

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

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

ITA No.156/Coch/2020 : Asst.Year 2008-2009

ITA No.157/Coch/2020 : Asst.Year 2010-2011

ITA No.158/Coch/2020 : Asst.Year 2013-2014

ITA No.159/Coch/2020 : Asst.Year 2014-2015

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| M/s. The Payyanur Co-operative Rural Bank Limited Payyanur - 670 307. [PAN : AAAAP3220E. | Vs. | The Income Tax Officer Ward 4 Kannur. |
| (Appellant) | | (Respondent) |

Appellant by : Sri.Arun Raj

Respondent by : Sri.Mritunjaya Sharma, Sr.DR

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| 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 a common order of the CIT(A), dated 12.12.2019. The relevant assessment years are 2008-2009, 2010-2011, 2013-2014 and 2014-2015.

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 2008-2009, 2010-2011, 2013-2014 and 2014-2015, returns were filed after claiming deduction u/s 80P of the I.T.Act. The assessment orders were passed for assessment years 2008-2009, 2010-2011, 2013-2014 and 2014-2015, 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 2008-2009, 2010-2011, 2013-2014 and 2014-2015. 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 2008-2009, 2010-2011, 2013-2014 and 2014-2015.

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

"1. The order of the Income Tax Officer, Ward -4, Kannur assessing the appellant on total income of Rs.19,39,270 and determination of tax and interest aggregating to Rs.9,28,430/- as against the returned total income of Rs. 9,28,430/- and tax assessed of Rs.3,36,627/- and the upholding of such assessment as correct by the Commissioner of Income Tax (Appeals) (CIT (Appeals)) in first stage appeal, is against the facts and circumstances of the case and hence opposed to law.

2. The CIT (Appeals) ought to have found that the appellant is primary agricultural credit co-operative society (PACS) registered as such, under Kerala Co-operative Societies Act, (KSC ACT) would be entitled to exemption u/s 80P(2) of the Income-tax Act and as such the dismissing the appeal by the CIT(A) by rejection of the claim u/s 80P of the Act is against the law and without any merits.

3. The assessee is not doing any banking business and accepts money only from its members. The difference between PACS and bank has been clearly brought out in various judicial pronouncements. It is submitted that the banking business means accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, which is withdrawable by cheque, draft etc. For carrying out the banking business licence from the Reserve Bank of India is mandatory. It was submitted that the assessee society does not accept money from the public for the purpose of lending or investment. Further, it is

contended that such activity of the society does not fall within the purview of Co-operative Bank and the society cannot be categorized as a Co-operative Bank.

4. The parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other things the registration of the society under any State law relating to co-operative societies for the time being in force. In this regard it is worth mentioning that the purpose of the societies so registered under the State Law, its objects have to be understood as those which have been approved by the competent authority under such State law and that alone qualifies it to be classified as co-operative Society under the act perse. This society having been classified as primary agricultural credit societies by the competent authority under the KCS Act has to necessarily conduct its activities as per its byelaws and the principal object of the society as per the bye-law 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 fixed by the Registrar of co-operative societies under the KCS Act and having its area of operation confined to a village, panchayath or a municipality. Thus the AO cannot probe into any issue or such matter relating to such aspects as conducted by the society. Further, the bye-laws of the society do not permit admission of any other co-operative society as member, except may be, in accordance with the proviso to sub-clause 2 of section 5(cciv) of the BR. Act. Thus, the income of the primary agricultural credit societies, registered as such under the KCS Act; and classified so, under that Act including the appellants are entitled to such exemption as contemplated ix] s 80P(4) of the Income Tax Act, 1961.

5. Upon above and other reasons that may be adduced at the time of hearing, the hon'ble Tribunal of the Income Tax, Additional bench, cochin may be pleased to set aside the order of CIT(Appeals)-Kozhikode upholding the assessment and allow the appeal."

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 2008-2009, 2010-2011, 2013-2014 and 2014-2015, 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. At the time of assessment, the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Cooperative Bank Ltd. (supra)* was ruling the roost and the certificate issued by the Registrar of Co-operative Society terming the assessee as a primary agricultural credit society would be sufficient for grant of deduction u/s 80P of the I.T.Act. 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 co-operate 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. In the result, the appeals filed by the assessee are allowed for statistical purposes.

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), Kozhikode.
4. The Pr.CIT, Kozhikode.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi