

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

Before Shri Sanjay Arora, AM & Shri Manomohan Das, JM

ITA No.134/Coch/2019: Asst.Year:2015-2016

The Income Tax Officer Ward-4 Kollam.	vs.	The Adichanalloor Farmers Service Co-operative Bank Limited, Adichanalloor Kollam – 691 573. [PAN : AABAT5060H] (represented by Shri R. Krishnan, CA)
(Appellant)		(Respondent)

ITA No.151/Coch/2018: Asst.Year:2014-2015

ITA No.143/Coch/2019: Asst.Year:2011-2012

The Income Tax Officer Ward-2(3) / JCIT Range-2 Trivandrum.	vs.	Mundela Service Co-operative Bank Limited, No.2433, Mundela Post, Vellanad Thiruvanathapuram-695543. [PAN : AAAAM5586E]. (represented by Shri Anoop, Advocate (Dr. K.P Pradeep, Advocate)
(Appellant)		(Respondent)

ITA No.48/Coch/2019: Asst.Year:2015-2016

The Income Tax Officer Ward-2(1)/Ad.CIT Range-2 Trivandrum.	vs.	Peroorkada Service Co- operative Bank Limited TC 845/1, Peroorkada PO Trivandrum – 695005. [PAN : AAAAP3974B]. (represented by Shri Amaljit P.J., CA)
(Appellant)		(Respondent)

ITA No.121/Coch/2019: Asst.Year:2015-2016

The Income Tax Officer Ward-2(5)/Addl.CIT Range-2 Trivandrum.	vs.	Pazhayakunnummel Service Co-operative Bank Limited No.1517, Bank Building Kunnummel PO Trivandrum – 695 601. [PAN : AAAAP4867D]. (represented by Shri Santosh P. Abraham, Advocate)
(Appellant)		(Respondent)

ITA No.414/Coch/2018: Asst.Year:2014-2015

Pidavoor Service Co-operative Bank Limited, Pidavoor Post Pathanapuram Kollam – 689695. [PAN:AACAP7516M] (represented by Shri Santosh P. Abraham, Advocate)	vs.	The Income Tax Officer Ward – 4 Kollam.
(Appellant)		(Respondent)

ITA No.77/Coch/2019: Asst.Year:2015-2016

The Income Tax Officer Ward-2(5)/Ad.CIT Range-2 Trivandrum.	vs.	Nagaroor Service Co-operative Bank Limited, Bank Building Nagaroor, Tltharamoodu Trivandrum – 695102. [PAN : AAAAN3291M]. Shri Santosh P. Abraham, Advocate)
(Appellant)		(Respondent)

Department by: Shri Sajith Kumar Das, CIT-DR/
Smt. Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing : 08.8.2023	Date of Pronouncement: 31.08.2023
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ORDER

Per Bench:

The captioned appeals raising a common issue, were heard together, and are being disposed of per a common order for the sake of convenience.

2. The instant appeals, initially decided by the Tribunal following the decision in *Chirakkal Service Co-operative Bank Ltd. v. CIT* [2016] 384 ITR 490 (Ker), were restored by it per a common order dated 16.9.2022 in rectification proceedings at the instance of the Revenue, for the reason that the said decision had been overruled vide it's subsequent, larger bench decision by the Hon'ble High Court in *CIT v. Poonjar Service Co-operative Bank Ltd.* [2019] 414 ITR 67 (Ker)(FB) dated

19.3.2019. The later decision, however, having a retrospective effect, the captioned appellate orders were recalled following the decision in *Kil Kotagiri Tea & Coffee Estates Co. Ltd. v. ITAT* [1988] 174 ITR 579 (Ker).

3.1 All assessees are co-operative societies registered as Primary Agricultural Credit Societies (PACSS) under the Kerala Co-operative Societies Act, 1969 (Kerala Act). The Tribunal had per the recalled orders set aside the issue of deduction under section 80P(1) of the Income-tax Act, 1961 ('the Act' hereinafter) to the file of the Assessing Officer (AO), who was to in the set aside proceedings examine if the activities of the assessee-societies were in agreement with the provisions of the Kerala Act for a PACS.

3.2 Deduction, on their entire income, had been claimed in the instant cases u/s. 80P(1) r/w s. 80P(2)(a)(i). The same was denied by the AO on the ground that the assessee/s does not, in view of it's lending profile, qualify as a PACS, i.e., given the definition thereof under the Banking Regulation Act, 1949 (BRA) – which stands coopted in the Act, and the Kerala Act. As such, despite being registered as a PACS, it would attract the disqualification of sec. 80P(4). The assessee's reliance on *Chirakkal SCB Ltd.* (supra) was met through reliance on *Perinthalmanna SCB Ltd.* [2014] 363 ITR 268 (Ker), which was not considered in *Chirakkal SCB Ltd.* (supra), besides the provisions of ss. 5(cciv)& 7 of BRA and s. 2(oa) of the Kerala Act. Further, income by way of interest on deposits with banks and treasuries was not an operational income, but on surplus funds therewith, and therefore, assessable as income from other sources, relying for the purpose on *Totgar's Co-operative Sale Society Ltd. v. ITO* [2010] 322 ITR 283 (SC). The relief allowed, where so, by the first appellate authority, has been on the basis of the decision in *Chirakkal SCB Ltd.* (supra), leading to the instant appeals.

4. Before us, it was the common contention for and on behalf of the assessee-societies that the decision by the Hon'ble High Court in *Poonjar (Mavilayi) Service*

Co-operative Bank Ltd. (supra), stands since reversed by the Hon'ble Apex Court per it's decision dated 12.01.2021, reported at [2022] 431 ITR 1 (SC), so that deduction u/s. 80P(2)(a)(i) would obtain *qua* business income. Further, as regards the Revenue's claim of interest on deposits with State/District Co-operative Banks and Treasuries/Sub-Treasuries being assessable u/s.56 as income from other sources, the same shall nevertheless be deductible u/s.80P(1) r/ws. 80P(2)(d) *qua* interest income on deposit with co-operative banks, even as held in *Pr.CIT v. Peroorkada Service Co-operative Bank Ltd.* [2022] 442 ITR 141 (Ker), placing a copy of the same on record. The Hon'ble Court had therein considered the decision by the Hon'ble Apex Court in *Totgar's CSS Ltd.* (supra) and *Mavilayi Service Co-operative Bank Ltd.*(supra).The assessment being u/s.56, would, therefore, be of no consequence. The Revenue was, upon this, provided an opportunity by the Bench to rebut the claim; the decision by the Hon'ble jurisdictional High Court being binding on the Tribunal, to, though, no effective rebuttal even as it was made clear that the Tribunal shall be in that case obliged to follow the said decision.

5. We have heard the parties, and perused the material on record.

5.1 Our first observation in the matter is that there had been no claim for deduction u/s. 80P(2)(d) in the instant appeals. Contrary to as was projected before us, it was not so in *Peroorkada SCB Ltd.* (supra), as a reading thereof would clarify. This, though, would be of no moment. This is as, as explained in *Kerala State Cooperative Marketing Federation Ltd. & Ors. v. CIT*[1998] 231 ITR 814 (SC), the correct way of reading the different heads of exemption enumerated in sec. 80P would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of income of a co-operative society is exempt from tax what has to be seen is whether the income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head.

5.2 Next, we may examine the plea as advanced before us. Clearly, income to the extent assessed as business income would stand to be deducted w.r.t. 80P(2)(a)(i). This leaves us with interest on deposits with banks and treasuries, claimed deductible u/s.80P(1) r/ws. 80P(2)(d). The same, sure, does not find mention in the Grounds of Appeal. However, in view of the oral plea made in the open court, permissible under the Rules, the same would be of little moment.

5.3 Section 80P(2)(d), falling u/c VIA-C of the Act, reads as under:

Deduction in respect of income of co-operative societies.

80P(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:--

- (a)..(c) ;
- (d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

The operative part of the decision in *Peroorkada Service Co-operative Bank Ltd.* (supra) reads as under: (pgs. 156-157)

“12.1 The decisions relied on by the Supreme Court refer to co-operative banks but not co-operative societies. The issue on hand is about the interest income earned by way of investments made with institutions other than co-operative societies. We are of the view that by referring to the order in *Nawanshahar Central Co-operative Bank Ltd.* case it cannot be held that the income has to be brought under section 80P(2)(a)(i) of the Act.

12.2 Section 80P deals with co-operative societies' computation of income. As already noted, it has four sub-sections and several clauses and sub-clauses. Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest *income earned by the assessee is from a co-operative society*. As a matter of fact, in the case on hand, there is no dispute that it is not from a co-operative society registered under Kerala Co-operative Societies Act. The interest income earned from District co-operative bank/State co-operative bank, in the facts and circumstances of the case, do come within section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by section 80P(2)(d), viz., interest or dividend derived

by the assessee from its investments with any other co-operative society. The source of interest income is from bank and treasury, interest income received from treasury be included in the computation of total income of the assessee. In other words, interest earned from treasury is inadmissible for deduction and interest income from co-operative societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of the Commissioner of Income-tax (Appeals) and the Tribunal is incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of section 80P(2)(a)(i) and permissible deduction of interest income is limited to co-operative societies/banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered.”

In fine, interest from co-operative banks, inasmuch as they are also cooperative societies under the Kerala Act, is deductible u/s.80P(2)(d), while that from the treasury or other institution, not being a co-operative society, is not. The matter, in view of the said binding decision, admits of no two views, at least insofar as the Cochin Bench of the Tribunal is concerned. No contrary judgment has even otherwise been brought to our notice by the Revenue, even as the decision in *Totgar's CSS Ltd.* (supra) stands considered in *Peroorkada SCB Ltd.* (supra).

5.4 We may, however, before parting with our order, place on record our humble view in the matter. The Hon'ble Apex Court in *Mavilayi Service Co-operative Bank Ltd.*(supra), while discussing the import of sec.80P(4), which reads as under, clarified that the exclusion thereby extends only to co-operative banks, i.e., co-operative societies in the business of banking as defined in sec.5(b) of the Banking Regulation Act, 1949 (BRA), under the license from RBI:

‘(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.’

Whether, therefore, the co-operative societies were PACS or not, which aspect informed the decision by the Hon'ble High Court, was immaterial. In other words, even if a co-operative society was not a PACS, as contended by the Revenue with reference to s.5(cc)(iv) of the BRA, as indeed the relevant provisions of the Kerala Act (i.e., under which Act the co-operative societies were registered and

constituted)— which we find to be even more stringent than that of the BRA, it was immaterial. That is, any co-operative society, as long as it is not a co-operative bank, would not be ousted by s.80P(4) and, thus, deprived of the benefit of s.80P. On quantum, though, the benefit of s.80P(2)(a)(i) shall extend only to the provision of credit to it's members, which shall include notional members (i.e., without the right to vote; participate in surplus, etc.) as well inasmuch as the Kerala Act provided for such membership. Income attributable to the credit to non-members would, accordingly, stand excluded while computing the amount deductible u/s.80P(2)(a)(i). This, to our mind, represents the said decision in substance, i.e., its ratio. The Revenue's contention of the assessee extending bulk of it's loans for non-agricultural purposes, and were in effect acting as banks, albeit without license from RBI, did not find traction with it inasmuch as their activity did not answer the definition of banking u/s.5(b) of BRA, the prime condition of which is the acceptance of deposits from the public for the purpose of lending. That being the case, the Hon'ble High Court in *Peroorkada SCB Ltd.* (supra) extending the benefit of sec.80P(1) to deposits with co-operative banks, on the basis that they are also co-operative societies, though in the business of banking, so that income therefrom would fall to be covered u/s. 80P(2)(d), may be, with respect, inconsistent with the decision by the Hon'ble Apex Court in *Mavilayi SCB Ltd.*(supra),which concerns itself in the main with the scope of the exclusion clause of s.80P(4). Sec.80P(4) ousts from the purview of sec.80P any co-operative bank (i.e., other than the specified categories thereof). Sec.80P(2)(d) clearly provides exemption of income on investment in a co-operative society, which therefore ought not to be extended to a co-operative bank, excluded u/s. 80P(4). Co-operative banks are public entities, operating as banks, and which is the only reason for their exclusion from s. 80P per sub-section (4) thereof. When, therefore, a co-operative society places it's money with them, the same becomes in turn available for the business of banking by the co-operative banks, including, *inter alia*, lending to the members of the public, i.e., goes

into the banking system. The close circuit, as explained in *Bangalore Club v. CIT*[2013] 350 ITR 509 (SC), which is further in agreement with a series of decisions by the Hon'ble Apex Court on mutuality, gets ruptured. Investment in a co-operative society, on the other hand, would restrict the access to it's funds only to members thereof, either directly by provision of credit thereto, or get channelized to the activities in which the lendee co-operative society is engaged. In sum, placing of funds with a cooperative bank cannot be regarded as any different from that with any other commercial bank, and which was the *raison de'tre* of exclusion of cooperative banks from the purview of s. 80P. There is support for this view, as in *Pr.CIT v. Totgars Co-operative Sale Society*[2017] 395 ITR 611 (Kar), wherein the Hon'ble High Court has, with reference to sec.80P(4) and also s.194A(3), opined that the interest on deposit with co-operative banks is not eligible for deduction u/s.80P(1) r.w.s. 80P(2)(d). As explained therein, the object to be served is the extension of credit to it's members and, not, engage in the business of banking, directly or indirectly. Lending to co-operative banks would thus attract s.80P(4). Our view, inconsequential in view of the binding judicial precedent in *Peroorkada Service Co-operative Bank Ltd.* (supra), is nevertheless stated inasmuch as no argument along these lines was advanced before the Hon'ble High Court, which may, in a given case, consider the same if deemed fit and proper.

6. The matter shall, accordingly, travel to the file of the AO to give effect to our order, as under:

- a). income assessed as business income would qualify for deduction u/s. 80P(1) r/w s. 80P(2)(a)(i) to the extent it relates to the eligible activity specified thereunder; and
- b). income by way of interest on deposits or dividend, assessed as income from other sources, would be deductible u/s. 80P(1) r/w s. 80P(2)(d) to the extent it relates to income arising from cooperative societies and cooperative banks; and
- c). balance income, if any, would be, irrespective of the head of income, taxable.

The income deductible would only be net of expenditure there-against, i.e., as per the provisions of the Act. We decide accordingly.

7. In the result, the appeals are disposed on the afore-stated terms.

Order pronounced on August 31, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: August 31, 2023
Devadas G*

Copy to:

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2. The Respondent.
3. The Pr. CIT concerned.
4. The CIT/Sr. DR, ITAT, Cochin.
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Assistant Registrar
ITAT, Cochin