IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 23RD DAY OF NOVEMBER 2021 / 2ND AGRAHAYANA, 1943

ITA NO. 57 OF 2019

AGAINST THE ORDER IN ITA 267/2015 OF I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

M/S.HOSDURG RANGE KALLU CHETHU THOZHILALI VYAVASAYA SAHAKARANA SANGHAM,
KOTTACHERY, KANHANGAD, KASARAGOD DISTRICT - 671 315.

BY ADVS.
S.ARUN RAJ
SMT.C.T.SUJA

RESPONDENT/S:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, MANANCHIRA, CALICUT - 673 001.

OTHER PRESENT:

SC CHRISTOPHER ABRAHAM

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 23.11.2021, ALONG WITH ITA.58/2019, 44/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 23RD DAY OF NOVEMBER 2021 / 2ND AGRAHAYANA, 1943

ITA NO. 58 OF 2019

AGAINST THE ORDER IN ITA 266/2015 OF I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

M/S.HOSDURG RANGE KALLU CHETHU THOZHILALI VYAVASAYA SAHAKARANA SANGHAM,
KOTTACHERY, KANHANGAD, KASARAGOD DISTRICT - 671 315.

BY ADVS.
S.ARUN RAJ
SMT.C.T.SUJA

RESPONDENT/S:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, MANANCHIRA, CALICUT -673 001.

SC CHRISTOPHER ABRAHAM

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 23.11.2021, ALONG WITH ITA.57/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 23RD DAY OF NOVEMBER 2021 / 2ND AGRAHAYANA, 1943

ITA NO. 44 OF 2019

AGAINST THE ORDER IN ITA 265/2015 OF I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

M/S.HOSDURG RANGE KALLU CHETHU THOZHILALI VYAVASAYA SAHAKARANA SANGHAM
KOTTACHERY, KANHANGAD, KASARAGOD DISTRICT.

BY ADVS.
S.ARUN RAJ
SMT.C.T.SUJA

RESPONDENT/S:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, MANANCHIRA, CALICUT- 673001.

SC CHRISTOPHER ABRAHAM

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 23.11.2021, ALONG WITH ITA.57/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

<u>JUDGMENT</u>

[ITA Nos.57/2019, 58/2019, 44/2019]

<u>S.V.Bhatti, J</u>.

Heard learned Advocate Mr Arun Raj S for appellant and learned Standing Counsel Mr Christopher Abraham for respondent.

2. M/s. Hosdurg Range Kallu Chethu Thozhilali Vyavasaya Sahakarana Sangham/assessee is the appellant. Commissioner of Income Tax, Calicut/Revenue is the respondent. The details of orders from which respective appeals arise are stated in the following tabular statement:

Sl. No.	Assessment Year & Date of Assessment Order	Order of Commissioner of Income Tax (Appeals)	Income Tax Appellate Tribunal	ITA No.
1	2009-10; dtd.28.03.2013	ITA NO.101/KSD/CIT/CLT/2013-14 DT.16.02.2015	ITA NO.265/COCH/2015 DTD 26.09.2017	44/2019
2	2011-12; dtd.19.02.2014	ITA NO.367/KSD/CIT/CLT/2013-14 DT.16.02.2015	ITA NO.267/COCH/2015 DTD 26.09.2017	57/2019
3	2010-11; dtd.08.03.2013	ITA NO.71/KSD/CIT/CLT/2013-14 DT.16.02.2015	ITA NO.266/COCH/2015 DTD 26.09.2017	58/2019

2. The assessee is a registered Co-operative Society formed in the year 2001. The Society is formed for enabling financial and social welfare of toddy tappers/workers; for tapping and selling toddy within Hosdurg jurisdiction. The assessee claimed exemption under Section 80P(2)(a)(vi) of the Act.

2.1 ITA No.44/2019 is treated as representative appeal for considering and disposing of the substantial questions raised by the assessee in the set of appeals since the question are same. The issues for adjudication substantially arise under Section 80P(2) of the Income Tax Act 1961 (for short 'the Act').

I.T.A. No.44/2019

Substantial Question Nos.1 & 2

3. Substantial question nos.1 and 2 read thus:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the appellant society cannot be considered as Co operative Societies engaged in the collective disposal of labour of its 2016 members as contemplated under section 80P(2) (a) (vi) of the Act and therefore not eligible for deduction under section 80 P of the Act.? Is not such a finding of the Tribunal illegal, arbitrary and perverse?
>
> 2. Whether the Tribunal is right in law and facts of the case in upholding the finding of the assessing officer/contention of the revenue that the appellant society having granted registration under the Kerala Co-operative Societies Act, 1969 and the Rules as a "Miscellaneous Society" and therefore assessee cannot be treated as a society engaged in collective disposal of labour of its members and therefore is not eligible/entitled for the deduction under Section 80P(2)(a)(vi) of the Act?"

3.1 The learned Counsel appearing for the assessee and the Revenue state that the questions are concluded by the judgment in *Peravoor Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. Commissioner of Income Tax*[1].

3.2 The statement is placed on record, accepted and accordingly by following the principle laid down in *Peravoor Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham* case the questions are answered in favour of the Revenue and against the assessee.

<u>Substantial Question No.3</u>

4. Substantial question no.3 is framed as follows:

> 3. Whether the Tribunal was right in law and facts of the case in not considering the issue of eligibility of the appellant for deduction under section 80 P (2) (a) (iii) of the Act?

4.1 Reference to Section 80P(2)(a)(iii) of the Act would be useful and reads thus:

1 [2016] 380 ITR 34 (Ker.)

> "80P. (1) Where, in the case of an assessee being a co-operative society, the 57gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
>
> (2) The sums referred to in sub-section (1) shall be the following, namely :—
>
> (a) in the case of a co-operative society engaged in -
>
> xxx xxx xxx
>
> (iii) the marketing of agricultural produce grown by its members,
>
> xxx xxx xxx"

4.2 A Division Bench of High Court of Telangana and Andhra Pradesh in *Vavveru Co-operative Rural Bank Ltd v. Chief Commissioner of Income Tax*[2], has succinctly tabulated the Societies and the benefits to which each one of the category of Societies is entitled to, would be benefiting in our narrative to excerpt the relevant portion as under:

2 [2017] 396 ITR 371 (T&AP)

"28. We have carefully considered the above submissions. Before considering the effect of the various decisions cited on both sides, we think it would be ideal to look at the statutory prescription in pure and simple form. As we have indicated earlier, Section 80P(2) is actually divided into six parts, categorised under clauses (a), (b), (c), (d), (e), and (f). Each one of these clauses deal with different types of co-operative societies engaged in different types of activities. The benefit made available to each one of them is also different from the other. Therefore, it may be useful to present a tabular form, the six categories of co-operative societies covered by clause (a) to (f) and the nature and extent of the benefit available to each one of them, as follows:

Category of Co-Op., Societies covered by sub-clauses (a) to (f)	Nature and Extent of benefit available
(a) (1) Co-operative society carrying on the business of banking or providing credit facilities to its members; (2) Co-op society engaged in Cottage Industry; (3) Co-operative engaged in marketing of agricultural produce grown by its members. (4) Co-operative society engaged in purchase of agricultural implements, seeds etc., for the purpose of supplying to its members; (5) Co-operative society engaged in processing of agricultural produce of its members without the aid of power (6) Co-operative society engaged in collective disposal of the labour of its members (7) Co-operative society engaged in fishing or allied activities.	The whole of the amount of profits and gains of business attributable to any one or more of such activities.

(b) Primary co-operative society engaged in supplying milk, oil seeds, fruits or vegetables grown by its members to 1) a federal co-operative society, engaged in the same business; 2) the Government or a local authority; 3) the Government company or Corporation engaged in the same business;	The whole of the amount of profits and gains on such business
(c) 1) A consumer co-operative society engaged in activities other than those specified in clause (a) or clause (b) either independently of, or in addition to, all or any of the activities so specified.	So much of the profits and gains attributable to such activities not exceeding Rs.100,000/- (one hundred thousand rupees).
2) Co-operative society other than a consumer co-operative society engaged in activities other than those specified in clauses (a) and (b).	So much to these profits and gains attributable to such activities not exceeding Rs.50,000/- (fifty thousand rupees).
(d) Interest or dividends derived by the co-operative society from its investments with any other co-operative society;	The whole of such income.
(e) Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;	The whole of such income.
(f) A co-operative society other than 1) A housing society; 2) An urban consumer society; 3) A society carrying on transport business; 4) A society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs.20,000/- (twenty thousand rupees)	The income by way of interest on securities and the income from house property chargeable under Section 22.

> 29. From the Tabular form presented above, it may be clear that the deductions available under Clauses (a) to (c) are activity-based. The deduction available under Clauses (d) and (e) are investment-based and the deduction under Clause (f) is institution-based. To put it differently,
> (A) to be eligible for deduction under Clause (a), the claim should relate to the profits and gains of business attributable to anyone or more of the activities listed in Clause (a),
> (B) to be eligible for deduction under Clause (b), the society should be a primary society engaged in supplying milk, oilseeds, fruits, etc. to named institutions, such as, Government, Local Authority, Federal Co-operative Society, or Government Company,
> (C) to be eligible for deduction under Clause (c), the institution must be engaged in activities other than those covered by Clauses (a) and (b) subject to the further condition that such profits and gains should not exceed a particular limit,
> (D) to be eligible for deduction under Clause (d), the income should be derived from investments with another Co- operative Society,
> (E) to be eligible for deduction under Clause (e), the income should be derived from letting of godowns or warehouses, etc."

4.3 The argument of Mr Arun Raj is that each one of the seven sub-clauses deals with different criteria and combinations of computation. Sub-clause (iii) deals with marketing of agricultural produce grown by its members. According to him, toddy vending by the members of assessee/Society is, for all purposes, marketing an agricultural produce. Therefore, its claim for deduction of income earned by the Society under sub-clause (iii) of Section 80P(2)(a) is a legitimate deduction claimed by the assessee. The Tribunal has noted the grounds covered by Section 80P(2)(a)(iii) in its order dated 26.09.2017, but has not considered or recorded a finding on the entitlement of assessee in this regard. Trying to impress this Court for availing deduction as agricultural produce, he invites our attention to the judgment dated 20.06.2018 of this Court in I.T.A. No.273/2015; firstly, prays for answering the question in favour of the assessee and grant deduction under Section 80P(2)(a)(iii). Alternatively, it is argued that the finding that the Tribunal being a final Court of fact the questions covered by Section 80P(2)(a)(iii) can be remitted to the Tribunal for consideration and disposal in accordance with law.

5. Mr Christopher Abraham objects to entertaining the merits on the nature of toddy: whether it is an agricultural produce or not. For, such an exercise could explore into the realm of pure and simple facts. So, this Court if is convinced on the objection of assessee that the Tribunal has not independently examined the grounds raised under Section 80P(2)(a)(iii), the matter could be remitted to Tribunal for consideration and disposal afresh. Stated briefly, after taking note of the consideration by the Tribunal, the learned Standing Counsel desires this question could be remitted to Tribunal for consideration and disposal afresh, in accordance with law.

6. We have taken note of the limited submissions made in this behalf and we are persuaded to accept the second limb of assessee's argument, namely that the matter needs to be re-examined by the Tribunal. For, our examining the question of

law independently, the possibility of treading into pure and simple facts cannot be obliterated. Which, for informed reasons in law, we do not want to undertake.

Therefore, the question is answered, to the extent indicated above, in favour of the assessee and against the Revenue. Substantial question no.3 is remitted to Tribunal for consideration and disposal, in accordance with law.

<u>Substantial Question Nos.4 and 5</u>

7. Substantial question nos. 4 and 5 read thus:

> "4. Whether, the Tribunal is right in law and facts of the case in not remanding the matter back to the assessing officer to consider whether the appellant society falls in any other category as contemplated under section 80 P(2) (a) and eligible for deduction under 80 P of the Act.?
>
> 5. Whether the Tribunal is right in law and facts and circumstance of the case in not considering the issue on the finding of the assessing officer that the bye-laws of the appellant does not restrict the voting rights and therefore not eligible for deduction under section 80 P (2) (a) of the Act?.

7.1 In our view and also from the tenor of arguments made in this behalf, this Court records a finding that these questions may not arise for the view already we have taken on substantial question no.3.

The questions are not taken up nor any view expressed in this behalf.

ITA No.57/2019

8. The substantial questions raised read as follows:

1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the appellant society cannot be considered as Co operative Societies engaged in the collective disposal of labour of its members as contemplated under section 80P(2) (a) (vi) of the Act and therefore not eligible for deduction under section 80 P of the Act.? Is not such a finding of the Tribunal illegal, arbitrary and perverse?

2. Whether the Tribunal is right in law and facts of the case in upholding the finding of the assessing officer/contention of the revenue that the appellant society having granted registration under the Kerala Co-operative Societies Act, 1969 and the Rules as a "Miscellaneous Society" and therefore assessee cannot be

treated as a society engaged in collective disposal of labour of its members and therefore is not eligible/entitled for the deduction under section 80 P (2) (a) (vi) of the Act?

3. Whether the Tribunal was right in law and facts of the case in not considering the issue of eligibility of the appellant for deduction under section 80 P (2) (a) (iii) of the Act?

4. Whether, the Tribunal is right in law and facts of the case in not remanding the matter back to the assessing officer to consider whether the appellant society falls in any other category as contemplated under section 80 P(2) (a) and eligible for deduction under 80 P of the Act.?

8.1 Substantial question nos.1 and 2 are similar to substantial question nos. 1 and 2; substantial question no. 3 is similar to substantial question no.3; and substantial question no.4 is similar to substantial question nos.4 and 5 in I.T.A. No. 44/2019.

By adopting the same reasoning these questions are answered accordingly.

I.T.A. No.58/2019

9. The substantial questions raised read as follows:

1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the appellant society cannot be considered as Co operative Societies engaged in the collective disposal of labour of its members as contemplated under section 80P(2) (a) (vi) of the Act and therefore not eligible for deduction under section 80 P of the Act.? Is not such a finding of the Tribunal illegal, arbitrary and perverse?
2. Whether the Tribunal is right in law and facts of the case in upholding the finding of the assessing officer/contention of the revenue that the appellant society having granted registration under the Kerala Co-operative Societies Act, 1969 and the Rules as a "Miscellaneous Society" and therefore assessee cannot be treated as a society engaged in collective disposal of labour of its members and therefore is not eligible/entitled for the deduction under section 80 P (2) (a) (vi) of the Act?
3. Whether the Tribunal was right in law and facts of the case in not considering the issue of eligibility of the appellant for deduction under section 80 P (2) (a) (iii) of the Act?
4. Whether, the Tribunal is right in law and facts of the case in not remanding the matter back to the assessing officer to

> consider whether the appellant society falls in any other category as contemplated under section 80 P(2) (a) and eligible for deduction under 80 P of the Act.?
>
> 5. Whether the Tribunal is right in law and facts of the case in not considering the issue of rejection of claim under section 80 P by the Lower authorities as hit by Section 80 A (5) of the Act as the claim made in a belated return, which issue is now squarely covered in favour of the asssessee by the of this Honourble Court in the case of Chirakkal Service Co operative Bank Ltd. Vs CIT and other connected cases reported in (2016)384 ITR 490 (Ker).

9.1 Substantial question nos.1 and 2 are similar to substantial question nos. 1 and 2; substantial question no. 3 is similar to substantial question no.3; and substantial question no.4 and 5 are similar to substantial question nos.4 and 5 in I.T.A. No. 44/2019.

By adopting the same reasoning these questions are answered accordingly.

I.T. Appeal Nos. 44, 57 and 58/2019 are answered accordingly.

Sd/-
S.V.BHATTI
JUDGE

Sd/-
BASANT BALAJI
JUDGE

jjj

APPENDIX OF ITA 57/2019

PETITIONER ANNEXURE

ANNEXURE A	A TRUE COPY OF THE ASSESSMENT ORDER DATED 19.02.2014 PASSED BY THE ASSESSING OFFICER FOR THE AY 2011-12.
ANNEXURE B	A TRUE COPY OF ORDER DATED 16.02.2015 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-KOZHIKODE FOR THE AY 2011-12.
ANNEXURE C	A TRUE COPY OF THE ORDER DATED 26.09.2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN FOR THE AY 2011-12.

APPENDIX OF ITA 58/2019

PETITIONER ANNEXURE

ANNEXURE A	A TRUE COPY OF THE ASSESSMENT ORDER DATED 8/3/2018 PASSED BY THE ASSESSING OFFICER FOR THE AY 2010-11.
ANNEXURE B	A TRUE COPOY OF ORDER DATED 16/2/2015 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-KOZHIKODE FOR THE AY 2010-11.
ANNEXURE C	A TRUE COPY OF THE ORDER DATED 26/9/2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN FOR THE AY 2010-11.

APPENDIX OF ITA 44/2019

PETITIONER ANNEXURE

ANNEXURE A	A TRUE COPY OF THE ASSESSMENT ORDER DATED 28.03.2013 PASSED BY THE ASSESSING OFFICER FOR THE AY 2009-10.
ANNEXURE B	A TRUE COPY OF ORDER DATED 16.02.2015 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-KOZHIKODE FOR THE AY 2009-10.
ANNEXURE C	A TRUE COPY OF THE ORDER DATED 26.09.2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN FOR THE AY 2009-10.