

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

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

ITA No.160/Coch/2020 : Asst.Year 2009-2010

M/s. Meloor Service Co-operative Bank Limited, B-196 Meloor P.O. Thrissur – 680 311. [PAN : AABAM5761E.	Vs.	The Income Tax Officer Ward 2(3) Thrissur.
(Appellant)		(Respondent)

Appellant by : Sri.Amaljith
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 23.06.2020	Date of Pronouncement : 24.06.2020
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ORDER

Per Bench:

This appeal at the instance of the assessee is directed against the order of the CIT(A), dated 20.12.2019. The relevant assessment year is 2009-2010.

2. The solitary issue argued was 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.

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 year 2009-2010, return was filed after claiming deduction u/s 80P of the I.T.Act. The assessment order was passed for assessment year 2009-2010, 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. The relevant finding of the Assessing Officer reads as follow:-

"27. Summing up the above discussions above, following facts emerge:-

(1) The assessee has claimed deduction u/s.80P of the Income Tax Act, 1961, as the assessee has been Registered and Classified as Primary Agricultural Credit Society by the Jt. Registrar of Societies.

(2) As per Explanation given under Section 80P(4) of the Income Tax Act, 1961, deduction u/s 80P(2)(a)(i), can be allowed only on compliance of Banking Regulation Act, 1949, because the definition of Banking as per Section 80P should be in accordance and compliance with Banking Regulation Act, 1949.

(3) In the case of The Chirakkal Service Cooperative Bank Ltd. Vs. The CIT (ITA No.212 of2013, the Hon. Kerala High Court has held that since the assessee has been registered as Primary Agricultural Credit Society (PACS) and classified as such by the competent authority, the assessee is entitled to deduction u/s.80P of the Income Tax Act, 1961. While delivering the said judicial pronunciation, whether assessee cooperative society being a PACS, could do Banking Activities have not come for consideration of the Hon. Kerala High Court.

(4) Verification of data made available shows that the assessee is not only doing providing of financial accommodation to the members for agricultural purposes or for purposes connected with agricultural activities, but also doing banking activities with the public.

(5) Hon. Kerala High Court in the case of Muhammed Usman vs Registrar Of Co-Operative ... on 29 November, 2002, Equivalent citations: AIR 2003 Ker 299,2003 116 CompCas 505 Ker, 2003 (1) KLT 69 has held that Primary Agricultural

Credit Society is permitted to provide financial accommodation only to its members and that too for agricultural purposes and purposes connected with agricultural activities.

(6) Central Board of Direct Tax Circular No. No.133/6 of 2007 dtd:9/5/2007 states that if the said entity is not being a co-operative bank, section 80P(4) of the Act would not apply to it.

(7) As per Banking Regulation Act, 1949, discussed in detail by Hon. Kerala High Court in Muhammed Usman supra, when Share Capital of a cooperative credit society, which is doing banking activity, exceeds Rs.1 lakh, such society automatically attains the character of Cooperative Bank.

(8) In the case of Quepem Urban Cooperative Credit Society Ltd. (2015) 63 Taxmann 300(SC), the ITAT, Panaji Bench has stated that "In our opinion it is not necessary that the cooperative society should have a banking licence as per the definition under the Income Tax Act for carrying on banking business. If licence is not obtained it may an illegal banking business under the other statute." Since the activities of the assessee Primary Agricultural Credit Society, other than providing financial accommodation only to its members and that too for agricultural purposes and purposes connected with agricultural activities, is not permissible, in view of Hon'ble Kerala High Court's decision in Muhammed Usman vs Registrar Of Co-Operative supra and affirmed by the decision in Cherukode Co-Op. Rural Bank Ltd. vs Parur Service Co-Op. Bank supra, in view of Explanation to Section 37 (1) of the Income Tax Act, 1961, no any expenditure is allowable in the case of assessee.

(9) In view of decision of the Hon. Kerala High Court in the case of The Chirakkal Service Cooperative Bank Ltd. Vs. The CIT (ITA No.212 of 2013, since the by laws of the assessee cooperative society does not contain any prohibitory clause for admission of other cooperative societies and the by-laws itself allows admission of Self Help Groups, Kudumbasree etc., which can also be registered as Cooperative Societies, the assessee cannot be treated as eligible for deduction u/s.80P.

(10) In view of above facts, it is very much clear that the assessee is not eligible for claiming deduction u/s.80P(2)(a)(i) of the Income Tax Act, 1961, for the income earned from such Banking Activities.

4. Aggrieved by the order passed by the Assessing Officer disallowing the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred appeal before the first appellate authority for assessment year 2009-2010. 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. 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 appeal filed by the assessee was rejected by the CIT(A) for assessment year 2009-2010.

5. Aggrieved by the order passed by the CIT(A), the assessee has preferred this appeal before the Tribunal. The grounds raised read as follow:-

"A. The Commissioner (Appeals) Thrissur as well as the Assessing Officer ought to have appreciated that even if the appellant is not a Primary Agricultural Credit Co-operative Society, the appellant is not a Co-operative Bank and hence eligible for deduction u/s 80P of the Income Tax Act 1961 in the light of the clarification No. 133/06/2006-07 dated 19-05-2007 issued by CBDT, New Delhi, which is binding on the Assessing Officer.

B. The view of the Commissioner (Appeals) Thrissur as well as the Assessing Officer that Primary Agricultural Credit Co-operative Societies only are eligible for deduction u/s Section 80(P) is diametrically opposite to the viewpoints expressed by various appellate authorities all over the country in the decisions mentioned below, to name a few.

(a) High Court of Karnataka in Bangalore Commercial

Transport Credit Society Ltd -

ITA NO: 598/2013 dated 27-06-2014

(b) High Court of Gujarat - Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax

Appeals no. 442 of 2013,443 of 2013 and 863 of 2013 on 15-01-2014

(c) High Court of Karnataka - Income Tax Officer Vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot on 5th Feb 2014

(d) High Court of Bombay at Goa - Quepem Urban Co-operative Credit Society Ltd. vs Assistant Commissioner of Income-tax on 17-04-2015

(e) Madras High Court - The Commissioner of Income Tax vs NIC Employees Co-Operative Society on 10 August, 2016

(f) ITAT, Panaji - Athani Taluka primary teachers Co-operative credit society Ltd. ITA No. 06/PNJ/2014 on 04-07-2014

(g) ITAT, Poona - Jankalyan Nagri Sahakari Pat Sanstha Ltd. reported in 24 Taxmann.com (Pune Tribunal) 127

(h) ITAT, Ahamadabad - Jafari Momin Vikas Co-Op. Credit society on 31 October, 2012

(i) ITAT, Indore - Bhee Thrift & Credit Co- operative society on 6 August, 2012

(j) ITAT, Bangalore - Yeshwantpur Credit co-operative Society on 11 April, 2012

(k) ITAT, Ahmedabad-Sarvoday Credit cum Consumers Co-operative Society on 3 May, 2013

(l) ITAT, Pune - Jain Nagri Sahkari Pat Sanstha Department Of Income Tax on 14 September, 2012

(m) ITAT, Pune - Dharasur Mardini Nagar Sahakari on 20 November, 2012

(n) ITAT, Pune - Vardhman Nagari Sahakari Path Sansta

on 22 November, 2012

(o) ITAT, Delhi – Palhawas Primary Agriculture Co-op. Society Ltd. Palhawas Distt., ITA No.2368/Del/2011.

(p) ITAT Delhi – Dharuhera Primary Agriculture Co-op society ITA No.2371/Del/2011.

(q) ITAT, Mumbai - The Income Tax officer, Ward- 20(2)(1), Mumbai -ITA No.1820/MUM/2017 dated 02-08-2018

C. When there is plenty of decisions of various High Courts and ITATs in India had made detailed discussions and arrived into a conclusion on the subject matter of eligibility for deduction u/s 80P, disallowance of claim under the said Section made by the Assessing Officer and the CIT(Appeals) relying on related decisions is denial of natural justice to the appellant.

D. The Appellant prays that the general outlook in the decisions of various High Courts and ITATs across the country on the disallowance of claim of deduction u/s 80P, adopted on the basis of CBDT clarification No.133/06/2006-07 dated 19.05.2007 shall be taken into consideration while disposing this appeal petition, so as to avoid further litigations which will not be productive but will only lead to unnecessary expenditure, wastage of precious time, money and manpower to the appellant, Revenue, the nation and of course the judiciary.

E. The Appellant prays that the disallowance of claim for deduction u/s 80P made in the assessment order in respect of income from banking and credit business with members may be deleted.

F. Since the assessment was based on the proceedings initiated by the assessing officer u/s 148 without any material evidence for reason to believe that the income had escaped assessment, the assessment order may be declared as invalid.”

5.1 The learned AR relied on the grounds raised, however, did not raise any argument with regard to the reopening of assessment as valid or not.

5.2 The learned Departmental Representative, on the other hand, strongly supported the orders passed by the Income

Tax Authorities. He has also filed a brief written submission, which reads as follow:-

"Reply on the Grounds of Appeal filed by the Assessee (in addition to the orders of Assessing Officer and Ld. CIT{Appeals):

2.1 Grounds nos. A&D : The assessee is a known Cooperative Bank. The CBDT Circular No. 133/6 of 2007 dated 09/05/2007 is primarily issued in case of a particular assessee only, based on the facts and material on record. Further, the statutory provisions of Section 80P(4) of the Act can't override by any CBDT Circular. Moreover, the aforementioned Circular specifically excludes the primary agricultural credit societies which are actually entitled for the deduction u/s 80P of the Act. The assessee failed to prove before the AO and Ld. CIT(A) that it is a primary agricultural credit society; and is actually working as a full-fledged Cooperative Bank not entitled for deduction.

[For further/additional details, please refer to Para 20 and 21 of the AO's order (pages 38- 41)

2.2 Grounds nos. B, C & E:

At the outset, it is submitted that deduction u/s 80P is available only to Primary agricultural credit societies and not to Cooperative Banks [as prohibited u/s 80P(4) of the Act].

A primary agricultural credit Society is defined at Section 56(c) inserting a new clause at section 5 as (cciv), in the Banking Regulation Act, 1949 (Refer Para 3.6 to 3.8 of the AO's order at Page 4-5). Para 3.18 of the AO's order (at Page 10) may also be referred for understanding the nature of Cooperative Societies as per the BR Act, 1949.

The primary difference between a- cooperative bank and a primary credit society is only in the case of paid up share capital and reserve (For primary Cooperative Bank - same shall not be less than Rs. 1 Lakh and for primary Credit Society - it shall be less than Rs. 1 Lakh). The primary agricultural credit society is permitted to provide financial accommodation only to its members and that too for agricultural purposes and connected activities. (Refer Para 3.11 of the AO's order - at Page 7)

Para 7 to 9 of the AO's order (Pages 24-25) clearly brought out

that section 80P refers only to BR Act, 1949 for definitions of cooperative bank and primary agricultural credit society, wherein BR Act provides certain qualifications for a cooperative society to become primary agricultural credit society which includes transactions with members only for agricultural activities and non-admission of any other cooperative society as a member (Reference is also drawn to Hon'ble Kerala HC decision in case of Muhammed Usman vs Registrar of Cooperative ... on 29 November, 2002 (AIR 2003 Ker 2009, 2003 116 CampCas 505 Ker, 2002 (1) KLT 69).

The objects of the assessee Society as brought out at Para 10 of the AO's order (Page 26) show that various objects have not been found related to agriculture. Further, assessee has provided only 1.81% of the total loans as agricultural loan (Paras 12-13 & 20 of the AO's order at Page 26-27 & 37-38 may be referred) [Ld. CIT(A) order Para 9.2 to 11 at pages 6-8 may please be referred wherein in is held that assessee failed to discharge the onus for claim of 80P deduction]. Reliance on the Hon'ble Kerala HC Full Bench case of M/s Mavilayi Service Cooperative Bank Ltd. has been emphasised.

As summarised by the AO at Para 21.2 of its order (Pages 40-41), the assessee ought to have applied licence before the RBI for its banking activities as it had lost the character of primary agricultural credit society after exceeding share capital beyond Rs. 1 Lakh, which it has failed to do so and is illegally operating as Primary Agricultural Credit Society to evade tax which is nothing, but a colourable device adopted by the assessee.

Further, the Bye-Laws of the Society does not prohibit admission of any other Cooperative Society as its member (which is one of the condition for qualification of primary agricultural credit societies as per the BR Act, 1949) {Refer Paras 23-26 of the AO's order at Pages 42-46}.

2.3 Grounds no. F: The assessee failed to file ITR within the due permissible and/or extended time. The following proviso of Section 139 mandates every Society (Association of Persons/ AOP) to file ITR:

"Provided also that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of clause (38) of section 10 or section 10A or

section 10B or section 10BA or Chapter V/-A exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed."

The filing of ITR in case of assessee's case is mandatory. Any deduction under Chapter VI-A is not automatic and it is subject to fulfilling of specific conditions and also subject to verification by the AO. Therefore, the assessee failed to file the ITR and can't automatically claim the operation of the provisions of the section 80P of the Act which it is not found entitled to, by the AO.

Accordingly, it is humbly submitted that the action of the AO in reopening of the assessment is justified.

[For further/additional details, please refer to Para 12 of Ld. CIT(A) order (pages 8-9)

3. It is further prayed to the Hon'ble Tribunal that if such cases are set aside assessee's may be asked to cooperate with the Department to furnish all the relevant records as directed by the Hon'ble Tribunal, as various instances have been cited by the field authorities on non-compliance by the assessee's in furnishing of records particulars even when Hon'ble Tribunal has given directions to examine every case.

4. In view of the above, the Hon'ble Tribunal is requested to uphold the order of the Assessing Officer."

5.3 In the rejoinder, the learned AR submitted that in order to deny the claim of deduction u/s 80P of the I.T.Act, the assessee should be a cooperative bank. It was contended that even assuming without admitting that the assessee is a primary agricultural credit society, unless the A.O. finds that the assessee is a cooperative bank, the claim of deduction u/s 80P of the I.T.Act cannot be denied.

6. 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."

6.1 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 is 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 period 2008-2009, 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. 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 this case, such a detailed examination has not been conducted by the A.O. Further, the A.O. has not examined to what extent loans, if any, has been disbursed to non-members. There is a passing

statement in the assessment order that there have been disbursement of loans to non-members as well. 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. Therefore, in view 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 to non-members of assessee-society, 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 this appeal 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.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 24th day of June, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 24th 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
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Asst.Registrar/ITAT/Kochi