

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

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

ITA No.194/Coch/2020 : Asst.Year 2011-2012

ITA No.195/Coch/2020 : Asst.Year 2014-2015

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SA No.104/Coch/2020 : Asst. Year 2011-2012

SA No.105/Coch/2020 : Asst. Year 2014-2015

M/s. Alakode Service Co-operative Bank Limited, No.1588, Alakode Kalayanthani P.O. Thodupuzha Idukki - 685 588. PAN : AAAAA7937P.	Vs.	The Income Tax Officer Ward 1 Thodupuzha.
(Appellant/Applicant)		(Respondent)

ITA No.196/Coch/2020 : Asst.Year 2011-2012

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SA No.106/Coch/2020 : Asst. Year 2011-2012

M/s. Kanchiyar Service Co-operative Bank Limited, No.K-164 Kanchiyar P.O. Idukki - 685 511. PAN : AAAAK8407E.	Vs.	The Income Tax Officer Ward 1 Thodupuzha.
(Appellant/Applicant)		(Respondent)

Appellants by : Sri.Arun Raj

Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 08.07.2020	Date of Pronouncement : 08.07.2020
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ORDER

Per George George K, JM :

These appeals at the instance of different assesseees are directed against the various orders of the CIT(A). The assesseees have also preferred stay applications seeking to stay the recovery of outstanding tax arrears.

2. Since common issues are raised in these appeals, they were heard together and are being disposed of by this consolidated order.

3. The solitary issue that is raised in these appeals 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 assessees are co-operative societies registered under the Kerala Co-operative Societies Act, 1969. For the assessment years under consideration, returns were filed after claiming deduction u/s 80P of the I.T.Act. The assessment orders were passed for the relevant assessment years, 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 assessees were 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 assessees 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 assessees preferred appeals before the first appellate authority. 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 under consideration.

6. Aggrieved by the orders passed by the CIT(A), the assessee has preferred these appeals before the Tribunal, raising identical grounds, which read as follow:-

"1. The order dated 10-12-2019 passed by the Commissioner of Income Tax (Appeals)-II Kochi confirming the order dated 19-12-2016 of the Assessing officer disallowing the deduction claimed under section 80 P of the Act for the AY 2011-12 by the appellant who is a Primary Agricultural Credit Society is illegal, arbitrary and unjustified.

2. The CIT (Appeals) ought not to have confirmed the disallowance of deduction under section 80 P of the Act made by the assessing officer.

3. The ,CIT (Appeals) ought to have remanded the matter back to the assessing officer for fresh consideration in view of "the judgment dated 19-3-2019 of the Full Bench of the Honourable High Court in the case of Mavilayi Service Co-operative Bank Ltd V s CIT.

4. The CIT (Appeals) failed to consider that the Full Bench of the Kerala High Court in the case of Mavilayi Service Co-operative Bank Ltd V s CIT has held that the assessing officer has to look into the transaction and the assessee can produce documents before the assessing officer to support / substantiate the claim of 80P deduction.

5. *The CIT (Appeals) failed to note that the assessing officer should consider the matter afresh and decide the issue of 80 P in the light of the Full Bench Judgment of the Kerala High Court Cited supra. The CIT (Appeals), without considering the matter in the right perspective has dismissed the appeal of the appellant confirming the disallowance of 80P deduction.*

6. *The CIT (Appeals) ought to have held that 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.*

7. *The assessing officer thoroughly erred in holding that the appellant is doing banking business. The appellant is providing credit facility only to its members, which by itself will entitle the appellant for deduction under section 80 P. The CIT (Appeals) ought to have noted that the assessing officer has not considered the issue of 80P in the right perspective.*

8. *The CIT (Appeals) ought to have noted that the assessing officer erred in holding that the appellant is doing banking business and therefore the appellant is a co-operative Bank. The lower authorities failed to note that banking business is different from providing credit facility to members and the appellant is not doing banking business. The CIT (Appeals) failed to consider the matter in the right perspective.*

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 10-12-2019 passed by the CIT (Appeals)- II, Kochi and the order dated 19-12-2016 passed by the ITO, on- Corporate Ward-1, Thodupuzha for the AY 2011-12 and to allow the appeal."

6.1 The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the order 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 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."

7.1 In the instant cases, the Assessing Officer had denied the claim of deduction u/s 80P of the I.T.Act for the reason that assessees were essentially doing the business of banking and disbursement of agricultural loans by the assessees was only minuscule. Therefore, the Assessing Officer's concluded that the assessees are not entitled to deduction u/s 80P(2) of the I.T.Act. The Assessing Officer after perusing the narration of the loan extracts for the financial periods under consideration, came to the conclusion that out of the total loan disbursement, only a minuscule portion has been advanced for agricultural purposes. The narration in loan extracts / 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's 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's. 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 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-societies 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. 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 assesseees are allowed for statistical purposes and the stay applications are dismissed.

Order pronounced on this 08th day of July, 2020.

**Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER**

**Sd/-
(George George K.)
JUDICIAL MEMBER**

Cochin, dated 08th July, 2020
Devadas G*

Copy to :

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

BY ORDER

Asst.Registrar/ITAT/Kochi