

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

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.730/Coch/2019 : Asst.Year 2016-2017

M/s.Calicut City Service Co-operative Bank Limited 19/1180-B, City Bank Building Chalappuram Calicut – 673 002. PAN : AABAC7863M	v.	The Assistant Commissioner of Income-tax, Circle 1(1) Kozhikode.
(Appellant)		(Respondent)

Appellant by : Smt.Parvathy Ammal, CA
Respondent by : Sri.Shantham Bose, CIT-DR

Date of Hearing : 29.06.2022	Date of Pronouncement : 30.06.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against Principal Commissioner of Income Tax's (PCIT) order dated 15.10.2019, passed u/s 263 of the I.T.Act. The relevant assessment year 2016-2017.

2. There is a delay of 1 day in filing this appeal. The assessee has filed a petition for condonation of delay and an affidavit of the Secretary of the assessee-bank stating therein the reasons for belated filing of this appeal. On perusal of the reasons stated for belated filing of the appeal, we noticed that no laches can be attributed to the assessee and there is sufficient cause in filing this appeal belatedly. Accordingly, we condone the delay in filing this appeal and proceed to dispose of this appeal on merits.

3. The solitary issue argued is whether the PCIT was justified in setting aside the assessment order, wherein the assessee's claim of deduction u/s 80P of the I.T.Act was granted.

4. The brief facts of the case are as follows:

The assessee is a service co-operative society. For the assessment year 2016-2017, the return of income was filed on 16.10.2016 declaring 'Nil' income after claiming deduction u/s 80P of the I.T.Act amounting to Rs.2,36,26,236. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 27.12.2018 accepting the return of income.

5. Thereafter, the PCIT issued notice u/s 263 of the I.T.Act (notice dated 22.07.2019) stating why the assessment order should not be set aside since it was erroneous and prejudicial to the interest of the revenue. The PCIT was of the view that deduction under section 80P(2) of the I.T.Act was wrongly granted by the AO. The assessee's AR appeared on 26.07.2019 and submitted the objection. The objection of assessee was rejected and PCIT passed the impugned order on 15.10.2019. The PCIT held that deduction u/s 80P of the I.T.Act was granted by the A.O. wrongly following 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.)]* and the said judgment of the Hon'ble jurisdictional High Court was reversed by the Hon'ble Full Bench of the 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]. Further, the PCIT was of the view that the income claimed as deduction u/s 80P of the I.T.Act arises only from the members and the concept of mutuality has to be satisfied. In the instant case, the PCIT held that the assessee has been dealing with non-members and the concept of mutuality is not satisfied, and following the judgment of the Hon'ble Apex Court in the case of *Citizens Co-operative Society Limited v. ACIT* reported in 397 ITR 1), set aside the assessment order directing the A.O. to examine whether the deduction claimed u/s 80P of the I.T.Act is in accordance with law.

6. Aggrieved, the assessee filed the present appeal before the Tribunal. The learned AR submitted that the subsequent judgment of the Hon'ble Kerala High Court is not a ground for invoking revisionary power u/s 263 of the I.T.Act. Further, it was stated that the judgment of the Hon'ble Apex Court in the case of *Citizen Co-operative Societhy Lt.d v. ACIT (supra)* is not applicable to co-operative societies in Kerala. It was stated that the judgment relied on by the PCIT for invoking the revisionary powers u/s 263 of the I.T.Act, namely, judgment of the Hon'ble Full Bench of the Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT [ITA No.97/2016 order dated 19th March, 2019]* has been reversed by the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. reported in (2021) 431 ITR 1 (SC)*.

7. The learned Departmental Representative supported the orders of the Income Tax Authorities.

8. We have heard rival submissions and perused the material on record. The A.O. completed the assessment on 27.12.2018 by following the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT (supra)*, wherein the Hon'ble Kerala High Court had opined that the Assessing Officers was bound by the certificate issued by the Registrar of Co-operative Societies, and there is no requirement to alter the status. The PCIT by placing reliance on the judgment of the Hon'ble Full Bench of the Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT [ITA No.97/2016 order dated 19th March, 2019]* and also the judgment of the Hon'ble Apex Court in the case of *Citizens Co-operative Society Limited v. ACIT reported in 397 ITR 1*), held that deduction u/s 80P of the I.T.Act can be granted only in respect of income derived out of business activities of providing credit facilities to its members. It was concluded by the PCIT that since the assessee's record indicates that it had conducted business with non-members, he set aside the assessment order completed on 27.12.2018. The PCIT directed the A.O. to verify whether the income of the assessee arises from members only and concept of mutuality is satisfied.

8.1 The judgment of the Hon'ble Kerala High Court (Full Bench) relied on by the PCIT in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* was reversed by

the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. reported in (2021) 431 ITR 1 (SC)*. The Hon'ble Apex Court had settled various issues for claiming deduction u/s 80P of the I.T.Act. The gist of the judgment of the Hon'ble Apex Court are as follows:-

(i) Section 80P is a benevolent provision enacted by the Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, if there is ambiguity, in favour of the assessee (para 45 of the judgment).

(ii) The co-operative societies extending credit facilities are entitled to deduction u/s 80P(2)(a)(i) and if there are loans to non-members, only profits attributable to the transactions with the non-members alone is liable to be excluded from the deduction. That is to say that the transactions with non-members per se would not disentitle a co-operative society from claiming the deduction under the section. If the state Act (the Co-operative Law) provides for enrollment of 'nominal members', the loans given to such nominal members would qualify for the purpose of deduction u/s 80P(2)(a)(i). (Para 30 to 46 of the Judgment)

(iii) Under clause (d) of section 80P(2), the interest or dividend income derived by a co-operative society from investments with other co-operative society is also eligible for the deduction whole of such income. (Para 35 of the Judgment)

(iv) The restrictive clause in sub-section (4) of section 80P applies only a co-operative bank and not to co-operative societies or to co-operative societies extending credit facilities to its members. Further, only a bank having obtained the license under the Banking Regulation Act, 1949, shall be covered under the said restrictive clause u/s 80P(4). The Hon'ble Court has also

elaborately explained the correct meaning & scope of the Proviso under the said sub-section (4) of section 80P declaring that the proviso carves out an exception to the exclusion in sub-section (4).

8.2 In the light of the principles laid down by the Hon'ble Apex Court in the case *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)*, we are of the view that the issue of deduction u/s 80P of the I.T.Act needs to be reconsidered afresh by the A.O. *de hors* the observation of the PCIT passed u/s 263 of the I.T.Act. Accordingly, the issues raised in this appeal are restored to the files of the A.O. The A.O. is directed to afford a reasonable opportunity of hearing to the assessee and take a decision in accordance with law. It is ordered accordingly.

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

Order pronounced on this 30th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 30th June, 2022.

Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin