

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

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

ITA No.14/Coch/2019 : Asst.Year 2013-2014

ITA No.15/Coch/2019 : Asst.Year 2014-2015

ITA No.16/Coch/2019 : Asst.Year 2015-2016

The Income Tax Officer Ward 3 Palakkad.	v.	The Cherplassery Service Co- operative Bank Limited Cherplassery, Palakkad – 679 503. <b>PAN : AAAAT4215F.</b>
(Appellant)		(Respondent)

Appellant by : --- None ---

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

<b>Date of Hearing : 13.08.2024</b>	<b>Date of Pronouncement : 13.08.2024</b>
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**ORDER**

**Per Bench :**

These Revenue's three appeals ITA Nos.14 to 16/Coch/2023 for the assessment years 2013-2014, 2014-2015 & 2015-2016 arise against the CIT (Appeals) as many Order Nos.ITA 656/16-17, 238/17-18 & 238/17-18, dated 26.10.2018, 23.03.2023 & 23.10.2018, 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 learned CIT-DR that these three Revenue's appeals are before us is the "second" round since earlier round common order dated 01.03.2019 decided the issue(s) raised herein in assessee's favour as under:-

*"6. We have heard the rival submissions and perused the material on record. Admittedly, the assesseees are primary agricultural credit societies registered under the Kerala Cooperative Societies Act, 1969. The Hon'ble High Court of Kerala in the case of Chirakkal Service Co-op Bank Ltd. (supra) had held that a primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969 is entitled to the benefit of deduction u/s. 80P(2). The Hon'ble High Court was considering the following substantial question of law:*

*a) Whether on the facts and in the circumstances of the case under consideration, the Tribunal is correct in law in deciding against the assessee, the issue regarding entitlement for exemption under section 80P, ignoring the fact that the assessee is a primary agricultural credit society?*

*6.1 In considering the above question of law, the Hon'ble High Court rendered the following findings:*

*"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 co-operative 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 visualise as due reciprocal 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 Ad 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 sect; on. 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."

6.2 In view of the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd. (supra), we hold that the assessee-societies are entitled to the benefit of deduction u/s. 80P of the Act. It is ordered accordingly.

6.3 Further, the decision of the Hon'ble Apex Court, relied on by the Revenue in the case of Citizen Co-operative Society Ltd. v. ACIT, is not applicable to Co-operative Societies registered as primary agricultural credit societies in Kerala, in view of the order of ITAT Cochin Bench in the case of ITO v. M/s.Maruthonkara Service Co-operative Bank Ltd. [ITA No.474/Coch/2017 order dated 08.03.2018].

7. In the result, the appeals filed by the Revenue are dismissed."

3. The Revenue thereafter filed its identical miscellaneous applications MA Nos.88 & 90 /Coch/2019 seeking recall / rectification of the above common order on the ground that case law *CIT v. Mavilayi Service Co-operative Bank Ltd. [2019] 414 ITR 67 (FB) (Ker.)* had decided the issue against the assessee. This tribunal's common order once again on 08.09.2023 accepted the said applications as follows:-

*“3. We have heard the parties, and perused the material on record.*

*3.1 That rectification would ensue or, rather ought to, in view of a contrary decision by the Hon'ble Apex Court or Hon'ble jurisdictional High Court, even if delivered subsequent to the order sought to be rectified, inasmuch as the said decision lays down the law as it always stood, forms part of well-settled law, for which the Revenue relies on *Kil Kotagiri Tea & Coffee Estates v. ITAT [1988] 174 - ITR 579 (Ker)*, and toward which we may also cite some: *Asst. CIT v. Saurashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 227 (SC)*; *CIT v. Aruna Luthra [2001] 252 ITR 76 (P&H)(FB)*). The instant MAs are thus maintainable, and ground, valid.*

*3.2 As regards the assessee's plea of the judgment relied upon having been since overruled, the same cannot be applied directly, and would require a fresh decision by the Tribunal on merits in accordance with law after hearing the parties. As explained recently in *CIT v. Gracemac Corporation [2023] 456 ITR 135 (SC)*, 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.*

*4. Under the circumstances, and in view of the stated legal position, we, accepting the Revenue's MAs, restore the Revenue's appeals for a decision afresh on merits in accordance with law. We decide accordingly.”*

4. It is in this factual backdrop that we are deciding the Revenue's instant three appeals in “second” round.

5. 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 from regular members only. He further submits that the hon'ble apex court has settled the foregoing issue in assessee's favour in "Mavilayi" case itself reported in (2021) 434 ITR 1 (SC) thereby reversing hon'ble high court's judgment (supra). The Revenue has made it clear already that facts are identical as per its miscellaneous application averments. We accordingly confirm the CIT(AS)'s identical lower appellate finding in identical terms.

6. These three Revenue's appeals ITA Nos.14 to 16/Coch/2019 are dismissed. A copy of this common order be placed in the respective case files.

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

**Sd/-**  
**(Amarjit Singh)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Satbeer Singh Godara)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 13<sup>th</sup> 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