

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

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

ITA No.276/Coch/2020 : Asst.Year 2010-2011
ITA No.277/Coch/2020 : Asst.Year 2011-2012
ITA No.278/Coch/2020 : Asst.Year 2012-2013
ITA No.279/Coch/2020 : Asst.Year 2013-2014
ITA No.280/Coch/2020 : Asst.Year 2014-2015
ITA No.281/Coch/2020 : Asst.Year 2015-2016

M/s. The Punukkannoor Service Co-operative Bank Limited No.2722, Society Junction Perumpuzha, Kollam – 691 504. PAN : AACAT9318B.	Vs.	The Income Tax Officer Ward – 2 Kollam.
(Appellant)		(Respondent)

Appellant by : Sri.Sabu C.S., CA
Respondent by : Sri.Shantom Bose, CIT-DR

Date of Hearing : 05.10.2020	Date of Pronouncement : 05.10.2020
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ORDER

Per George Mathan, JM :

These are appeals filed by the assessee against orders of the learned Principal CIT, Trivandrum, passed u/s 263 of the I.T.Act in C.No.412/J/RP-15/2019-20/PCIT/TVPM/3525, C.No.412/J/RP-16/2019-20/PCIT/TVPM/3528, C.No.412/J/RP-17/2019-20/PCIT/TVPM/3531, C.No.412/J/RP-18/2019-20/PCIT/TVPM/3534, C.No.412/J/RP-19/2019-20/PCIT/TVPM/3537, C.No.412/J/RP-20/2019-20/PCIT/TVPM/3540 dated 11.03.2020 for the assessment years 2010-2011, 2011-

2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016, respectively.

2. Sri.Sabu C.S., learned AR represented on behalf of the assessee and Sri.Shantom Bose, learned CIT-DR represented on behalf of the Revenue.

3. It was submitted by the learned AR that originally the assessments came to be completed on 29.12.2017 for the assessment year 2010-2011, on 21.12.2017 for the assessment years 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016. It was the submission that the assessee being aggrieved by the assessment orders, had filed appeals before the CIT(A) and against the orders of the learned CIT(A), had preferred appeals before the ITAT in ITA No.646 to 651/Coch/2019 for the relevant assessment years. The ITAT had vide an order dated 06.01.2020 had upheld the rectification order passed by the learned CIT(A) and had upheld the view 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 Act. This direction was given following the decision of the Full Bench of the Hon'ble Jurisdictional High Court of Kerala in the case of The Mavilayi Service Co-operative Bank Limited in ITA No.97 of 2016 dated 19th March, 2019. It was the submission that consequent to the order of the Tribunal dated 06.01.2020 in assessee's own case for the relevant assessment years, the issue of deduction u/s 80P was before

the A.O. It was the submission that the learned Pr.CIT in the mean time had issued a show cause notice dated 23.10.2019 in respect of the failure of the A.O. in not considering the issue of reserves and provisions which was not added back. It was the submission that the order of the Pr.CIT u/s 263 was passed on 11.03.2020 on which date the assessment orders dated 29.12.2017 and 21.12.2017 for the respective assessment years no more survived in view of the restoration of the issue of deduction u/s 80P to the file of the A.O. to follow the decision of the Full Bench of the Hon'ble Jurisdictional High Court of Kerala in the case of The Mavilayi Service Co-operative Bank Limited, referred to supra. It was the submission that consequently the order passed u/s 263 are liable to be quashed.

4. In reply the learned CIT-DR vehemently supported the order of the learned CIT passed u/s 263 of the Act. It was the submission that the issue u/s 263 was different from the issue which has been restored to the file of the A.O.

5. We have considered the rival submissions. A perusal of the decision of the Full Bench of the Hon'ble Jurisdictional High Court of Kerala in the case of The Mavilayi Service Co-operative Bank Limited, shows that the Hon'ble Jurisdictional High Court has given a direction to conduct inquiry into the factual situation as to the activities of the assessee-society and then to arrive at a conclusion whether the benefits can be extended or not in the light of the provisions of section 80P of the Act. A perusal of the decision of the co-ordinate Bench of

this Tribunal in assessee's own case for the relevant assessment years, referred to supra, being the order dated 06.01.2020 shows that following the Full Bench decision of the Hon'ble Jurisdictional High Court and for the application of the principles laid down therein, the issue of deduction u/s 80P(2) has been restored to the file of the A.O. A perusal of the assessment orders for the relevant assessment years show that the A.O. has treated the assessee as not a primary agricultural co-operative society but treated it as a co-operative bank and on a protective basis denied the assessee's claim of deduction u/s 80P of the Act. As the very basis of the assessment is the requirement of the verification as to whether the activities of the assessee-society makes the assessee eligible for or not, the benefits of the provisions of section 80P is to be examined, clearly the very assessment orders no more survive on account of the order passed by the Tribunal dated 06.01.2020 for the relevant assessment years. The order of the Pr.CIT passed u/s 263 being beyond the date of the order of the Tribunal in assessee's own case for the relevant assessment years, the very foundation for the order passed u/s 263 being the assessment orders passed on 29.12.2017 and 21.12.2017, no more survive. As the assessment orders do not survive, the order passed u/s 263 also would not survive. Admittedly, the issue of section 80P having been restored to the file of the A.O. for re-adjudication after verification of the factual facts, would clearly keep all the issues open in respect of the assessment. In these circumstances, the order passed u/s 263 being in respect of the order which does not exist as on the date of the order

passed u/s 263, the impugned orders u/s 263 cannot survive and the same stand quashed.

6. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 05th day of October, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cochin, dated 05th October, 2020
Devadas G*

Copy to :

1. The Appellant
2. The Respondent
3. The Pr.CIT, Trivandrum.
4. The Pr.CIT,
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi