

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI KESHAV DUBEY, JM**

**ITA No. 653/Coch/2023
Assessment Year: 2017-18**

Kanichukulangara Service Co-op. Bank Ltd. Appellant
Kanichukulangara, Alappuzha 688544
[PAN: AACAK2630D]

vs.

The Income Tax Officer Respondent
Ward - 5, Alappuzha

Appellant by: ----- None -----
Respondent by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 06.01.2025
Date of Pronouncement: 28.01.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 27.07.2023 for Assessment Year (AY) 2017-18.

2. Brief facts of the case are that the appellant is a co-operative society registered under the Kerala State Co-operative Societies Act, 1969. The appellant did not file the return of income for AY 2017-18. The Department was in possession of the information that during the financial year 2016-17 the appellant had made substantial cash deposit in bank accounts during the demonetisation period. Hence,

notices u/s. 142 were issued to the assessee, which remained uncomplished with. Therefore, the Income Tax Officer, Ward -5, Alappuzha (hereinafter called "the AO") completed the assessment vide order dated 12.12.2019 passed u/s. 144 of the Act. While doing so the AO made an addition of Rs.44,94,201/- under the head "income from business or profession" denying deduction u/s. 80P of the Act on the ground that no return of income was filed.

3. Being aggrieved, an appeal was filed before the CIT(A). who vide the impugned order dismissed the appeal of the assessee by placing reliance on the judgement of the Hon'ble Jurisdictional High Court in the case of Kuthuparamba Range Kalluchethu Vyavasayi Thozhilali Sahakarana Sangham Ltd. vs. CIT [2018] 95 taxmann.com 299 (Ker).

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. We have heard the rival contentions of both the parties and perused the material available on record. The CIT(A) confirmed the action of the AO in disallowing the claim for deduction u/s. 80P of the Act solely on the reason that the assessee had not filed the return of income for the relevant assessment year. This issue is no longer res integra, as it is covered by the judgement of the Hon'ble Jurisdictional High court in the case of Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT 459 ITR 730 wherein it is held as under: -

“ a reading of section 80A(5) and section 80AC of the Income-tax Act, 1961, as they stood prior to April 1, 2018, would reveal that the statutory scheme under the Act was to admit only such claims for deduction under section 80P of the Act as were made by the assessee in a return of income filed by him. That return could be under section 139(1), (4), 142(1) or 148, and to be valid, had to be filed within the due date contemplated under those provisions. Under section 80A(5), the claim for deduction under section 80P could be made by an assessee in a return filed within the time prescribed for filing such returns under any of the above provisions. The amendment to section 80AC with effect from April 1, 2018, however, mandated that for an assessee to get a deduction under section 80P of the Income-tax Act, it had to furnish a return of his income for such assessment year on or before the due date specified in section 139(1) of the Income-tax Act. In other words, after April 1, 2018, even if the assessee made its claim for deduction under section 80P in a return filed within time under section 139(4), 142(1) or 148, it would not be allowed the deduction, unless the return in question was filed within the due date prescribed under section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under section 80P of the Act only if it is made in a return recognised as such under the Act, and after April 1, 2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. On the facts as the returns in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under section 139(1) and (4) or in the notices issued under section 142(1) and section 148, the returns were non est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.(AY.2009-10, 2010-11).”

The Hon'ble High Court has also held that the view taken by it vide para 13 of its earlier decision in the case of Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 384 ITR 490 (Ker) is not a correct view. The relevant observation made by the Hon'ble Jurisdictional High Court is extracted as below: -

“It is in the backdrop of the aforesaid discussion that we must consider the findings of a Division Bench of this court in Chirakkal Service Co-operative Bank Ltd. (supra). The findings therein, that appear to suggest that a claim for deduction under section 80P can be entertained even if it is

made in a return filed beyond the time permitted under the Income-tax Act, ignores the perspective tht sees the requirement of the claim for deduction being made in a valid return as a precondition for obtaining the benefit of the statutory deduction. The said findings also fly in the face of the express statutory provisions that requires the claim to be made in a return filed by the assessee, by which term is meant a valid return under the Act, and, therefore, have necessarily to be seen as per incuriam. We also find that the subsequent amendments to section 80AC by the Finance Act, 2018 fortifies the view that we have taken for, it makes the claim for deduction under section 80P conditional on filing a return within the due date prescribed under section 139(1) of the Income-tax Act. In other words, the precondition for claiming the deduction under section 80P of the Income-tax Act has now been made more stringent by reducing the time available to an assessee for making the claim.”

5. In the light of the above decision the judgement in the case of Chirakkal Service Co-operative Bank Ltd. (supra) no longer hold the field. In view of the above legal position we find no merit in the grounds of appeal raised by the assessee.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 28th January, 2025.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 28th January, 2025

n.p.

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1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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By Order

Assistant Registrar
ITAT, Cochin