the light of the Larger Bench judgment of the Hon'ble Kerala High Court, the earlier CIT(A) order's granting deduction u/s. 80P(2) of the I.T. Act have been rightly recalled by the CIT(A). Therefore the grounds raised by the assesseees that the CIT(A) has erred in passing orders u/s. 154 of the I.T. Act are dismissed

7.1 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 appellants 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."*

7.2 The CIT(A) had initially allowed the appeals of the assessee and granted deduction u/s 80P 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 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, subject to jurisdiction granted to the assesseees as per the certificates of registration issued by the Registrar of Co-operative Societies, and accordingly, consider the allowability of deduction u/s 80P 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. The assesseees for the relevant assessment years have also claimed that it is entitled for deduction u/s. 80P(2)(d) of the I.T. Act before the CIT(A), stating that interest income is received from investment made with other co-operative societies.

7.4 The Ld. AR submitted that it is pertinent to consider the order of the co-ordinate Bench in the case of *ITO vs. Ananthapuram Co-operative Society* in ITA No. 111 & 112/Coch/2019 dated 02/05/2019 wherein it was held that since the assessee had made investments with sub-

treasuries, District Co-operative Banks, other Banks in the course of its business of banking/providing credit facilities to its members, it was entitled to deduction u/s.80P(2)(a)(i) of the I.T. Act in respect of interest income that was received on such investments. Since it was found that the interest income was earned in course of carrying on business of banking and entitled to deduction u/s. 80P(2)(a)(i) of the I.T. Act.

7.5 The Ld. DR submitted that the assessee made an alternative claim before the CIT(A) that the assessee is entitled to deduction u/s. 80P(2)(d) of the I.T. Act of interest on investments. According to the Ld. DR, this claim of the assessee was first time made before the CIT(A) while adjudicating the issue by him u/s. 154 of the I.T. Act. The Ld. DR submitted that this relief was not claimed before the assessment proceedings by the assessee. As such, it cannot be granted by rectification since there was no material on record to support this claim.

7.6 I have heard the rival submissions and perused the record. It is pertinent to note that in *Anchor Pressings (P) Ltd. vs. CIT (1975) 100 ITR 347 (All)*, the assessee had failed to claim a rebate which was allowable under section 84 of the Act to a newly established undertaking, in its return and also in assessment proceeding and in appeal against the assessment order. Subsequently, it claimed said rebate by

making application under s. 154 of the Act and pleaded that there was mistake apparent from the record on account of the fact that the assessment order did not grant said relief. It was held by the High Court that the ITO was justified in refusing to grant the relief in rectification proceeding which the assessee had not claimed in assessment proceeding. The principle that was applied by the Court was that s. 154 was not meant for preferring a claim which had not been preferred in assessment proceeding and that said section operated only on the facts which were already on record and could not be resorted to for introducing new facts. This decision was affirmed by the Supreme Court in appeal in Anchor Pressings (P) Ltd. vs. CIT (1986) 58 CTR (SC) 126 : (1986) 161 ITR 159 (SC).

7.7 The above decision of Allahabad High Court as well as another decision of that High Court in Sharda Prasad vs. CIT (1975) 100 ITR 373 (All.) in which also rectification proceeding was held to be not maintainable for obtaining relief under Section 84 of the Act were dissented from by Gujarat High Court in Choksi Metal Refinery vs. CIT (1977) 107 ITR 63 (Guj) in which facts were identical. The Gujarat High Court mainly relied on circular of the [Board No. 14 (XL-35) of 1955 dt. 11th April, 1955 in which the Board had declared that the officers of the Department should not take advantage of ignorance of an assessee as to his rights and it was one of their duties to assist a taxpayer in every reasonable way,

particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where the proceedings or other particulars before them indicated that some refund or relief was due to the taxpayer and that although the responsibility for claiming refunds and reliefs rested with the assessee on whom it is imposed by law, the officers should draw their attention to any reliefs to which they appeared to be clearly entitled but which they omitted to claim for some reason or other [See also CIT vs. K.N. Oil Industries (1982) 30 CTR (MP) 137 : (1983) 142 ITR 13 (MP)].

7.8 In Anchor Pressings (P) Ltd. vs. CIT (1986) 58 CTR (SC) 126 : (1986) 161 ITR 159 (SC): in which the decision of Allahabad High Court in anchor Pressing (P) Ltd. vs. CIT (1975) 100 ITR 147 (All) was affirmed, the Supreme Court observed that although an obligation imposed on the Assessing Officer by section 84 of the Act to grant relief thereunder could not be refused merely because the assessee had omitted to claim it, yet the mere obligation on the part of the Assessing Officer to grant such relief was not sufficient and that precise factual material and clear data should be contained in the record which should be sufficient to enable the Assessing Officer to consider whether relief should be granted and that in the absence of such material no fault could be found with the Assessing Officer for not making an order u/s. 84 favouring the assessee. In such a situation,

powers u/s. 154 of the Act, though wider than those provided in O.XLVII, R.1, of CPC, could not be exercised because there were no materials on record to support the claim of relief. (See also Indian Aluminium Co. Ltd. vs. CIT (1983) 141 ITR 258 (Cal.) and paramount Trading corporation vs. ITO (1980) 124 ITR 55 (All.).

7.9 In the present case, the question is not making any claim by the assessee in his return of income or before the Assessing Officer during the assessment proceedings or before the CIT(A) in the proceedings u/s. 143(3) r.w.s 147 and 250 of the I.T. Act. When the CIT(A) proceeded to rectify his earlier order by placing reliance on the judgment of the Jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)*, the assessee made this claim before the CIT(A) on which facts relating to the mistake is not apparent on record and the related documents connected with this claim of the assessee were not at all filed either before the Assessing Officer or before the CIT(A). Being so, such claim cannot be entertained by the CIT(A) while he is deciding the issue under section 154 r.w.s. 250 of the I.T. Act. Hence, I do not find any infirmity in the order of the CIT(A) on this issue in rejecting the claim of the assessee u/s. 80P(2)(d) of the I.T. Act.

7.9.1 Further, the reliance placed by the Ld. AR on the judgments of the Supreme Court in the case of National

Thermal Power Corporation Ltd. vs. CIT (229 ITR 383) and Goetze (India) Ltd. vs. CIT (157 Taxman 1) have no application to the facts of the present case since they were delivered on different set of facts. Further, the Ld. AR placed reliance on the earlier order of the co-ordinate Bench in the case of M/s. Pazhuvil Service Co-operative Bank Limited vs. ITO in ITA No.15/Coch/2020 vide order dated 06/02/2020 stating that the issue was covered in favour of the assessee. However, I find that the Tribunal decided the issue without noticing the judgment of the Supreme Court in the case of Anchor Pressings (P) Ltd. vs. CIT 161 ITR 159. Being so, I do not find any merit in the claim of the assessee u/s. 80P(2)(d) of the I.T. Act made during the proceedings u/s. 154 of the I.T. Act before the CIT(A). Thus, this ground of appeals of the assesses is rejected.

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

Order pronounced on this 13th February, 2020.

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Cochin ; Dated :13th February, 2020.
GJ

Copy of the Order forwarded to :

1. M/s. Thaniyam Panchayath Service Co-operative Bank Limited, Kizhuppillikkara, Thrissur-680 702.
2. M/s. Vallachira Service Co-operative Bank Limited, No.527 Vallachira P.O., Thrissur-680 562.
3. M/s. Varavoor Service Co-operative Bank Limited, R-299, Varavoor, Thrissur-680 585.
4. The Income Tax Officer, Ward-2(3), Thrissur.
5. The Income Tax Officer, Ward-2(5), Thrissur.
6. The CIT(A), Thrissur.
7. The Pr. CIT, Thrissur.
8. The DR, ITAT, Cochin.
9. Guard File.

By Order

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