

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
Before S/Shri Chandra Poojari, AM & George George K, JM**

ITA No.39/Coch/2020
Asst.Year : 2011-12

M/s. Vellanad Service Co-operative Bank Limited, Vellanad Post, Trivandrum-695 543. [PAN : AAAAV 4784F]	Vs.	The Income Tax Officer Ward -2(3), Trivandrum.
(Appellant)		(Respondent)

Appellant by : Shri G. Surendranath Rao, CA
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 02.03.2020	Date of Pronouncement : 02.03.2020
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ORDER

This appeal at the instance of the assessee is directed against the order of the CIT(A), Trivandrum dated 03.09..2019 passed u/s. 154 r.w.s. 250 of the I.T.Act. The relevant assessment year is 2011-12.

2. 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 year 2011-12, the return of income was filed after claiming deduction u/s 80P of the I.T.Act. The Assessing Officer passed an order, disallowing 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) of the I.T.Act was that the assessee was 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 the deduction u/s 80P(2) of the I.T.Act. The Assessing Officer The Assessing Officer also disallowed the claim of deduction with regard to interest income received by the assessee on investments made with District Co-operative Banks and other Banks.

3. Aggrieved by the order of assessment denying the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred appeal to the first appellate authority. The CIT(A) allowed the appeal by holding that the assessee was eligible for deduction u/s 80P of the I.T.Act. The interest income received from other banks and treasury also was allowed as deduction u/s 80P(2)(a)(i) of the I.T.Act. In allowing the appeal of the assessee, the CIT(A) followed the judgment of 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.)*.

4. Subsequently, the CIT(A) issued notice u/s 154 of the I.T.Act proposing to rectify his order passed, in view of the subsequent 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 [ITA No.97/2016 order dated 19th March, 2019]*. The assessee objected to the issuance of notice. However, the CIT(A) rejected the objections raised by the

assessee and passed an order u/s 154 of the I.T.Act, disallowing the claim of the assessee u/s 80P(2) of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal raising the following grounds:

1. The order of the CIT(A) is against law and facts.

2. The Commissioner Appeals should have appreciated that section 154 applies only in the case of errors apparent on records. The Commissioner (Appeals) had originally decided the appeal in favour of the appellant based on the decision of the Kerala High court in Chirakkal Service Cooperative Bank Ltd Vs CIT, Calicut (414 ITR 67) (Ker) which was binding on him. The Commissioner! Appeals) has erred in rectifying his order by invoking section 154 relying on the subsequent full bench decision of the Kerala High court in Mavilayil Service Co-operative Bank Ltd Vs CIT , Calicut (414 ITR 67)(Ker). The Learned Commissioner(Appeals) should have appreciated that the full bench of the Kerala High Court has only held that to ascertain the actual nature of the Cooperative Society as to whether it is a Primary Agricultural Cooperative Society (PACS) it is not enough if only the certificate issued by the Register of Cooperative Societies under the Kerala Cooperative Society Act 1969 is looked into, in other words, it involves a long drawn process of analysis of the principal objects of the society and the adherence to the same in its actual operations. These details were not part of the assessment records. Thus the reliance of the Commissioner(Appeals) on the Kerala High court decision in Killkotagiri Tea and Coffee Estates Co Ltd Vs ITAT(174 ITR 579) (Kerala) to invoke s.154 is not in order. The Commissioner (Appeals) should have appreciated that the decision in Killkotagiri (supra) has been distinguished by the Supreme Court in Mepco Industries Ltd Vs CIT (319 ITR 208) (SC) where it has been held that s.154 will be valid only in a case where there was mistake of law when the order sought to be rectified was originally passed. In the instant case there is no such mistake of law but only a review of the procedure in identifying a Primary Agricultural Credit Society. Rectification carried out by the Commissioner of Appeals) is hence not valid and is based only on a change of opinion as decided in the Supreme court in Mepco Industries Ltd (319 ITR 208)(SC) referred to above.

6. The learned AR relied on the grounds raised.

6.1 The learned Departmental Representative, on the other hand, 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 Kerala High Court in the case of *Kil Kotagiri Tea & Coffee Estates Co. Ltd. v. ITAT* reported in 174 ITR 579 had held that when an authority has decided on the basis of a decision of the High Court which is subsequently reversed, there would be a rectifiable mistake coming within the section 154 of the Income-tax Act. The Larger Bench of the Hon'ble Kerala High Court has reversed the dictum laid down by the judgment of the Hon'ble Kerala High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)* by holding that the activities of the assessee has to be examined to determine whether the assessee is Co-operative society or cooperative bank. In the light of the Larger Bench judgment of the Hon'ble Kerala High Court, the earlier CIT(A) order's granting deduction u/s. 80P(2) of the I.T. Act have been rightly recalled by the CIT(A). Therefore the grounds raised by the assessee that the CIT(A) has erred in passing order u/s. 154 of the I.T. Act are dismissed

7.1 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."*

7.2 The CIT(A) had initially allowed the appeal of the assessee and granted deduction u/s 80P(2) of the I.T.Act. Subsequently, the CIT(A) passed order u/s 154 of the I.T.Act,

wherein the claim of deduction u/s 80P of the I.T.Act was denied, by relying on the judgment of the Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)*. The CIT(A) ought not to have rejected the claim of deduction u/s 80P(2) of the I.T.Act without examining the activities of the assessee-society. The Full Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT (supra)* had held that the A.O. 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. In view of the dictum laid down by the Full Bench of the Hon'ble jurisdictional High Court (supra), we restore the issue of deduction u/s 80P(2) to the files of the Assessing Officer. The Assessing Officer shall examine the activities of the assessee and determine whether the activities are in compliance with the activities of a co-operative society functioning under the Kerala Co-operative Societies Act, 1969 and accordingly grant deduction u/s 80P(2) of the I.T.Act.

7.3 As regards the interest on the investments with Co-operative Banks and other Banks, the co-ordinate Bench order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited in ITA No.525/Coch/2014 (order dated 20.07.2016)*, had held that interest income earned from investments with treasuries and banks is part of banking activity of the assessee, and therefore, the said interest income was eligible to be assessed as 'income from business'

instead of 'income from other sources'. However, as regards the grant of deduction u/s 80P of the I.T.Act on such interest income, the Assessing Officer shall follow the law laid down by the Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT (supra)* and examine the activities of the assessee-society before granting deduction u/s 80P of the I.T.Act on such interest income. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 2nd day of March, 2020.

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. M/s. Vellanad Service Co-operative Bank Ltd., Vellanad Post, Tivandrum-695 543.
2. The Income Tax Officer, Ward-2(3), Trivandrum.
3. The CIT(A), Trivandrum.
4. The Pr.CIT, Trivandrum.
5. The DR, ITAT, Cochin
6. Guard file.

By Order

(Assistant Registrar)
ITAT, Cochin Bench

