

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

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

ITA No.119/Coch/2020 : Asst.Year 2014-2015

ITA No.120/Coch/2020 : Asst.Year 2015-2016

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| M/s. Kanayannur Co-operative Agricultural and Rural Development Bank Limited No.E.326, Palarivattom Ernakulam – 682 025. [PAN : AACAK7050P. | Vs. | The Income Tax Officer Corporate Ward 1(1) Kochi. |
| (Appellant/Applicant) | | (Respondent) |

Appellant by : Sri.Amaljith

Respondent by : Sri.Mritunjaya Sharma, Sr.DR

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| Date of Hearing : 23.06.2020 | Date of Pronouncement : 25.06.2020 |
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ORDER

Per Bench :

These appeals at the instance of the assessee are directed against two orders of the CIT(A), dated 12.12.2019 and 10.12.2019. The relevant assessment years are 2014-2015 and 2015-2016, respectively.

2. The grounds raised are identical for both the assessment years. The argued ground reads as follow:-

"1. Assessing Officer as well as the Commissioner (Appeals) contravened the CBDT Clarification No.133/6 of 2007 by disallowing entire claim for deduction u/s 80P of the appellant which is not a Co-operative Bank as defined in Part V of the Banking Regulation Act, 1949.

2. Assessing Officer as well as the Commissioner (Appeals), erred in holding that the appellant is eligible for deduction u/s 80P on proportionate basis and went against the scheme and spirit of Section 80P. Appellant being a Primary Co-operative Agricultural & Rural Development Bank as defined in Explanation (b) under sub Section (4) of Section 80P is eligible for deduction u/s 80P for the

income from entire credit business with members irrespective of the nature of loans or its purpose."

3. Brief facts of the case are as follow:

The assessee claims to be a Co-operative Society, registered under the Kerala Co-operative Societies Act, 1969 and is not a Co-operative Bank. For the assessment years 2014-2015 and 2015-2016, the assessee had claimed deduction u/s 80P(2)(a)(i) of the I.T.Act. The Assessing Officer while completing the assessment for the assessment years 2014-2015 and 2015-2016, restricted the deduction u/s 80P of the I.T.Act. The A.O. proportionately allowed the claim of deduction u/s 80P of the I.T.Act to the loans advanced in rural areas (i.e. villages) and for agricultural loans. The A.O. distinguished the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Co-operative Bank Ltd. v. CIT [(2016) 384 ITR 490 (Ker.)]*, by observing as under:-

"The Hon'ble Kerala High Court dated 15.02.2016 had held that if it is a registered society of primary agricultural society by the reserve bank of India, then they are entitled for deduction u/s 80P As far as the fulfillment of conditions as laid down for claim of 80P under the provisions the IT Act, there was nothing before the Hon'ble High Court to make any opinion on such matters. Moreover the Hon'ble jurisdictional High Court decision is contrary to their own decision in the case of Perinthalammana Service Co-operative Bank [2004] 363 ITR 268 Kerala Whereas it was held that with introduction of section 80P [4] necessarily an enquiry has to be conducted into financial situation whether co-operative bank is conducting business as a primary agricultural credit society or a primary co-operative agricultural and rural development bank and depending upon transaction, Assessing officer has to extend benefits available and he would not merely look at registration certificate issued under relevant co-operative society Act or at nomenclature of co-operative bank. After respectfully, considering the jurisdictional Hon'ble High Court

decision dated 15.02.2016, however, since, the department has not accepted the said decision and filed a SLP before the Hon'ble Supreme Court which is pending for disposal and also keeping the above discussion in full view, the deduction u/s 80P claimed by the Assessee stands modified in consistent with the stand taken by the department in earlier year in the Assessee's own case."

4. Aggrieved by the order restricting the claim of deduction u/s 80P of the I.T.Act, the assessee preferred appeals before the first appellate authority. The CIT(A) relying 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 assessee is essentially engaged in the business of banking and the A.O. has correctly restricted the claim of deduction u/s 80P of the I.T.Act. The finding of the CIT(A) for assessment year 2015-2016 reads as follow:-

"5. The AO denied the claim of deduction u/s 80P on the basis of enquiry conducted by him and giving a clear verdict on facts that, even though the assessee is registered as a primary agricultural society, verification of bye-laws and other documents demonstrate that the appellant in reality, is engaged in true banking activities.

Appellant's reliance on the decision is reversed by a Full Bench decision of Hon'ble Kerala High Court by an order, pronounced on March 2019, 2019 in the case of The Mavilayi Service Co-Operative Bank Ltd. vs. CIT, wherein it was held that, 'The AO is not obliged to grant deduction by merely looking at the certificate of Registration issued by the competent Authority under the Co-operative Societies Act. Instead he has to conduct an enquiry into the factual situation as to the activities of the assessee and arrive at a conclusion whether benefits can be extended or not. Chirakkal 384 ITR 490 (Ker.) overruled. Antony Pattukulangara 2012(3) KHC 726 and Perinthalmanna 363 ITR 268 (Ker.) approved. Citizen Co-Operative Society 397 ITR 1 (SC) followed. "

In the instant case, the AO has given a clear finding on the basis of the enquiry conducted by him that the appellant is

engaged in Banking activities. The appellant has given nothing to prove the contrary. The disallowance made is confirmed and this ground is dismissed."

5. Aggrieved by the order of the CIT(A), the assessee has preferred these appeals before the Tribunal. The learned Counsel for the assessee submitted that the assessee is a Co-operative Society, registered under the Kerala Co-operative Societies Act, 1969 and is not a Co-operative Bank. It was submitted that the Kerala State Co-operative Agricultural and Rural Development Bank is the Apex Body of the assessee and it disburses funds to all Co-operative Agricultural and Rural Development Banks similar to the assessee. The Kerala State Co-operative Agricultural and Rural Development Bank fixes the types of loans and the amounts of loan that the assessee should advance for each category of loan. It was submitted that the funds allocated by the Apex Body is the only amounts received by the assessee and no deposits are taken by the assessee from any other entities. Hence, it was contended that the assessee cannot be stated to be doing the business of banking and hence not a Co-operative Bank. It was stated that the assessee is engaged in the business of providing credit facilities to its members, and all Co-operative Societies engaged in the business of banking for providing credit facilities to its members, is eligible for deduction u/s 80P of the I.T.Act. It was contended that the restrictions imposed u/s 80P(4) of the I.T.Act is only for the Co-operative Banks and not to Co-operative Societies. The assessee also relied on the CBDT clarification in Circular No.133 of 2007 dated 09.05.2007, which states that all cooperative societies other than cooperative Banks are eligible for deduction u/s

80P of the I.T.Act. It was further contended that there is a specific exemption to Primary Co-operative Agricultural and Rural Development Banks (PCARD Banks) in section 80P of the I.T.Act. *Explanation (b)* to section 80P(4) of the I.T.Act defines Primary Cooperative Agricultural and Rural Development Bank to mean "a society having its area of operation confined to a Taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities". It was stated that the assessee is a cooperative society as per the definition of cooperative societies u/s 2(19) of the I.T.Act and the operation of the assessee is confined to only one Taluk, namely, Kanayanur Taluk. It was submitted that the principal object of the assessee as per bye-laws is to provide long term loans for agricultural and rural development activities and being a primary cooperative agricultural and rural development bank, the assessee is not hit by section 80P(4) of the I.T.Act.

6. The learned Departmental Representative strongly supported the orders of 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 a Co-operative 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 restricted the claim of deduction for the reason that the assessee was

essentially doing the business of banking and disbursement of agricultural loan by the assessee was very less compared to the total loans advanced. Further, the A.O. was of the view that the assessee was disbursing loan for non-rural development activities. For the above reasons, the A.O. restricted the claim of deduction u/s 80P of the I.T.Act. The A.O. after perusing the narration of loan extracts in the Statutory Audit Report for the assessment years 2014-2015 and 2015-2016, came to the conclusion that the assessee had not advanced any loan for agricultural purposes. We are of the view that the narration of loan in the Statutory Audit Reports by itself may not be conclusive to prove whether the loan is agricultural loan or a non-agricultural loan. Gold loans may or may not be disbursed for the purpose of agricultural purposes. Necessarily, the A.O. has 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 purposes or non-agricultural purposes. Further, the A.O. had stated that the assessee had advanced loans for many non-rural areas. In this context, the assessee's claim is that the assessee's area of operation is confined to one Taluk, viz., Kanayanur Taluk and the bye-laws of the assessee permits only advancement of loan for agricultural and rural development purposes. It is further contended by the assessee that it does not accept any types of deposits except the funds allocated by the Kerala State Co-operative Agricultural and Rural Development Bank, which the Apex Body of the assessee-society. This aspect of the matter has not been considered in detail by the Assessing Officer. 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 cooperative 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. Needless to state, the assessee shall co-operate with the A.O. and shall furnish the necessary details called for. Further, the assessee shall not seek unnecessary adjournment. It is ordered accordingly.

8. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 25th day of June, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 26th June, 2020
Devadas G*

Copy to :

1. The Appellant
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