IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

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

ITA No.60/Coch/2020 : Asst.Year 2010-2011
ITA No.61/Coch/2020 : Asst.Year 2014-2015
&
SA No.32/Coch/2020 : Asst. Year 2010-2011
SA No.33/Coch/2020 : Asst. Year 2014-2015

M/s. Poomangalam Service Co-operative Bank Limited No.R.712, Aripalam P.O. Thrissur – 680 688. [**PAN : AABAP6092P.**	Vs.	The Income Tax Officer Ward 2(4) Thrissur.
(Appellant)		(Respondent)

Appellant by : Ms.Swathy S., Advocate
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 10.03.2020		**Date of Pronouncement : 12.03.2020**

O R D E R

Per George George K, JM :

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 20.12.2019. The assessee has also preferred stay applications seeking to stay the recovery of outstanding tax arrears. The relevant assessment years are 2010-2011 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

proportionately 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 2010-2011 and 2014-2015, `Nil' returns were filed after claiming deduction u/s 80P of the I.T.Act. The assessment orders were passed for assessment years 2010-2011 and 2014-2015, wherein the Assessing Officer disallowed part of claim of deduction u/s 80P of the I.T.Act. The A.O. allowed deduction u/s 80P of the I.T.Act only proportionately to the extent of agricultural loan disbursed by the assessee. The reasoning of the Assessing Officer to disallow a portion of 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 in respect of disbursement of non-agricultural loan. The relevant finding of the Assessing Officer for assessment year 2010-2011 reads as follow:-

> *"27. Summing up the above discussions above, following facts emerge:-*
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> *(1) The assessee has claimed deduction u/s.80P of the Income Tax Act, 1961, as the assessee has been Registered and Classified as Primary Agricultural Credit Society by the Jt. Registrar of Societies.*

(2) As per Explanation given under Section 80P(4) of the Income Tax Act, 1961, deduction u/s 80P(2)(a)(i), can be allowed only on compliance of Banking Regulation Act, 1949, because the definition of Banking as per Section 80P should be in accordance and compliance with Banking Regulation Act, 1949.

(3) In the case of The Chirakkal Service Cooperative Bank Ltd. Vs. The CIT (ITA No.212 of2013, the Hon. Kerala High Court has held that since the assessee has been registered as Primary Agricultural Credit Society (PACS) and classified as such by the competent authority, the assessee is entitled to deduction u/s.80P of the Income Tax Act, 1961. While delivering the said judicial pronunciation, whether assessee cooperative society being a PACS, could do Banking Activities have not come for consideration of the Hon. Kerala High Court.

(4) Verification of data made available shows that the assessee is not only doing providing of financial accommodation to the members for agricultural purposes or for purposes connected with agricultural activities, but also doing banking activities with the public.

(5) Hon. Kerala High Court in the case of Muhammed Usman vs Registrar Of Co-Operative ... on 29 November, 2002, Equivalent citations: AIR 2003 Ker 299,2003 116 CompCas 505 Ker, 2003 (1) KLT 69 has held that Primary Agricultural Credit Society is permitted to provide financial accommodation only to its members and that too for agricultural purposes and purposes connected with agricultural activities.

(6) Central Board of Direct Tax Circular No. No.133/6 of 2007 dtd:9/5/2007 states that if the said entity is not being a co-operative bank, section 80P(4) of the Act would not apply to it.

(7) As per Banking Regulation Act, 1949, discussed in detail by Hon. Kerala High Court in Muhammed

Usman supra, when Share Capital of a cooperative credit society, which is doing banking activity, exceeds Rs.1 lakh, such society automatically attains the character of Cooperative Bank.

(8) In the case of Quepem Urban Cooperative Credit Society Ltd. (2015) 63 Taxmann 300(SC), the ITAT, Panaji Bench has stated that "In our opinion it is not necessary that the cooperative society should have a banking licence as per the definition under the Income Tax Act for carrying on banking business. If licence is not obtained it may an illegal banking business under the other statute." Since the activities of the assessee Primary Agricultural Credit Society, other than providing financial accommodation only to its members and that too for agricultural purposes and purposes connected with agricultural activities, is not permissible, in view of Hon'ble Kerala High Court's decision in Muhammed Usman vs Registrar Of Co-Operative supra and affirmed by the decision in Cherukode Co-Op. Rural Bank Ltd. vs Parur Service Co-Op. Bank supra, in view of Explanation to Section 37 (1) of the Income Tax Act, 1961, no any expenditure is allowable in the case of assessee.

(9) In view of decision of the Hon. Kerala High Court in the case of The Chirakkal Service Cooperative Bank Ltd. Vs. The CIT (ITA No.212 of 2013, since the by laws of the assessee cooperative society does not contain any prohibitory clause for admission of other cooperative societies and the by-laws itself allows admission of Self Helf Groups, Kudumbasree etc., which can also be registered as Cooperative Societies, the assessee cannot be treated as eligible for deduction u/s.80P.

(10) In view of above facts, it is very much clear that the assessee is not eligible for claiming deduction u/s.80P(2)(a)(i) of the Income Tax Act, 1961, for the income earned from such Banking Activities.

5. Aggrieved by the orders passed by the Assessing Officer disallowing major portion of 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 2010-2011 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. Accordingly disallowance of part 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 2010-2011 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 Commissioner (Appeals) Thrissur 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. Hon'ble High Court of Kerala has also instructed that the question of the effect of the decisions of the different High Courts touching clarification No. 133/2007 issued by the CBDT is left open to be considered by the Tribunal. [IT A.No. 32 of*

2016 dated 18/03/2016].

B. The view of the Commissioner (Appeals) Thrissur as well as the Assessing Officer that Primary Agricultural Credit Co-operative Societies alone are eligible for deduction u/s Section 80(P) is diametrically opposite to the clarification of CBDT (supra) and the decisions of various appellate authorities all over the country. Commissioner did not make it clear why the CBDT circular and the related decisions were not binding on the Assessing Officer while passing the assessment order. Some of the decisions of appellate authorities on applicability of Section 80P/80P(4) are given below:-

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

C. When almost all decisions of various High Courts and ITATs in India had made detailed discussions and arrived into a conclusion on the subject matter of eligibility for deduction u/s 80P in favour of credit co-operative societies which are not licensed by R.B.I., and such co-operative societies all over India whose activities are similar that of the appellant, are enjoying the benefit, disallowance of claim for deduction under the said Section by the Assessing Officer and the C.I.T. (Appeals), Thrissur, relying on unrelated decisions is denial of natural justice.

D. The Commissioner (Appeals) Thrissur failed to understand that the reference order dated 19-03-2019 of the full bench of Hon'ble High Court of Kerala in the case of Mavilayi Service Co-operative Bank Ltd., vs Income Tax otticer, Kannur was confined to the issue whether the Assessing Officer should conduct enquiry on the activities of a co-operative society to find out if it is really eligible for deduction u/s 80Por not in the light of the provisions under sub-section (4) of Section 80P. The Court has not commented anything on the allowability of deduction u/s 80P. In fact, the Full Bench of Hon'ble High Court in Mavilayi case (supra) had not attempted to considered those issues regarding allowability of deduction u/s 80P. vide para 6 of the Order. Commissioner (Appeals) without knowing this aspect held that the issue of allowability of deduction u/s 80P to the PACS has been considered in the case of Mavilayi Service Co-operative Bank Ltd., vs Income Tax Officer, Kannur. vide para 9 of the appellate order. Therefore, the entire findings and conclusion of the Commissioner (Appeals) are misconceived. Since CBDT had clarified that a co-operative society is eligible for deduction u/s 80P if it is not a Co-operative Bank as defined in Part V of the Banking Regulation Act 1949 and High Courts all over India have adopted the same view, the only thing to be enquired by the Assessing Officer in view of the order in Mavilayi (supra) is limited to the extend to find out whether the Appellant is a co-operative Bank or not. Appellant, not being a Co-operative Bank, is eligible for deduction u/s 80P as defined in Part V of the Banking Regulation Act 1949. Commissioner (Appeals) failed to verify the veracity of the Assessment order as if the final authority to decide the allowability of deduction u/s 80P is the Assessing Officer, by virtue of the order in the Mavilayi case (supra) and therefore the appellate order is liable to be quashed.

E. Appellant is not a Co-operative Bank in as much as appellant is not a State Co-operative Bank or a

Central Co-operative Bank or a Primary Co-operative Bank. Since appellant receives deposits from the members only the primary object or principal business of the appellant cannot be treated as Banking. Further, the byelaws of the appellant permit admission of other co-operative societies as members. Therefore, appellant is not a Primary Co-operative Bank by definition provided in Part V of the Banking Regulation Act 1949.

F. Assessment Order is bad in law in as much as the reason recorded for the issuance of notice u/s 148 was that the appellant did not file the return of income. It is a settled position in law that non-filing of return of income cannot be a reason to believe that the income has escaped assessment [Hon'ble High Court of Bombay in W.P. © No.1155 of 2016 dated 20/07/2016]

G. 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."

6.1 The learned AR relied on the grounds raised, however, did not raise any argument with regard to the reopening of assessment as valid or not. 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 a portion of 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 to the extent of the disbursement of agricultural loan alone, assessee is entitled to deduction u/s 80P(2) of the I.T.Act. The Assessing Officer after perusing the narration of the loan extracts for the financial period 2009-2010 and 2013-2014, came to the conclusion that out of the total loan disbursement, only a minuscule portion has been advanced for agricultural purposes. The narration in loan extracts / 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. Further, the A.O. has not examined to what extent loans, if any, has been disbursed to non-members. There is a passing statement at para 15 of the assessment order that there has been disbursement of non-agricultural loans to non-members as well. There has been no detailed examination of these aspects 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. Therefore, in view 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 to non-members of assessee-society, for non-agricultural purposes etc. and accordingly conclude that the assessee's 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 assessee are dismissed as infructuous.

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

Order pronounced on this 12th day of March, 2020.

Sd/-	**Sd/-**
(Chandra Poojari)	**(George George K.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cochin, dated 12th March, 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