

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

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

ITA No.214/Coch/2020 : Asst.Year 2012-2013
ITA No.215/Coch/2020 : Asst.Year 2016-2017
ITA No.216/Coch/2020 : Asst.Year 2017-2018
&
SA No.120/Coch/2020 : Asst. Year 2012-2013
SA No.121/Coch/2020 : Asst. Year 2016-2017
SA No.122/Coch/2020 : Asst. Year 2017-2018

M/s. Aloor Service Co-operative Bank Limited No.693, Aloor P.O. Thrissur - 680 683. [PAN : AAEEA3159R.	Vs.	The Income Tax Officer Ward 2(1), Range-2 Thrissur.
(Appellant/Applicant)		(Respondent)

ITA No.217/Coch/2020 : Asst.Year 2008-2009
ITA No.218/Coch/2020 : Asst.Year 2009-2010
ITA No.219/Coch/2020 : Asst.Year 2010-2011
ITA No.220/Coch/2020 : Asst.Year 2012-2013
ITA No.221/Coch/2020 : Asst.Year 2013-2014
ITA No.222/Coch/2020 : Asst.Year 2014-2015
ITA No.223/Coch/2020 : Asst.Year 2015-2016
ITA No.224/Coch/2020 : Asst.Year 2016-2017
ITA No.225/Coch/2020 : Asst.Year 2017-2018
&
SA No.123/Coch/2020 : Asst.Year 2008-2009
SA No.124/Coch/2020 : Asst.Year 2009-2010
SA No.125/Coch/2020 : Asst.Year 2010-2011
SA No.126/Coch/2020 : Asst.Year 2012-2013
SA No.127/Coch/2020 : Asst.Year 2013-2014
SA No.128/Coch/2020 : Asst.Year 2014-2015
SA No.129/Coch/2020 : Asst.Year 2015-2016
SA No.130/Coch/2020 : Asst.Year 2016-2017
SA No.131/Coch/2020 : Asst.Year 2017-2018

M/s. Puthenchira Service Co-operative Bank Limited No.2264, Puthenchira PO Thrissur - 680 682. [PAN : AAAAP2754K.	Vs.	The Income Tax Officer Ward 2(4), Range 2 Thrissur.
(Appellant/Applicant)		(Respondent)

Appellants by : Sri.Jojo C.A., Advocate
Respondent by : Sri.Shanthom Bose, CIT-DR

Date of Hearing : 06.10.2020	Date of Pronouncement : 06.10.2020
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ORDER

Per Bench :

These appeals at the instance of the assesseees are directed against various orders of the CIT(A). The assesseees have also preferred stay applications seeking to stay the recovery of outstanding tax arrears.

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 Officer's 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 assesseees are a co-operative societies 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 assesseees were

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 assesseees 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 assesseees 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 assesseees are only minuscule and assesseees 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 assesseees were rejected by the CIT(A) for assessment years under consideration.

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

"A. The Commissioner (Appeals) Thrissur ought to have considered that the issue whether the assessing officer shall probe into the activities of a Co-operative society to find out whether it is eligible for deduction u/s 80P of the Income Tax Act 1961 or will it be hit by Section 80P(4) is a matter to be decided by the Hon'ble Supreme Court in the appeals

[SLP (Civil) Diary No. 27628/2019) filed by the Co-operative Societies in Kerala, against the reference order dated 19-03-2019 of the full bench of Hon'ble High Court of Kerala in the case Mavilayi Service Co-operative Bank Ltd., vs Income Tax Officer, Kannur and that the Apex court has issued notice on the prayer for stay of the order of High Court.

B. The Commissioner (Appeals) Kottayam as well as the assessing Officer ought to have appreciated that even if the appellant is not a Primary Agricultural Credit Co-operative Society the appellant is not a Co-operative Bank and hence eligible for deduction u/s 80P of the Income Tax Act 1961 in the light of the clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT, New Delhi, which is binding on the Assessing Officer.

C. The view of the Commissioner (Appeals) Kottayam as well as the assessing Officer that Primary Agricultural Credit Co-operative Societies only are eligible for deduction u/s Section 80(P) is diametrically opposite to the viewpoints expressed by various appellate authorities all over the country in the decisions mentioned below, to name a few.

(a) High Court of Karnataka in Bangalore Commercial Transport Credit Society Ltd - ITA NO: 598/2013 dated 27-06-2014

(b) High Court of Gujarat - Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 on 15-01-2014

(c) High Court of Karnataka - Income Tax Officer Vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot on 5th Feb 2014

(d) High Court of Bombay at Goa - Quepem Urban Co-operative Credit Society Ltd. vs Assistant Commissioner of Income-tax on 17-04-2015

(e) Madras High Court - The Commissioner of Income Tax vs Nlc Employees Co-Operative Society on 10 August, 2016

(f) ITAT, Panaji - Athani Taluka primary teachers Co-operative credit society Ltd. ITA NO. 06/PNJ/2014 on 04-07-2014

(g) ITAT, Poona - Jankalyan Nagri Sahakari Pat Sanstha Ltd. reported in 24 Taxmann.com (Pune Tribunal) 127

(h) ITAT, Ahamadabad - Jafari Momin Vikas Co-Op. Credit society on 31 October, 2012

(i) ITAT, Indore - Bhee Thrift & Credit Co- operative society on 6 August, 2012

(j) ITAT, Bangalore - Yeshwantpur Credit co-operative Society on 11 April, 2012

(k) ITAT, Ahmedabad-Sarvoday Credit cum Consumers Co-operative Society on 3 May, 2013

(l) ITAT, Pune - Jain Nagri Sahkari Pat Sanstha Department Of Income Tax on 14 September, 2012

(m) ITAT, Pune - Dharasur Mardini Nagar Sahakari on 20 November, 2012

(n) ITAT, Pune - Vardhman Nagari Sahakari Path Sansta on 22 November, 2012

(o) ITAT, Delhi- Palhawas Primary Agriculture Co-op. Society Ltd. Palhawas Distt., I.T.A.No.2368/Del/2011

(p) ITAT, Delhi - Dharuhera Primary Agriculture Co-op. society -I.T.A.No.2371/Del/2011

(q) ITAT, Mumbai - The Income Tax officer, Ward-20(2)(1), Mumbai -ITA No. 1820/MUM/2017 dated 02-08-2018

D. When there is no dearth of decisions of various High Courts and ITATs in India in which detailed discussions were made and conclusion arrived on the subject matter of eligibility for deduction u/s 80P, disallowance of claim under the said Section made by the Assessing Officer and the CI.T. (Appeals) relying on unrelated decisions is denial of natural justice to the appellant.

E. The Appellant prays that the general outlook in the decisions of various High courts and ITATs across the country on the disallowance of claim for deduction u/s 80(P), adopted on the basis of CBDT clarification No. 133/06/2006-07 dated 19-05-2007 shall be taken into consideration while disposing this appeal petition.

F. The Appellant prays that the disallowance of claim for deduction u/s 80(P) made in respect of income from banking and credit business with members may be deleted."

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 cases, the Assessing Officer had denied the claim of deduction u/s 80P of the I.T.Act for the reason that assessees were essentially doing the business of banking and disbursement of agricultural loans by the assessees were only minuscule. Therefore, the Assessing Officer concluded that the assessees 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 assesseees 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 assesseees' 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 assesseees-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 assesseees are dismissed as infructuous.

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

Order pronounced on this 06th day of October, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cochin, dated 06th October, 2020
Devadas G*

Copy to :

1. The Appellants / Applicants.
2. The Respondents
3. The CIT(A), Thrissur.
4. The Pr.CIT, Thrissur.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi