

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

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

**ITA No 58/Coch/2015  
(Asst Year 2009-10)**

&

**I.T.A. No. 592/Coch/ 2014  
(Asst Year 2009-10)**

The Income Tax Officer, Ward-3, Kottayam.	<b>Vs.</b>	M/s. Poonjar Service Co-operative Bank Ltd., Poonjar P.O., Kottayam-686 681. [PAN:AAAAP 4839K]
<b>(Appellant/Respondent )</b>		<b>(Respondent/Appellant )</b>

**CROSS OBJECTION No. 05/Coch/2015**

M/s. Poonjar Service Co- operative Bank Ltd., Poonjar P.O., Kottayam-686 681.	<b>Vs.</b>	The Income Tax Officer, Ward-3, Kottayam.
<b>(Cross Objector)</b>		<b>(Respondent)</b>
<b>PAN No.</b>		PAN:AAAAP 4839K]
Assessee By		Sh Josekutty Jacob
Revenue By		Sh A Dhanaraj, Sr DR
Date of Hearing		20 <sup>th</sup> March 2017
Date of pronouncement		22 <sup>nd</sup> March 2017

**ORDER**

**PER GEROGGE GEORGE K, JM:**

These cross appeals and the Cross Objection at the instance of the assessee are restored to the Tribunal by the judgment of the Hon'ble jurisdictional High Court in ITA Nos.65, 66 and 72 of 2016 (judgment dated 18.10.2016)

2 Briefly stated the facts of the case are as follows:

The assessee is admittedly a primary agricultural credit society. The assessment u/s 143(3) of the I T Act was completed vide order dated 30.12.2011. The Assessing Officer was of the view that out of the total interest received, interest amounting to Rs. 2,79,63,652/-, is on loans disbursed, not for agricultural purposes. The Assessing Officer held that the interest income amounting to Rs. 2,79,63,652/- is not eligible for deduction u/s 80P of the Act and hence, assessable u/s 56 of the I T Act. The relevant observations of the Assessing Office, read as follows:

*"The assessee's arguments as detailed above have been carefully considered. The assessee is a primary agricultural credit co-operative society (PACS) registered under the Co-operative Societies Act. Therefore, subject to satisfaction of provisions of section 80P(1), if the gross total income includes any income referred in sub-section (2) of section 80P, the assessee shall be eligible only for that income for deduction in computing the total income.*

*As per details filed in respect of different type of loans, it is seen that the minimum rate of interest on loan was from 7% to 15.5%. Though the primary agricultural credit societies are formed for the purpose of providing finance to farmers, there are non-agricultural loans, like gold loans, housing loans and trade loans etc. Though the loans are paid to its members, the purpose of loan could not be proved to be fore agricultural purposes other than the loans such as Kissan Credits, Agricultural Short Term and Biogas loans.*

*In the assessee's case. it is observed that majority of loans given were for non-agricultural activities. On gold-loan, housing loan and ordinary loan etc. the rate of interest was from 12% to 15.5%. Therefore, the loans bearing the lowest interest rate and for agricultural purposes are accepted to be agricultural loans. Out of the total interest received, the interest received on the following loans comes to Rs.27963652/- which is not for the benefit of agricultural members and for the purpose of the activities of the society. Hence this income is not eligible for deduction u/s. 80P(1) and hence assessed under section 56.*

(i) Own Fund Long Term Loan	-	70,60,773/-
(ii) Own Fund Short Term Loan	-	1,31,80,270/- at 12.5% to 14%
(iii) Gold Loans	-	23,64,719/- at 13%
(iv) Housing Loans	-	8,94,833/- at 12%
(v) Ordinary Loan	-	42,86,229/- at 15.5%
(vi) Trade Loan	-	1,58,258/- at 13%
(vii) Housing Repair	-	18,570/- at 12.5%

2,79,63,652/-"

2.1 Further, the Assessing Officer held that interest received on short term deposit with bank amounting to Rs. 33,85,886/- was also not eligible for deduction u/s 80P. The relevant findings of the Assessing Officer, read as follows:

*"During the relevant asst year, the assessee had surplus funds which the assessee had invested in the short term deposits with Banks as follows and earned interest to Rs.3385886/-.*

1. District Co-operative Bank, Pala	Rs. 5,57,461/-
2. District Co-operative Bank, pala	Rs. 417/-
3. District Co-operative Bank, Erattupetta	Rs.20,08,270/-
4. Meenachil Taluk Co-operative Employees Society	Rs. 3,19,738/-
5. Meenachil Rubber Marketing Co-operative Society	<u>Rs. 5,00,000/-</u>
Total	Rs.33,85,886/-

*As per Sec 2(24)(1), both the above income of Rs.2,79,63,652/- and Rs.33,85,886/- includes profit and gains. Here the interest income received cannot fall under the business income attributable to the activities of the society and cannot be considered for deduction u/s. 80P(1). Hence it is assessable u/s. 56 for income from other sources based on the hon'ble apex courts decision in the case of Totgar's Co-op sales society Ltd."*

3 Aggrieved by the assessment completed, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the assessment order in disallowance u/s 80P (2) of the Act amounting to Rs. 33,85,886/-. As regards, the addition of Rs. 2,79,63,652/-, the CIT(A) deleted the same.

4 Aggrieved, both the assessee and the revenue filed appeals to the Tribunal. The assessee has also filed cross objection against the revenue's appeal. The Tribunal, vide its order dated 3.11.2015, restored the assessment order and rejected the claim of the assessee for deduction u/s 80P(2) of the I T Act.

5 Aggrieved by the order of the Tribunal, the assessee preferred appeal before the Hon'ble High Court u/s 260A of the Act. The Hon'ble High Court, vide judgment

dated 18.10.2016 restored the matter to the Tribunal. The Hon'ble High Court directed the Tribunal to decide the issue afresh in light of the judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd vs CIT reported in 384 ITR 490 and the Board Circular No. 18/2015 dated 2.11.2015. It is in this context, the cases were heard on 20<sup>th</sup> March, 2017.

6 The Id counsel for the assessee submitted that the circular no.18 of 2015 dated 2.11.2015 clearly states interest on deposits on non SLR securities is taxable under the head 'income from business" and are eligible for deduction u/s 80P(2)(a)(i) of the Act. It was submitted that in the instant case, the assessee is a cooperative Society providing credit facility to its members and therefore, provisions to circular no.18 of 2015 will have clear application to the facts of the instant case. It was further submitted that the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd (supra) had clearly held that primary agricultural society registered as such under the Kerala Cooperative Society Act, is entitled to the benefit of deduction u/s 80P(2) of the Act. Further, it was submitted that the Tribunal, in the case of the Kizhathadiyoor Service Coop Bank Ltd in ITA No.525/Coch/2016 dated 20.7.2016, held that investment in treasury/bank and earning interest is part of banking activities and the said income is eligible for deduction u/s 80P(2)(a)(i) of the Act.

6.1 The Id DR, on the other hand submitted that interest income amounting to Rs. 2,79,63,652/- and Rs.33,85,886/- is clearly not income relatable to the activities of the Society and the same should be assessed under the head 'income from other

sources'. The Id DR relied on the judgment of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sales Soc. Ltd vs ITO reported in 322 ITR 283 (SC).

8 We have heard the rival submissions and perused the material on record. As regards the interest income received on various loans given to the assessee's members amounting to Rs. 2,79,63,652/-, the details are as follows:

a) Own fund long term loan	Rs. 70,60,773/-
b) Own Fund short term loan	Rs. 1,31,80,270/-
c) Gold Loans	Rs. 23,64,719/-
d) Housing Loans	Rs. 8,94,833/-
e) Ordinary Loan	Rs. 42,86,229/-
f) Trade loan	Rs. 1,58,258/-
g) Housing Repair Loan	<u>Rs. 18,570/-</u>
<b>Total</b>	<b>Rs. 2,79,63,652/-</b>

8.1 As regards the above interest income received on disbursement of loans to its members, we find, on identical facts, the Cochin Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd., in ITA No. 372/Coch/2010 had decided the matter in favour of the assessee. The Cochin Bench of the Tribunal, in the case of Muttom Service Cooperative Bank Ltd (supra), had distinguished the judgment of the Hon'ble Apex Court in the case of Totgar's Cooperative Sale Society Ltd (supra). The relevant finding of the coordinate Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd (supra) read as follows:

*"5. We have considered the rival submission on either side and also perused the material available on record. We have also carefully gone through the order of the lower authority. No doubt, the latest judgment in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the Apex court found that the deposit of surplus funds by the co-operative society is not eligible for deduction u/s 80P(2). In the case before the Apex Court in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the assessee co-operative society was to provide credit facility to its members and market the agricultural produce. The assessee is not in the business of banking. Therefore, this*

*Tribunal is of the opinion that the judgment of the Apex court in Totgar's Co-operative Sale Society Ltd (supra) is not applicable in respect of the co-operative society whose business is banking. Admittedly, the assessee has invested funds in state promoted treasury small savings fixed deposit scheme. Since Government of India has withdrawn India Vikas Patra, as a small savings instrument, funds invested at the discretion of the bank is one of the activities of the banking as per the Banking Regulation Act. Since the assessee co-operative society is in the 4 ITA No.372/Coch/2010 business of banking the investment in the state promoted treasury small savings fixed deposit certificate scheme is a banking activity, therefore, the interest accrued on such investment has to be treated as business income in the course of its banking activity. Once it is a business income, the assessee is entitled for deduction u/s 80P(2)((a)(i). therefore, this Tribunal is of the opinion that the judgment of the Larger Bench of the apex Court in Karnataka State Cooperative Apex Bank (supra) is applicable to the facts of this case. By respectfully following the judgment of the Apex court in Karnataka State Co-operative Bank (supra), the order of the Commissioner of Income-tax(A) is upheld."*

8.2 In the instant case, the assessee is a cooperative credit society providing credit facility to its members and the same is evident from the loans disbursement and it is part of the banking activity of the assessee's cooperative bank. Therefore, the said income is eligible for deduction u/s 80P(2)(a)(i) of the Act. Moreover, the Board Circular no 18 of 2015 dated 2.11.2015 had clearly states that interest on deposits on non SLR securities is taxable under the head 'income from business" and are eligible for deduction u/s 80P(2)(a)(i) of the Act, in the case of Cooperative banks carry on the business of banking. As mentioned earlier, in this case, the assessee is a cooperative credit society providing credit facility to its members, which is akin to the banking activity. Therefore, we are of the view that the CIT(A) had correctly deleted the addition made by the Assessing Officer amounting to Rs. 2,79,63,652/-.

8.3 However, the Hon'ble Kerala High Court in the case of Chirakkal Service Co-op Bank Ltd (supra) had clearly held that primary agricultural societies registered under

the Kerala Cooperative Society Act and classified so, under that Act, are entitled to the benefit of deduction u/s 80P(2) of the Act. The relevant portion of the judgment of the Hon'ble Kerala High Court (supra) reproduced as under:

*"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 exemptions."*

8.4 In the instant case, admittedly, the Joint Registrar (General) Kottayam, by certificate dated 23.12.2011 had certified that the assessee is a primary agricultural credit cooperative society. This fact also admitted by the Assessing Officer at page 2 of the assessment order. In view of the clear finding of the Hon'ble jurisdictional High Court, we are of the view that the assessee is entitled to the benefit of deduction u/s 80P(2) of the Act.

9 The details of interest income of Rs.33,85,886/-, which was denied the benefit of deduction u/s 80P(2) are as follows:

a) District Coop Bank, Pala	Rs. 5,57,461/-
b) District Coop Bank, Pala	Rs. 417/-
c) District Coop Bank, Erattupetta	Rs. 20,08,270/-
d) Meenachil taluk Coop Employees Soc.	Rs. 3,19,738/-
f) Meenachil Rubber Mktg Coop Soc.	<u>Rs. 5,00,000/-</u>
	<b>Total Rs 33,85,886/-</b>

9.1 As per section 80P(2)(d) of the I T Act, interest income received by the cooperative society from its investment from another cooperative society, is eligible for exemption from taxation. The whole of interest income was received from other

cooperative society/banks and hence, as per provisions of section 80P(2)(d) of the Act, the same is to be allowed as deduction. This issue was considered by the Cochin Bench of the Tribunal in the case of the Kizhathadiyoor Service Cooperative Bank Ltd in ITA No. 525/Coch/2014 vide order dated 20<sup>th</sup> July 2016. The relevant findings of the Tribunal read as follows:'

*"7.1 From the above, it is clear that a major portion of the investment income was interest receipt from other cooperative societies. Section 80P(2)(d) provides for deduction in respect of any income by way of interest or dividend derived by a cooperative society from its investment in another cooperative society. Therefore, interest income received from other cooperative societies are eligible for deduction u/s 80P(2)(d) of the Act and cannot be assessed as "income from other source."*

9.2 Moreover, by virtue of section 80P(2)(a)(i) in the case of cooperative society carrying on the business of banking or providing credit facilities to its members, whole of the profits and gains attributable to such activities is eligible for deduction. If the income is derived by a cooperative society from the business of banking or providing credit facility to its members it will fall within the exemption. The Hon'be Supreme Court, in the case of CIT vs Karnataka State Cooperative Apex Bank reported in 251 ITR 194(SC), held that interest from surplus funds kept as deposits in banks, being ancillary and incidental to the carrying on of the business of providing credit facility by the assessee cooperative society to its members, is entitled to deduction u/s 80P(2)(a)(i).

9.3 In light of the aforesaid reasoning, we hold that the Assessing Officer is not justified in denying the benefit of deduction u/s 80P in respect of the amounts of Rs.2,79,63,652/- and Rs. 33,85,886/-. It is ordered accordingly.

10 In the result, the appeal filed by the revenue is dismissed and the appeal by the assessee is allowed.

**CROSS OBJECTION no.5/Coch/2015(by the assessee)**

11 The cross objection filed by the assessee is supporting the order of the CIT(A). Since we have dismissed the appeal filed by the revenue, the cross objection by the assessee has become infructuous and the same is dismissed.

12 To sum-up, the appeal filed by the revenue and the cross objection by the assessee are dismissed; whereas the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 22<sup>nd</sup> day of March 2017.

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

Cochin: Dated 22<sup>nd</sup> 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