

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Chandra Poojari, AM & Shri George Mathan, JM

ITA No.244/Coch/2020 : Asst. Year 2008-2009

ITA No.245/Coch/2020 : Asst. Year 2012-2013

ITA No.246/Coch/2020 : Asst. Year 2017-2018

&

SA No.147/Coch/2020 : Asst. Year 2008-2009

SA No.148/Coch/2020 : Asst. Year 2012-2013

SA No.149/Coch/2020 : Asst. Year 2017-2018

M/s. Kechery Service Co-operative Bank Limited No.R 286 C/o.M/s.Arikkat Vijayan Menon & Associates, "Prathibha" North Railway Station Road Ernakulam – 18. [PAN : AACAK2954Q. (Appellant/Applicant)	Vs.	The Income Tax Officer Ward 1 Guruvayur. (Respondent)
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Appellant by : Smt.Krishna K, Advocate

Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 17.09.2020	Date of Pronouncement : 17.09.2020
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ORDER

Per Bench :

These appeals at the instance of the assessee are directed against the common order of the CIT(A) dated 12.03.2020. The assessee has also preferred stay applications seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2008-2009, 2012-2013 and 2017-2018.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. The solitary issue that is raised is whether the CIT(A) is justified in confirming the Assessing Officers order in denying the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act.

4. The brief facts of the case are as follow:

The assessee is a co-operative society registered under the Kerala Co-operative Societies Act, 1969. For the assessment years under consideration, returns were filed after claiming deduction u/s 80P of the I.T.Act. The assessment orders were passed for assessment years under consideration, wherein the Assessing Officer disallowed the claim of deduction u/s 80P of the I.T.Act. The reasoning of the Assessing Officer to disallow the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act was that the assessee was essentially doing the business of banking, and therefore, in view of insertion of section 80P(4) of the I.T.Act with effect from 01.04.2007, the assessee will not be entitled to deduction u/s 80P of the I.T.Act.

5. Aggrieved by the orders passed by the Assessing Officer disallowing the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred appeals before the first appellate authority for all the assessment years under consideration. The CIT(A) placing reliance on the judgment of the Full Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT [(2019) 414 ITR 67 (Ker.) (FB) (HC)]* held that the Assessing Officer had made elaborate findings and has come to a factual finding that

agricultural credit provided by the assessee is only minuscule and assessee cannot be termed as primary agricultural credit society. Accordingly disallowance of claim of deduction u/s 80P of the I.T.Act made by the Assessing Officer was upheld by the CIT(A). In the result the appeals filed by the assessee were rejected by the CIT(A) for assessment years under consideration.

6. Aggrieved by the orders passed by the CIT(A), the assessee has preferred these appeals before the Tribunal. Identical grounds have been raised and they read as follow:-

"A: The orders of the authorities below in so far as they are against the appellant are opposed to law, facts and circumstances of the case.

B: The appellant is eligible for deduction under Section 80P(2)(a)(i) of the Income Tax Act and the finding to the contrary by the lower authorities is without any justification and arbitrary.

C: The finding of the assessing authority that appellant falls within the definition of "Co-operative Bank" which is not eligible for deduction u/s.80P is illegal and without any justification. The lower authorities ought to have interpreted Section 80P(4) correctly so as to find that appellant is a primary agricultural credit society (PACS) engaged in providing credit facilities to its members. For this reason itself, the entire demand is liable to be cancelled.

D: The finding of the lower authorities that the agricultural credit provided by the appellant is negligible if not extinct is incorrect and without any justification. There is no mandate u/s. 80P that PACS ought to utilize 100% of its funds for its primary object or to provide financial accommodation to its members for agriculture or for purposes connected with agricultural activities. The appellant has idle funds after providing loans for agricultural activities. Such idle funds are used to provide loans for non-agricultural activities. So much so, the appellant is eligible for deduction of the whole profit attributable to the activities of giving credit facilities to its

members.

E: The finding of the assessing authority that the deduction can be allowed only on compliance of the Banking Regulation Act, 1949, as the definition of banking under Section 80P ought to be in accordance with the said Act, is wrong and unjustified. The Banking Regulation Act specifies share capital limit only for "Primary Co-operative Bank and Primary Credit Society and not to PACS. In ITO, Bangalore v. Yeshwantpur Credit Co-operative Society Ltd., the IT AT following the ratio in Bangalore Commercial Transport Credit Co-operative Society Ltd., in ITA 1069/Bang/2010 dated. 08-04-2011 held that there was a clear distinction between a co-operative bank and a co-operative society. It is held that the benefits of Section 80P is denied only to Co-operative Banks u/ s. 80P(4), whereas the benefit is available and extended to PACS Section 80P(4) does not define the word "Co-operative Society". Therefore, the provisions of the Banking Regulation Act does not get attracted to the facts and circumstances of the case of the appellant.

F: The first appellate authority ought to have noted that the appellant is not a co-operative bank licensed by the Reserve Bank of India. Appellant is originally registered as PACS and no reclassification made by the RBI. So much so, the disallowance of deduction claimed u/s 80P is illegal and unjustified.

G: The Hon'ble High Court of Kerala in Chirakkal Service Co-operative Bank's case reported in 384 ITR 490 held that once a certificate classifying the co-operative society as a PACS is issued by the registrar under the Co-operative Societies Act, 1969, the Department cannot sit in judgment over the same and is bound to accept the same. However, in The Mavilayi Service Co-operative Bank v. Commissioner of Income Tax, Calicut, (2019) 2 KLT 597 (F.B.) the judgment in Chirakkal's case is reversed. But in the said judgment the matter is remitted for further enquiry by the statutory authorities. So much so, the assessing authority ought to conduct enquiries in accordance with the law.

H: The finding of the lower authorities that details and evidences as required by the assessing authority are not furnished is incorrect and without any justification. The assessing authority ought to have considered the documents submitted so as to find that the appellant is a PACS engaged in providing credit facilities to its members.

I: No other co-operative societies are admitted to the appellant Society as members.

J: The levy of interest under Sections 234A and 234B is illegal and liable to be cancelled.

K: Demand of tax u/ s. 156 is also not correct or legal, therefore, liable to be cancelled.

L: Other grounds will be raised at the time of hearing."

6.1 The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the orders passed by the Income Tax Authorities.

7. We have heard the rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT* [(2016) 384 ITR 490 (Ker.)] had held that when a certificate has been issued to an assessee by the Registrar of Co-operative Societies characterizing it as primary agricultural credit society, necessarily, the deduction u/s 80P(2) of the I.T.Act has to be granted to the assessee. However, the Full Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT* (supra) had reversed the above findings of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT* (supra). The Larger Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT* (supra) held that the Assessing Officer has to conduct an inquiry into the factual situation as to the activities of the assessee society to determine the eligibility of deduction u/s 80P of the I.T.Act. It was held by

the Hon'ble High Court that the Assessing Officer is not bound by the registration certificate issued by the Registrar of Kerala Co-operative Society classifying the assessee-society as a co-operative society. The Hon'ble High Court held that each assessment year is separate and eligibility shall be verified by the Assessing Officer for each of the assessment years. The finding of the Larger Bench of the Hon'ble High Court reads as follows:-

"33. In view of the law laid down by the Apex Court in Citizen Co-operative Society [397 ITR 1] it cannot be contended that, while considering the claim made by an assessee society for deduction under Section 80P of the IT Act, after the introduction of sub-section (4) thereof, the Assessing Officer has to extend the benefits available, merely looking at the class of the society as per the certificate of registration issued under the Central or State Co-operative Societies Act and the Rules made thereunder. On such a claim for deduction under Section 80P of the IT Act, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of Section 80P.

33. In Chirakkal [384 ITR 490] the Division Bench held that the appellant societies 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 to be 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 and as such, they are entitled for the benefit of sub-section (4) of Section 80P of the IT Act to ease themselves out from the coverage of Section 80P and that, the authorities under the IT Act cannot probe into any issues or such matters relating to such societies and that, Primary Agricultural Credit Societies registered as such under the KCS Act and classified so, under the Act, including the appellants are entitled to such exemption.

34. *In Chirakkal [384 ITR 490] the Division Bench expressed a divergent opinion, without noticing the law laid down in Antony Pattukulangara [2012 (3) KHC 726] and Perinthalmanna [363 ITR 268]. Moreover, the law laid down by the Division Bench in Chirakkal [384 ITR 490] is not good law, since, in view of the law laid down by the Apex Court in Citizen Co-operative Society [397 ITR 1], on a claim for deduction under Section 80P of the Income Tax Act, by reason of sub-section (4) thereof, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of Section 80P of the IT Act. In view of the law laid down by the Apex Court in Citizen Co-operative Society [397 ITR 1] the law laid down by the Division Bench Perinthalmanna [363 ITR 268] has to be affirmed and we do so.*

35. *In view of the law laid down by the Apex Court in Ace Multi Axes Systems' case (supra), since each assessment year is a separate unit, the intention of the legislature is in no manner defeated by not allowing deduction under Section 80P of the IT Act, by reason of sub-section (4) thereof, if the assessee society ceases to be the specified class of societies for which the deduction is provided, even if it was eligible in the initial years."*

7.1 In the instant case, the Assessing Officer had denied the claim of deduction u/s 80P of the I.T.Act for the reason that assessee was essentially doing the business of banking and disbursement of agricultural loans by the assessee was only minuscule. Therefore, the Assessing Officer concluded that the assessee cannot be treated as co-operative society. The Assessing Officer after perusing the narration of the loan extracts in the statutory audit report for assessment years under consideration, came to the conclusion that out of the total loan disbursement, only a minuscule portion has been advanced for agricultural purposes. We are of the view that the narration in loan extracts in the audit reports by itself

may not conclusive to prove whether loan is a agricultural loan or a non-agricultural loan. The gold loans may or may not be disbursed for the purpose of agricultural purposes. Necessarily, the A.O. had to examine the details of each loan disbursement and determine the purpose for which the loans were disbursed, i.e., whether it is for agricultural purpose or non-agricultural purpose. In these cases, such a detailed examination has not been conducted by the A.O. At the time of assessment, the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Cooperative Bank Ltd.* (*supra*) was ruling the roost and the certificate issued by the Registrar of Co-operative Society terming the assessee as a primary agricultural credit society would be sufficient for grant of deduction u/s 80P of the I.T.Act. In the light of the dictum laid down by the Full Bench of the Hon'ble Kerala High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT* (*supra*), we are of the view that there should be fresh examination by the Assessing Officer as regards the nature of each loan disbursement and purpose for which it has been disbursed, i.e., whether it for agricultural purpose or not. The A.O. shall list out the instances where loans have disbursed for non-agricultural purposes etc. and accordingly conclude that the assessee's activities are not in compliance with the activities of primary agricultural credit society functioning under the Kerala Co-operative Societies Act, 1969, before denying the claim of deduction u/s 80P(2) of the I.T.Act. For the above said purpose, the issue raised in these appeals is restored to the files of the Assessing Officer. The

Assessing Officer shall examine the activities of the assessee-society by following the dictum laid down by the Full Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* and shall take a decision in accordance with law. It is ordered accordingly.

8. Since we have disposed of the appeals, the stay applications filed by the assessee are dismissed as infructuous.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes and the stay applications are dismissed.

Order pronounced on this 17th day of September, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cochin, dated 17th September, 2020
Devadas G*

Copy to :

1. The Appellant / Applicant
2. The Respondent
3. The CIT(A), Thrissur.
4. The Pr.CIT, Thrissur.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi