

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

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

ITA No.265/Coch/2020 : Asst.Year 2009-2010
ITA No.266/Coch/2020 : Asst.Year 2012-2013
ITA No.267/Coch/2020 : Asst.Year 2014-2015
ITA No.268/Coch/2020 : Asst.Year 2016-2017
ITA No.269/Coch/2020 : Asst.Year 2017-2018

&

SA No.151/Coch/2020 : Asst.Year 2009-2010
SA No.152/Coch/2020 : Asst.Year 2012-2013
SA No.153/Coch/2020 : Asst.Year 2014-2015
SA No.154/Coch/2020 : Asst.Year 2016-2017
SA No.155/Coch/2020 : Asst.Year 2017-2018

M/s. The Mudoor Service Co-operative Bank Ltd., R.189, Anjoor, Mundur Thrissur - 680 541. PAN : AABAM9871B.	Vs.	The Income Tax Officer Ward 2(3) Thrissur.
(Appellant / Applicant)		(Respondent)

Appellant by : Sri.M.Ramdas, CA
Respondent by : Sri.B.Sajjiv, Sr.DR

Date of Hearing : 08.10.2020	Date of Pronouncement : 08.10.2020
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ORDER

Per Bench :

These appeals at the instance of the assessee are directed against orders of the CIT(A), all dated 24.04.2020, passed u/s. 250 of the Income-tax Act. The assessee has also preferred stay applications seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2009-2010, 2012-2013, 2014-2015, 2016-2017 & 2017-2018.

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

3. Two issues are raised in these appeals – (i) whether the assessee is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act; and (ii) whether the interest income received on investments can be treated as ‘income from business’ and granted deduction u/s 80P(2)(d) 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 under consideration, the returns of income were filed, after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed orders u/s 143(3) of the I.T.Act, disallowing 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) of the I.T.Act was that the assessee was 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 the deduction u/s 80P(2) of the I.T.Act. The Assessing Officer also disallowed the claim of deduction with regard to interest income received by the assessee on investments made with District Co-operative Banks.

5. Aggrieved by the orders of assessment denying the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred

appeals to the first appellate authority. The CIT(A) allowed the appeals by holding that the assessee was eligible for deduction u/s 80P of the I.T.Act. The interest income received from other banks and treasury also was allowed as deduction u/s 80P(2)(a)(i) of the I.T.Act. In allowing the appeals of the assessee, the CIT(A) followed the judgment of 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.)*.

6. Subsequently, the CIT(A) issued notices u/s 154 of the I.T.Act proposing to rectify his orders passed, in view of the subsequent 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 [ITA No.97/2016 order dated 19th March, 2019]*. The assessee objected to the issuance of notices. However, the CIT(A) rejected the objections raised by the assessee and passed orders u/s 154 of the I.T.Act, disallowing the claim of the assessee u/s 80P(2) of the I.T.Act.

7. Aggrieved by the orders of the CIT(A), the assessee has filed these appeals before the Tribunal raising identical grounds, except variance in figures. Hence, we reproduce the grounds raised for assessment year 2009-2010, as under :-

"1. The order of the Commissioner of Income Tax (Appeals), Thrissur u/s 250 of the I.T.Act, 1961 is opposed to law and contrary to the facts of the case and again equity and principles of natural justice.

(a) The Commissioner of Income Tax (Appeals), upheld the Assessing Officers order disallowing claim of the appellant

deduction u/s 80P(2)(a)(i) of the Act to the tune of Rs.17,45,028/- even though the Assessing Officers finding that the appellant is a Primary Agricultural Credit Society and it does banking business without the license from the Reserve Bank of India.

(b) The Commissioner of Income Tax (Appeals) has no finding that the appellant is not a Primary Agricultural Credit Society.

(c) The Commissioner of Income Tax (Appeals) has failed to appreciate that the Supreme Court has taken on record an SLP filed before it against the decision of Kerala High Court in the larger Bench dated 19.03.2019.

(d) The first Appellate Authority has also erred in law and in fact in not allowing the claim of the appellant under section 80P(2)(d) of the Act while disposing of the appeal.

2(a) The appellant has claimed deduction u/s 80P(2)(a)(i) of the Act on the interest on investments. The same is allowable Appellant wishes to rely on the decision dated 20.07.2016 of this bench of the Hon'ble Income Tax Appellate Tribunal, Cochin bench in the case of Kizhathodiyoor Service Cooperative Bank Ltd. v. Income Tax Officer, Ward 2, Kottayam. The appellant therefore prays that :-

(a) The order of the CIT(Appeals), Thrissur u/s 250 of the Act is therefore to be cancelled and deduction u/s 80P(2)(a)(i) of the Act to be allowed.

(b) To allow the deduction claimed u/s 80P(2)(d) of the Act which was not allowed by the first Appellate Authority to be allowed, and

(c) To pass such other consequential order as the Hon.Income Tax Appellate Tribunal may deem fit to render justice."

8. The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income-tax authorities.

9. 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."

9.1 The CIT(A) had initially allowed the appeals of the assessee and granted deduction u/s 80P(2) of the I.T.Act. Subsequently, the CIT(A) passed order u/s 154 of the I.T.Act, wherein the claim of deduction u/s 80P of the I.T.Act was denied, by relying on the judgment of the Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)*. The CIT(A) ought not to have rejected the claim of deduction u/s 80P(2) of the I.T.Act without examining the activities of the assessee-society. The Full Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT (supra)* had held 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 I.T.Act. In view of the dictum laid down by the Full Bench of the Hon'ble jurisdictional High Court (supra), we restore the issue of deduction u/s 80P(2) to the files of the Assessing Officer. The Assessing Officer shall examine the activities of the assessee and determine whether the activities are in compliance with the activities of a co-operative society functioning under the Kerala Co-operative Societies Act, 1969 and accordingly grant deduction u/s 80P(2) of the I.T.Act.

9.2 As regards the interest on the investments with Co-operative Banks and other Banks, the co-ordinate Bench

order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited in ITA No.525/Coch/2014 (order dated 20.07.2016)*, had held that interest income earned from investments with treasuries and banks is part of banking activity of the assessee, and therefore, the said interest income was eligible to be assessed as 'income from business' instead of 'income from other sources'. However, as regards the grant of deduction u/s 80P of the I.T.Act on such interest income, the Assessing Officer shall follow the law laid down by the Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT (supra)* and examine the activities of the assessee-societies before granting deduction u/s 80P of the I.T.Act on such interest income. It is ordered accordingly.

10. Since we have disposed of the appeals filed by the assessee, the Stay Applications filed by the assessee become infructuous and the same are dismissed as such.

11. In the result, the appeals filed by the assessee are allowed for statistical purposes and the Stay Applications are dismissed.

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

Sd/-
(George Mathan)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin, dated 08th October, 2020
Devadas G

Copy to :

1. The Appellant /Applicant
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