

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

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

ITA No.184/Coch/2020 : Asst.Year 2013-2014
ITA No.185/Coch/2020 : Asst.Year 2014-2015
ITA No.186/Coch/2020 : Asst.Year 2015-2016
ITA No.187/Coch/2020 : Asst.Year 2016-2017
&
SA No.94/Coch/2020 : Asst. Year 2013-2014
SA No.95/Coch/2020 : Asst. Year 2014-2015
SA No.96/Coch/2020 : Asst. Year 2015-2016
SA No.97/Coch/2020 : Asst. Year 2016-2017

M/s. The Karkurissi Service Co-operative Bank Limited 229, Karakurussi, Palakkad – 678 595. [PAN : AADAT7362G.	Vs.	The Income Tax Officer Ward 2 Palakkad.
(Appellant/Applicant)		(Respondent)

ITA No.236/Coch/2020 : Asst.Year 2017-2018
&
SA No.142/Coch/2020 : Asst. Year 2017-2018

M/s. The Kongad Service Co-operative Bank Limited Kongad P.O. Palakkad – 678 631. [PAN : AAFAT5104Q.	Vs.	The Income Tax Officer Ward 2 Palakkad.
(Appellant/Applicant)		(Respondent)

Appellant by : Sri.Sivadas Chettoor, CA

Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 15.09.2020	Date of Pronouncement : 15.09.2020
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ORDER

Per Bench :

These appeals at the instance of the assesseees are directed against different 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 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 assessees are 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 assessees 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 assessees 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 assessees 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:-

"1. The order of the Learned Commissioner of Income Tax(Appeals), Thrissur in so far as it is prejudicial to the interests of the appellant is opposed to law, facts and circumstances of the case.

2. It is submitted that the appellant is clearly eligible for deduction u/s 80P(2)(a)(i) of the Income Tax Act 1961 and the observation or finding to the contrary by the lower authorities are illegal and unsustainable. It is further submitted that on a harmonious and combined reading of all the applicable provisions of law in this connection along with the scheme of the Act, the appellant is clearly eligible for the deduction. A detailed note in support of this ground shall be filed on or before the hearing of this appeal.

3. It is submitted that the denial of deduction u/s 80P(4) of the Act by the lower authorities is illegal and unsustainable in law on a harmonious and combined reading of all the applicable provisions of law in this connection. A detailed note in support of this ground shall be filed on or before the hearing of this appeal.

4. The learned CIT(A) had passed the order based on the decisions of Chirakkal and Perinthalmanna case alone and

failed to consider the other important grounds raised by the appellant. The CIT(A) is duty bound to decide all the issues/grounds raised in the appeal. Therefore the said order violates the natural justice principles besides being illegal.

5. *In the facts and circumstances of the case, the appellant is clearly eligible for deduction of the whole profit attributable to the activities of giving credit facilities to its members under section 80P. The denial of the said deduction by the CIT(A) is illegal, unwarranted and unreasonable.*

6. *The order suffers from serious legal infirmities in so far as the learned officer failed to deal with many important objections raised against the denial of deduction u/s 80P(4) of the Act. The predisposition and the lack of application of mind are plain and glaring. There is a clear violation of natural justice in this case.*

7. *The learned Commissioner of Income Tax(Appeals) acted illegally while ignoring the submission of the appellant that the society falls under the definition of Co-operative credit society u/s 5 (ccii) of the Banking Regulation Act 1949.*

8. *It is submitted that if the department is treating the appellant as a Cooperative Bank then all the other deductions and reliefs provided to the said banks should also be made available to the appellant including the deduction u/s 36(1)(viiia).*

9. *The appellant is eligible for complete exemption from tax on application of the doctrine of mutuality.*

10. *The status of the appellant as AOP as fixed by the AO is not correct with the result that the order passed in the status of AOP is liable to be quashed.*

11. *It is submitted that the Special Leave Petition challenging the full bench decision of the Hon'ble Kerala High court in Mavilayil case ITA No: 97/2016 has been admitted by the Hon'ble Supreme Court and the matter is pending.*

12. *It is submitted that the Chirakkal case is applicable to the appellant in view of the binding decision of the Hon supreme court in Vadilal Chemicals Ltd V s State of AP where it is stated that no tax authorities can reject a binding certificate. It is submitted with utmost respect to the Hon Court that the decision to the contrary in Mavilayil case is to be reconsidered as one rendered per incurium.*

13. *The appellant is eligible for deduction of Rs 50,000/- u/s 80P(2)(c) of the Act in case all the above grounds are found rejected.*

For these amongst other grounds that may permitted to be raised and evidences adduced at the time of hearing it is prayed that the justice be done to the appellant by quashing or modifying the impugned order of assessment."

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 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 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 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 15th day of September, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cochin, dated 15th September, 2020
Devadas G*

Copy to :

1. The Appellants
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