

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

BEFORE S/SHRI ABRAHAM P GEORGE, AM & GEORGE GEORGE K, JM

**ITA No 260/Coch/2014
(Asst Year 2008-09)**

M/s Tellicherry Coop Rural Bank Ltd Thiruvangad Thalasserry	Vs	The Income Tax Officer Ward 2 Kannur
(Appellant)		(Respondent)

PAN No.	AAACT9127C
Assessee By	Smt Vandana, Advocate
Revenue By	Sh A Dhanaraj, Sr.DR
Date of Hearing	22 nd March 2017
Date of pronouncement	22 nd March 2017

ORDER

PER GEROGGE GEORGE K, JM:

This appeal is restored to the Tribunal by the judgment of the Hon'ble Kerala High Court dated 7th April 2016 in ITA no.58 of 2016.

2 Brief facts of the case are as follows:

The assessee is a cooperative bank registered as a primary agricultural credit society under the Kerala Cooperative Societies Act, 1969. The claim of deduction u/s 80P(2) was denied by the Assessing Officer for the reason that the assessee is primarily engaged in the business of banking and in view of section 80P(4) of the Act, the assessee is not entitled to deduction u/s 80P(2) of the Act.

3 Aggrieved by the assessment, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the assessment order.

4 Aggrieved by the order of the CIT(A), the assessee preferred appeal to the Tribunal. The Tribunal, vide order dated 10.10.2014 dismissed the appeal of the assessee by holding that the assessee was not entitled to the benefit of deduction u/s 80P of the Act.

5 Aggrieved by the order of the Tribunal, the assessee preferred further appeal before the Hon'ble Kerala High Court, u/s 260A of the Act. The Hon'ble High Court vide judgment dated 7th April 2016 in ITA No. 58 of 2016, restored the issues to the Tribunal. It is in this context, the case was heard on 22nd March 2017.

6. We have heard the rival submissions and perused the material on record. The Hon'ble High Court in the case of Chirakkal Service Co-op Bank Ltd vs CIT reported in 384 ITR 490 had held that the Tribunal was not justified in denying the benefit of exemption u/s 80P of the Act. 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 substantial 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 sort, 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 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 sect; on. In this view of the matter, the appeals succeed.

17. In the light of the aforesaid, we answer substantia¹ 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 the instant case, the assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The certificate has been issued by the Registrar of Cooperative Societies to the above said effect and the same is on record. The Hon'ble High Court, in assessee's own case and other batch of cases, had held that primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of deduction u/s 80P(2). Since there is a certificate issued by the Registrar of Cooperative Societies, stating that the assessee is a primary agricultural credit society, we hold that the assessee is entitled to the benefit of deduction u/s 80P(2) of the Act.

7 No other issues were argued by the Id counsel for the assessee during the course of hearing of this appeal.

8 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on this 22nd day of March 2017.

Sd/- (ABRAHAM P GEORGE)	Sd/- (GEORGE GEORGE K)
Accountant Member	Judicial Member

Cochin: Dated 22nd March 2017

Raj*

Copy to:

1. Appellant –
2. Respondent –
3. CIT(A)
4. CIT,
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN