

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

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

ITA No.198/Coch/2020 : Asst.Year 2012-2013
ITA No.199/Coch/2020 : Asst.Year 2016-2017
ITA No.200/Coch/2020 : Asst.Year 2017-2018
&
SA No.108/Coch/2020 : Asst. Year 2012-2013
SA No.109/Coch/2020 : Asst. Year 2016-2017
SA No.110/Coch/2020 : Asst. Year 2017-2018

M/s. Edathirinji Service Co-operative Bank Limited No.R-137, Edathirinji PO Thrissur - 680 122 [PAN : AAAAE8130A.	Vs.	The Income Tax Officer Ward 2(1) Thrissur.
(Appellant/Applicant)		(Respondent)

Appellant by : Ms.Krishna K, Advocate
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 23.06.2020	Date of Pronouncement : 23.06.2020
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ORDER

Per Bench :

These appeals at the instance of the assessee are directed against two orders of the CIT(A). The assessee has also preferred stay applications seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2012-2013, 2016-2017 and 2017-2018.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. The solitary issue that is raised is whether the CIT(A) is justified in confirming the Assessing Officer's order in denying the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act.

4. 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 2012-2013, 2016-2017 and 2017-2018, returns were filed after claiming deduction u/s 80P of the I.T.Act. The assessment orders were passed for assessment years 2012-2013, 2016-2017 and 2017-2018, wherein the Assessing Officer disallowed 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)(a)(i) of the I.T.Act was that the assessee was essentially 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 deduction u/s 80P of the I.T.Act.

5. Aggrieved by the orders passed by the Assessing Officer disallowing the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred appeals before the first appellate authority for assessment years 2012-2013, 2016-2017 and 2017-2018. The CIT(A) placing reliance on the 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 [(2019) 414 ITR 67 (Ker.) (FB) (HC)]* held that the Assessing Officer had made elaborate findings and has come to a factual finding that agricultural credit provided by the assessee is

only minuscule and assessee cannot be termed as primary agricultural credit society. Accordingly disallowance of claim of deduction u/s 80P of the I.T.Act made by the Assessing Officer was upheld by the CIT(A). In the result the appeals filed by the assessee were rejected by the CIT(A) for assessment years 2012-2013, 2016-2017 and 2017-2018.

6. Aggrieved by the orders passed by the CIT(A), the assessee has preferred these appeals before the Tribunal. Identical grounds have been raised and they read as follow:-

A: The orders of the authorities below in so far as they are against the appellant are opposed to law, facts and circumstances of the case.

B: The averments made before the first appellate authority, by way of written submissions have not been taken into account by the said authority.

C: The appellant is eligible for deduction under Section 80P(2)(a)(i) of the Income Tax Act and the finding to the contrary by the lower authorities is without any justification and arbitrary.

D: The finding of the assessing authority that appellant falls within the definition of "Co-operative Bank" which is not eligible for deduction u/s. 80P is illegal and without any justification. The lower authorities ought to have interpreted Section 80P(4) correctly so as to find that appellant is a primary agricultural credit society (PACS) engaged in carrying on the business of banking.

E: The appellant is eligible for deduction of the whole profit attributable to the activities of giving credit facilities to its members. The Hon'ble High Court of Kerala in Chirakkal Service Co-operative Bank's case reported in 384 ITR 490 held that once a certificate classifying the co-operative society as a PACS is issued by the registrar under the Co-operative Societies Act, 1969, the Department cannot sit in judgment over the same and is bound to accept the same. However, in The Mavilayi Service Co-operative Bank v. Commissioner of

Income Tax, Calicut, (2019) 2 KLT 597 (F.B.) the judgment in Chirakkal's case is reversed. But in the said judgment the matter is remitted for further enquiry by the statutory authorities.

F: The first appellate authority ought to have noted that the appellant is not a co-operative bank licensed by the Reserve Bank of India. Appellant is originally registered as PACS and no reclassification made by the RBI. So much so, the disallowance of deduction claimed u/s. 80P is illegal and unjustified.

G: The finding of the assessing authority that the benefit of the principle of mutuality is not applicable is not correct or legal. The reliance placed by the assessing authority on M/ s. Citizen Service Co-operative Society Vs. ACIT, Hyderabad 397 ITR 1 (SC) is incorrect and unsustainable. The first appellate authority ought to have found that the principle of mutuality is applicable and appellant is eligible for complete exemption from tax. The lower authorities ought to have found that categorization of members to different classes is only for the smooth functioning of the appellant society. Nominal members cannot be treated as non-members. The lower authorities ought to have noted that the restrictions provided to nominal member so as to not to be entitled to any share as per clause 2(m) of the Kerala Co-operative Societies Act does not affect the mutuality between members and legal. Therefore, the principle of mutuality can be invoked or denied only when the transactions are with non-members.

H: The finding of the lower authorities that details furnished as required by the assessing authority are incomplete is without any justification hence, illegal. The names and address of the persons to whom deposits/loans had been disbursed are not provided as it requires more time. The appellant ought to submit the reply to pre-assessment notice on time. So much so, the details of names and address of the persons to whom deposits/loans are disbursed could not be included in the said reply. In any event, the lower authorities ought to have found that no correlation between name and address of the customers of deposits and operation of PACS.

I: Even though a prohibitory clause preventing other societies from becoming members in the co-operative society is not inserted in the bye laws of the society, no such member is admitted to the appellant Society.

J: The levy of income tax and interest under Sections

234A, 234B and 234C is illegal and liable to be cancelled.

K: Demand of tax u/ s. 156 is also not correct or legal, therefore, liable to be cancelled.

L: The other grounds will be raised at the time of hearing."

6.1 The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the orders passed by 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 In the instant case, the Assessing Officer had denied the claim of deduction u/s 80P of the I.T.Act for the reason that assessee was essentially doing the business of banking and disbursement of agricultural loans by the assessee was only minuscule. Therefore, the Assessing Officer concluded that the assessee cannot be treated as co-operative society. The Assessing Officer after perusing the narration of the loan extracts in the statutory audit report for assessment years 2012-2013, 2016-2017 and 2017-2018, came to the conclusion that out of the total loan disbursement, only a minuscule portion has been advanced for agricultural purposes. We are of the view that the narration in loan extracts in the audit reports by itself may not conclusive to prove whether loan is a agricultural loan or a non-agricultural

loan. The gold loans may or may not be disbursed for the purpose of agricultural purposes. Necessarily, the A.O. had to examine the details of each loan disbursement and determine the purpose for which the loans were disbursed, i.e., whether it is for agricultural purpose or non-agricultural purpose. In these cases, such a detailed examination has not been conducted by the A.O. In the light of the dictum laid down by the Full Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)*, we are of the view that there should be fresh examination by the Assessing Officer as regards the nature of each loan disbursement and purpose for which it has been disbursed, i.e., whether it for agricultural purpose or not. The A.O. shall list out the instances where loans have disbursed for non-agricultural purposes etc. and accordingly conclude that the assessee's activities are not in compliance with the activities of primary agricultural credit society functioning under the Kerala Co-operative Societies Act, 1969, before denying the claim of deduction u/s 80P(2) of the I.T.Act. For the above said purpose, the issue raised in these appeals is restored to the files of the Assessing Officer. The Assessing Officer shall examine the activities of the assessee-society by following the dictum laid down by the Full Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* and shall take a decision in accordance with law. Needless to state, the assessee shall cooperate with the A.O. and shall furnish the necessary

details called for. Further, the assessee shall not seek unnecessary adjournment. It is ordered accordingly.

8. Since we have disposed of the appeals, the stay applications filed by the assessee are dismissed as infructuous.

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 23rd day of June, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 23rd June, 2020
Devadas G*

Copy to :

1. The Appellant
2. The Respondent
3. The CIT(A), Thrissur.
4. The Pr.CIT, Thrissur.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi