

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

**BEFORE S/SHRI B P JAIN, AM & GEORGE GEORGE K, JM**

**ITA No 358/Coch/2016  
(Asst Year 2012-13 )**

The Income Tax Officer Ward 1 Kottayam	Vs	The Ettumanoor Service Coop Bank Ltd Peroor Road Ettumanoor Kottayam 686 631
<b>( Appellant)</b>		<b>(Respondent)</b>

<b>PAN No.</b>	AACFT7631G
Assessee By	Sh Matew Joseph
Revenue By	Sh A Dhanraj, Sr DR
Date of Hearing	16 <sup>th</sup> Nov 2016
Date of pronouncement	17 <sup>th</sup> Nov 2016

**ORDER**

**PER GEORGE GEORGE K, JM;**

This appeal, at the instance of the revenue, is directed against the CIT(A)'s order dated 6<sup>th</sup> June 2016. The relevant assessment year is 2012-13.

2 The grounds raised in this appeal read as follows:

*The order of the learned Commissioner of Income tax (Appeals), Kottayam in so far as the points stated below are concerned, is opposed to law on the facts and in the circumstances of the case.*

*2. The Ld. Commissioner of Income Tax (Appeals) has erred in deleting the disallowance of deduction claimed by the assessee under section 80P(2)(a)(i) of the Act.*

*3. While placing reliance on the decision of the Kerala High Court in the case of The Chirakkal Service Co-operative Bank Ltd in ITA No.212 of 2013, the Ld. (IT (A) ought to have considered whether the assessee-society claiming the status of "Primary Agricultural Credit Society" has actually fulfilled the primary object or principal business of providing agricultural loans to agriculturists.*

4. *The Ld. CIT (A) ought to have also considered an earlier decision of the jurisdictional High Court in WP No.14226 of 2012 dated 14-09-2012 in the case of Thathamangalam SCB Ltd. in which the court has held that Hit is very much obligatory for the petitioner-societies who claim the status and the benefits of Primary Agricultural Credit Societies to substantiate that their main object of incorporation is being continued to be fulfilled as well".*

5. *In view of the two different judgements of the jurisdictional High Court on the same issue, the Ld. (IT (A) ought not to have allowed the deduction merely on the strength of the certificate issued by the Registrar of Co-operative Societies.*

6. *The Ld. CIT (Appeals) also erred in allowing deduction u/s 80P(2)(a)(i) in respect of interest expense of Rs. 44,97,0181 - disallowed by the Assessing Officer in the absence of adequate evidence for" the above expenditure.*

*For these and other grounds that may be advanced at the time of hearing, the order of the learned Commissioner of Income tax (Appeals) on the above points may be set aside and that of the Assessing Officer restored.*

3 Grounds 2 to 5 relate to the issue of deduction u/s 80P(2)(a)(i) of the I T Act.

4 Briefly stated the facts in relation to the above issue are as follows:

The assessee is a Primary Agricultural Cooperative Society registered under the Kerala Cooperative Societies Act, 1969. The return of income for the assessment year 2012-13 was filed on 26.2.2013 disclosing the taxable income at Rs. 4,65,980/- after claiming deduction amounting to Rs. 79,57,892/- u/s 80P of the I T Act. The assessment was completed u/s 144 of the I T Act vide order dated 13.3.2015. The Assessing Officer completed the assessment by making certain additions and rejecting the claim of benefit of deduction u/s 80P(2)(a)(i) of the Act.

5 Aggrieved by the disallowance u/s 80P(2)(a)(i), the assessee preferred appeal to the first appellate authority. Before the CIT(A), it was contended that for the AYs 2010-11, 2011-12 and 2013-14, the Division Bench of the Hon'ble jurisdictional High

Court in the case of the Chirakkal Service Cooperative Bank Ltd & others in ITA No.212 of 2013 ( Judgment dated 15<sup>th</sup> February 2016) in which the assessee was also a party, had decided the matter in favour of the assessee. The CIT(A), after going through the arguments, evidences on record and taking note of the judgment of the Hon'ble jurisdictional High Court (supra) held that the assessee is entitled to the benefit of deduction u/s 80P(2)((a)(i) of the Act for the relevant assessment year namely 2012-13. The relevant findings of the CIT(A) read as follows:

*"10 I have carefully one through the arguments and records and documents produced before me and also taken into consideration the jurisdictional High Court's decision in similar cases and the fact that the appellant has got deduction under section 80P(2)(i)(a) for the assessment year 2010-2011, 2011-12 and 2013-14. There was no material or different facts that are in support to disallow the claim for the assessment year under reference. Thus, I hold that the assessee is eligible for exemption under section 80P(2)((i)(a) for the assessment year 2012-13."*

6 Aggrieved by the order of the CIT(A), the revenue is in appeal before us. The Id DR placed reliance on the grounds raised in the appeal memo. On the other hand, the Id counsel for the assessee placed reliance on the judgment of the Hon'ble Jurisdictional High Court in the case of the Chirakkal Service Cooperative Bank Ltd (supra).

7 We have heard the rival submissions and perused the material on record.. The Hon'ble jurisdictional High Court in the case of The Chirakkal Service Cooperative Bank Ltd & others (supra) has held that the primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969 is entitled to the benefit of deduction u/s 80P(2). The Hon'ble High Court was considering the following substantial question of law:

*a) Whether on the facts and in the circumstances of the case under consideration, the Tribunal is correct in law in deciding against the assessee, the issue regarding entitlement for exemption under section 80P, ignoring the fact that the assessee is a primary agricultural credit society?*

7.1 In considering the above question of law, the Hon'ble High Court rendered the following findings:

*"15. Appellants in these different appeals are indisputably societies registered under the Kerala co-operative societies Act, 1969, for sort, KCS Act and the bye-laws of each of them, as made available to this court as part of the paper books, clearly show that they have been classified as primary agricultural credit societies by the competent authority under the provisions of that Act. The parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other things, the registration of a society under any State law relating to co-operative societies for the time being; it cannot but be taken that the purpose of the societies so registered under the State Law and its objects have to be understood as those which have been approved by the competent authority under such State law. This, we visualise as due reciprocal legislative exercise by the Parliament recognising the predominance of decisions rendered under the relevant State Law. In this view of the matter, all the appellants 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 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. This is the consequence of the definition clause in section 2(oaa) of the KCS Act. The authorities under the IT Act cannot probe into any issue or such matter relating to such applicants.*

*16. The position of law being as above with reference to the statutory provisions, the appellants had shown to the authorities and the Tribunal that they are primary agricultural credit societies in terms of clause (cciv) of section 5 of the BR Act, having regard to the primary object or principal business of each of the appellants. It is also clear from the materials on record that the bye-laws of each of the appellants do not permit admission of any other co-operative society as member, except may be, in*

*accordance with the proviso to sub-clause 2 of section 5(cciv) of the BR Act. The different orders of the Tribunal which are impeached in these appeals do not contain any finding of fact to the effect that the bye- laws of any of the appellant or its classification by the competent authority under the KCS Act IS anything different from what we have stated herein above. For this reason, it cannot but be held that the appellants are entitled to exemption from the provisions of section 80P of the IT Act by virtue of sub- section 4 of that sect; on. In this view of the matter, the appeals succeed.*

*17. In the light of the aforesaid, we answer substantia<sup>1</sup> question 'A' in favour of the appellants and hold that the Tribunal erred in law in deciding the issue regarding the entitlement of exemption under section 80P against the appellants. We hold that the primary agricultural credit societies, registered as such under the KCS Act; and classified so, under that Act, including the appellants are entitled to such exemption."*

7.2 In the instant case, the assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The certificate, which has been issued by the Registrar of Cooperative Societies, to the above effect, is placed on record. The Hon'ble jurisdictional High Court in assessee own case and other batch of cases had held that primary agricultural credit societies registered under the Kerala Cooperative Societies Act, 1969 are entitled to the benefit of deduction u/s 80P(2)(i)(a) of the Act. Since there is a certificate issued by the Registrar of Cooperative Societies stating that the assessee is a primary agricultural credit society, we hold that the assessee is entitled to the benefit of deduction u/s 80P(2)(a) of the I T Act. Accordingly, the ground nos 2 to 5 are dismissed. It is ordered accordingly.

8 As regards ground no 6, the brief facts are as follows:

The Assessing Officer had made a ad-hoc disallowance of 5% out of the total interest paid by the assessee on the deposits received from its members. The amount of such disallowance was Rs. 44,97,108/-. The Assessing Officer had added the same under the head 'business income'. On further appeal by the assessee, the disallowance made by the Assessing Officer was confirmed by the CIT(A) for the reason that the entire details of deposits were not submitted before the Assessing Officer and therefore, the Assessing Officer was justified in making the ad-hoc disallowance of interest @5% out of the total interest payment. The CIT(A), however, granted deduction u/s 80P on the enhanced income on account of disallowance of interest expenditure. The relevant finding of the CIT(A) in this regard read as follows:

*"13. The addition made of Rs. 44,97,108/- by the Assessing Officer has been upheld in paras 6 & 7 of this order. However, the said addition is eligible for deduction u/s 80P. The following case laws are relevant here:*

- i) Buldana Urban Coop Credit Society Ltd vs ACIT – IT appeal nos 151 to 153 and 179 to 181(ITAT Nagpur) Of 2012*
- ii) Karad Merchant Sah. Credit Sanstha vs ITO – ITA No. 159/PN/09 (AY2005-06) of ITAT Pune.*

*14 In the above referred cases the ITATs, Nagapur and Pune had allowed the issue in favour of assessee. Based on the above cited orders of the ITATs, the argument of the AR is upheld and deduction u/s 80P is allowed for the amount of addition made u/s 68 of the I T Act."*

9 Aggrieved by the above action of the CIT(A) in allowing deduction u/s 80P of the Act, the revenue is in appeal before us. The Id DR present was duly heard. On the other hand, the Id Counsel for the assessee reiterated the submissions made before the Income Tax Authorities and relied on the findings of the CIT(A).

10 We have heard the rival submissions and perused the material on record. The Assessing Officer while making the ad-hoc disallowance of interest paid had brought the same to tax under the head "income from business". Once the same is brought to tax as 'income from business', the said income is entitled to the benefit of deduction u/s 80P(2)(i)(a) of the Act. In taking the above view, we placed reliance on the following orders of the Tribunal:

- i) Buldana Urban Coop Credit Society Ltd vs ACIT – IT appeal nos 151 to 153 and 179 to 181(ITAT Nagpur) Of 2012*
- ii) Karad Merchant Sah. Credit Sanstha vs ITO – ITA No. 159/PN/09 (AY2005-06) of ITAT Pune.*

10.1 The CBDT, in the recent circular no.37/2016 dated 2<sup>nd</sup> Nov 2016 has considered higher deduction u/s 80P on the enhanced profit as a result of disallowance of expenditure. The CBDT had clarified that, as a result of expenditure disallowance, there is a enhanced profit and the same is brought to tax as business income, deduction under Chapter VI-A need to be allowed on the enhanced profit.

10.2 In light of the above reasoning, we hold that the CIT(A) is justified in granting benefit of deduction u/s 80P(2)(i)(a) of the Act, as regard to interest that was disallowed amounting to Rs 44,97,108/-. Accordingly, ground no.6 also is rejected.

11 In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on this 17<sup>th</sup> day of Nov 2016.

Sd/- <b>(B P JAIN)</b>	Sd/- <b>(GEORGE GEORGE K)</b>
<b>Accountant Member</b>	<b>Judicial Member</b>

Cochin: Dated 17<sup>th</sup>, Nov 2016

**Raj\***

Copy to:

1. Appellant –
2. Respondent –
3. CIT(A)
4. CIT,
5. DR
6. Guard File

By order

Assistant Registrar  
ITAT, COCHIN