

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.11/Coch/2019 : Asst.Year 2013-2014

ITA No.12/Coch/2019 : Asst.Year 2014-2015

ITA No.13/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward 3 Palakkad.	v.	The Thirumittacode Service Co-operative Bank Limited Chathannur PO, Peringode Palakkad – 679 537. PAN : AABAT7088D.
(Appellant)		(Respondent)

Appellant by : --- None ---

Respondent by : Sri.Sanjit Kumar Das, CIT-DR

Date of Hearing : 13.08.2024	Date of Pronouncement : 13.08.2024
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ORDER

Per Bench :

These Revenue's three appeals ITA Nos.11 to 13/Coch/2023 for the assessment years 2013-2014, 2014-2015 & 2015-2016 arise against the CIT (Appeals) common Order Nos.ITA 686/16-17, 1155/16-17 & 249/17-18, dated 15.10.2018, respectively, in proceedings u/s. 143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Case files perused.

Cases called twice. None appears at the behest of the assessee. It is accordingly proceeded ex parte.

2. We notice that the able assistance coming from the Department that these instant three Revenue's appeals are listed before us for the second time. And that the earlier learned co-ordinate bench's common order dated 01.03.2019 had rejected these Revenue's cases as under:-

"4. The facts of the case are that the assessee is a Primary Agricultural Credit Society (PACS) under the Kerala Co-operative Societies Act, 1969 and registered with Assistant Registrar of Co-operative Societies (General), Ottapalam, Palakkad. The assessee filed its return of income and claimed deduction u/s.80P(2) of the I.T. Act. It filed its returns of income as per the following details:

<i>Asst.year</i>	<i>Date of filing of return</i>	<i>Income returned</i>	<i>Deduction claimed u/s 80P</i>
<i>2013-14</i>	<i>31.03.2015</i>	<i>Nil</i>	<i>Rs.2,37,27,630</i>
<i>2014-15</i>	<i>20.01.2016</i>	<i>Nil</i>	<i>Rs.3,24,70,531</i>
<i>2015-16</i>	<i>22.01.2026</i>	<i>Nil</i>	<i>Rs.3,05,85,895</i>

The Assessing Officer was of the view that the assessee was functioning as a Cooperative Bank and disbursed only a small portion of loan for agricultural purposes and the assessee was not eligible for deduction u/s. 80P of the Act in view of provisions contained in Section 80P(4) of the I.T. Act. Further, for assessment year 2015-16, the Assessing Officer relied on the decision of the Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT, Cir.9(1), Hyderabad in Civil Appeal No.10245 of 2017. Thereafter, the Assessing Officer disallowed deduction claimed by the assessee u/s. 80P(2) of the Act.

5. On appeal, the CIT(A) allowed the deduction u/s 80P(2) of the Act by placing reliance on the judgment of the Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. and others vs. CIT (384 ITR 490).

6. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us.

7. We have heard the rival submissions and perused the material on record. Admittedly, similar issue was considered by the Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. (2016) vs. CIT (384 ITR 490)

wherein it was held as under:

"15. Appellants in these different appeals are indisputably societies registered under the Kerala co-operative societies Act, 1969, for short, KCS Act and the bye-laws of each of them, as made available to this court as part of the paper books, clearly show that they have been classified as primary agricultural credit societies by the competent authority under the provisions of that Act. The parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other things, the registration of a society under any State law relating to cooperative societies for the time being; it cannot but be taken that the purpose of the societies so registered under the State Law and its objects have to be understood as those which have been approved by the competent authority under such State law. This, we visualize as due reciprocative legislative exercise by the Parliament recognising the predominance of decisions rendered under the relevant State Law. In this view of the matter, all the appellants 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 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. This is the consequence of the definition clause in section 2(oaa) of the KCS Act. The authorities under the IT Act cannot probe into any issue or such matter relating to such applicants.

16. The position of law being as above with reference to the statutory provisions, the appellants had shown to the authorities and the Tribunal that they are primary agricultural credit societies in terms of clause (cciv) of section 5 of the BR Act, having regard to the primary object or principal business of each of the appellants. It is also clear from the materials on record that the bye-laws of each of the appellants do not permit admission of any other co-operative society as member, except may be, in accordance with the proviso to sub-clause 2 of section 5(cciv) of the BR Act. The different orders of the Tribunal which are impeached in these appeals do not contain any finding of fact to the effect that the bye-laws of any of the appellant or its classification by the competent authority under the KCS Act is anything different from what we have stated herein above. For this reason, it cannot but be held that the appellants are entitled to exemption from the provisions of

section 80P of the IT Act by virtue of sub-section 4 of that section. In this view of the matter, the appeals succeed.

17. In the light of the aforesaid, we answer substantial question 'A' in favour of the appellants and hold that the Tribunal erred in law in deciding the issue regarding the entitlement of exemption under section 80P against the appellants. We hold that the primary agricultural credit societies, registered as such under the KCS Act; and classified so, under that Act, including the appellants are entitled to such exemption."

8. In our opinion, the issue is squarely covered in favour of the assessee by the above judgment of the Jurisdictional High Court cited supra. Accordingly, we do not find any infirmity in the order of the CIT(A) and confirm the same. This ground of appeal of the Revenue for all the assessment years is dismissed."

3. The Revenue thereafter filed its miscellaneous applications in MA Nos.85 to 87/Coch/2019 seeking recall / rectification of the above extracted common order on the ground that the hon'ble jurisdictional high court in *CIT v. Mavilayi Service Co-operative Bank Ltd. [2019] 414 ITR 67 (FB) (Ker.)* had decided the instant issue of sec.80P deduction against the assessee. The said miscellaneous applications stood allowed by this tribunal in its common order on 16.10.2023, reading as under:-

*"2. The common point raised by the Revenue in the instant petitions is that the order by the Hon'ble jurisdictional High Court, replied upon by the Tribunal in disposing the said appeals, has since been reversed by it's larger Bench decision in *CIT vs. Poonjar Service Co-operative Bank Ltd. [2019] 414 ITR 67 (FB) (Ker.)*. The impugned order may kindly be recalled for adjudication.*

*3. We have considered the rival contentions and perused the material on record. We find the Revenue's contentions as correct. The Revenue, which has relied for the purpose on the decision in *Kil Kotagiri Tea & Coffee vs. ITAT [1998] 174 ITR 579 (Ker.)*, has preferred the instant petitions within the*

statutory period under section 254(2) of the Act. That a decision inconsistent with the decision by Hon'ble Apex Court or Hon'ble jurisdictional High Court is 'mistaken', liable to be rectified, is trite law, for which reference may be made to, inter alia, Asst. CIT v. Saurashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 227 (SC); CIT v. Aruna Luthra [2001] 252 ITR 76 (P&H)(FB)). We accordingly recall the captioned appeals for a decision afresh by the Tribunal on merits in accordance with law after hearing the parties. We are conscious that the decision by the Hon'ble High Court in Mavilayil Service Cooperative Bank (supra) stands since reversed by the Hon'ble Apex Court vide its judgement reported at [2021] 431 ITR 1 (SC). However, it is again trite law that once a judgment is passed by a court following another judgment and, subsequently, the latter judgment is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgment passed following the overruled judgment nor can the same be reviewed (CIT v. Gracemac Corp. [2023] 456 ITR 135 (SC)). It is thus only in the recalled proceedings that regard to the judgment by the Hon'ble Apex Court in Mavilayil Service Co-operative Bank (supra) could be given. We decide accordingly.

4. In the result, the MPs filed by the Revenue are allowed.”

It is in this factual backdrop that the Revenue has filed these three appeals in ITA Nos.11 to 13/Coch/2019.

4. Learned CIT-DR vehemently argues that the CIT(A) has erred in law and on facts in deciding sec.80P deduction issue in favour of the assessee despite the fact that there is no clear cut indication that its profits eligible for deduction have been derived from regular members only. We find in this backdrop that hon'ble apex court has reversed hon'ble jurisdictional high court's Full Bench decision in "Mavilayi" case itself as reported in (2021) 434 ITR 1 (SC). It has already come on record that the relevant facts qua assessee's sec.80P deduction claim are identical (supra). That being the clinching

case, we uphold the learned CIT(A)'s findings once again.
Ordered accordingly.

6. These Revenue's three appeals ITA Nos.11 to 13/Coch/2019 are dismissed. A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 13th Day of August, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 13th August, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin