

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

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

ITA No.292/Coch/2020 : Asst.Year 2009-2010

ITA No.293/Coch/2020 : Asst.Year 2014-2015

M/s. Kavannur Service Co-operative Bank Limited C/o.Anil D.Nair, Advocate 39/2661, 2 nd Floor, Panthiyil Towards, Warriam Road Kochi - 682016 PAN : AACAT9559Q.	Vs.	The Income Tax Officer Ward 4 Tirur.
(Appellant)		(Respondent)

Appellant by : Sri.Anil D.Nair, Advocate
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 14.09.2020	Date of Pronouncement : 14.09.2020
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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 25.02.2020. The relevant assessment years are 2009-2010 and 2014-2015.

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 assessee is a co-operative society registered under the Kerala Co-operative Societies Act, 1969. For the assessment years 2009-2010 and 2014-2015, returns were filed after claiming deduction u/s 80P of the I.T.Act. The assessment orders were passed for assessment years 2009-2010 and 2014-2015, 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 assessment years 2009-2010 and 2014-2015. 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 2009-2010 and 2014-2015.

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 order of the Appellate Authority to the extent objected to herein is absolutely illegal, arbitrary and unauthorized.

B. The Appellate Authority went wrong in taking in myopic view of ratio of the Judgment of full Bench reported in [2019]414 ITR 67 (Ker) [FB]. In fact, the Full Bench has directed the Assessing authority to look into the activity undertaken by the Assessee before rejecting the claim of exemption under Sec. 80P. In the facts of the case, it is respectfully submitted that the assessing authority proceeded to reject the claim of the Appellant on the premise that the Appellant is a Primary Co-operative Bank and hence not entitled for exemption. It is therefore respectfully submitted that the issue to be decided is whether the Appellant is a Primary Agricultural Credit Society or a Primary Co-operative Bank as contemplated in the Banking Regulation Act 1949.

C. The Appellate Authority went wrong in confirming that the Appellant is a Primary Co-operative Bank and not a Primary Agricultural Credit Society. It is respectfully submitted that the claim of exemption made by the Appellant is not under Sec. 80P(4) of the Act which applies to Primary Co-operative Bank coming under the purview of the Banking Regulation Act. It is respectfully submitted that the Appellant does not come under the control of RBI and is not involved in banking activities. It is therefore respectfully submitted that the activities undertaken by the Appellant will have to be examined prior to rejecting the claim of exemption. It is respectfully prayed that by following the ratio of the Judgment of the Full Bench of High Court reported in [2019]414 ITR 67 (Ker) [FB] this Hon' ble Tribunal be pleased to direct the Officer to relook the claim of exemption including the issue of classification as to whether the Appellant is a Primary Agricultural Credit Society or as a Primary Co-operative Bank.

D. The assessment has been completed under Sec.143 (3) read with Sec.148. No reasons for reopening has been forwarded to the Assessee. The sanction afforded by the Joint

Commissioner has also not been let known to the Assessee. The Assessee has never got an opportunity to contest the reasons for reopening. Therefore the issue involved is the classification of the Assessee as a Co-operative Bank when there is a certification to the effect that the Assessee is a Primary Agricultural Credit Society. Therefore, applying the ratio of the judgment of the Hon'ble Supreme Court reported in (2003) 259 ITR 9, the entire proceedings are vitiated and is liable to be quashed and set aside.

E. For these and other grounds and documents to be submitted at the time of hearing and it is therefore humbly prayed that the Honorable Tribunal be pleased to allow the appeal."

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 2009-2010 and 2014-2015, 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 be conclusive to prove whether loan is an 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 is for agricultural purpose or not. The A.O. shall list out the instances where loans have been disbursed for non-agricultural purposes etc. and accordingly conclude that the assessee's activities are not in compliance with the activities of a 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. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 14th day of September, 2020.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin, dated 14th September, 2020
Devadas G*

Copy to :

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

Asst.Registrar/ITAT/Kochi