

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH (SMC)  
KOCHI**

**BEFORE SHRI GEORGE GEORGE K, Judicial Member**

**ITA No 395/Coch/2014  
(Asst Year 2010-11)**

M/s Karuvanthiruthy Service Co-operative Bank Post- Karuvanthiruthy Kozhikode	Vs	The Income tax Officer Ward 2(3), Kozhikode
<b>( Appellant)</b>		<b>(Respondent)</b>

<b>PAN No.</b>	AAABK0519N
Assessee By	Sh A V Muraleedharan
Revenue By	Sh A Dhanaraj, SR DR
Date of Hearing	3 <sup>rd</sup> Jan 2017
Date of pronouncement	3 <sup>rd</sup> Jan 2017

**ORDER**

**PER GEORGE GEORGE K, JM:**

This appeal is restored to the Tribunal by the Hon'ble Kerala High Court vide judgment dated 16<sup>th</sup> June 2016 in ITA no.72 of 2015.

2 Brief facts of the case are as follows:

The assessee is a cooperative society registered under the Kerala Cooperative Societies Act, 1969. The assessee had failed to file the return of income for the AY 2010-11. Since the assessee had failed to file the return of income, the AO issued a notice u/s 142(1) requiring the assessee to file return of income. The assessee neither complied with this notice nor filed return of

income in terms of section 139 or 142(1) of the Act and hence, the Assessing Officer proceeded to initiate best judgment assessment u/s 144 of the Act as per the notice issued u/s 142(1) of the Act. Accordingly, the Assessing Officer called for details, which were required by her to complete the assessment u/s 144 of the Act. During the course of assessment proceedings, the assessee filed a return of Income on 15.2.2013, which was beyond the time allowed u/s 139 and the time given in notice u/s 142(1) and, therefore, the Assessing Officer treated the same as invalid. On the basis of materials gathered during the course of assessment, the Assessing Officer worked out the total income of the assessee from business at Rs.29,39,870/-. While completing the assessment, the Assessing Officer disallowed the claim of deduction u/s 80P by invoking the provisions of section 80A(5) of the Act.

3 Aggrieved by the assessment, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the assessment order by following the order of the Cochin Bench of the Tribunal in the case of M/s Kadachira Service Co-operative Bank Ltd. Vs ITO ( 153 TTJ 129(Cochin).

4 Aggrieved by the above order of the CIT(A), the assessee preferred appeal to the Tribunal. The Tribunal vide order dated 5.12.2014 disposed off the appeal of the assessee. The Tribunal held that since the return was not filed within the time prescribed u/s 139(1) or u/s 139(4), the assessee was not entitled

to the benefit of deduction u/s 80P of the Act in view of section 80A(5) of the Act.

5 Aggrieved by the order of the Tribunal, the assessee preferred further appeal u/s 260A of the Act. The Hon'ble Kerala High Court, vide judgment dated 16.6.2016 in ITA No. 72 of 2015, restored the matter to the Tribunal. It is in this context, the case was heard on 3<sup>rd</sup> Jan 2017.

6. I have heard the rival parties and perused the material on record. As regards the belated filing of return, the Hon'ble High Court has decided the issue in favour of the assessee. The Hon'ble High Court had held that the Tribunal was not justified in denying the benefit of exemption u/s 80P of the Act on the mere ground of belated filing of return of income. The Hon'ble High Court was considering the following substantial question of law:

*"B Whether the Tribunal is justified in denying the exemption u/s 80P of the I T Act 1961 on the mere ground of belated filing of return by the assessee?"*

*C. Whether a return filed by the assessee beyond the period stipulated u/s 139(1)/(4) or section 142(1)/148 can be held as non-est in law and invalid for the purpose of deciding exemption u/s 80P of the I T act, 1961?"*

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

*"18. Questions B & C relate to denial of exemption on ground referable to belated filing of return, that is to say, returns filed beyond the period*

stipulated under section 139(1) or section 139(4) as the case may be as well as section 142 (1) or section 148, as the case may be. There are no cases among these appeals where returns were not filed. There are cases where claims have been made along with the returns and the returns were filed within time. Still further, there are cases where returns were filed belatedly, that is to say, beyond the period stipulated under sub section 1 or 4 of section 139; and there are also returns filed after the period with reference to sections 142(1) and 148 of the IT Act.

19. Section 80A(5) provides that where the assessee fails to make a claim in his return of income for any deduction, inter alia, under any provision of chapter VIA under the heading "C- Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder. Therefore, in cases where no returns have been filed for a particular assessment year, no deductions shall be allowed. This embargo in section 80A(5) would apply, though section 80P is not included in section 80AC. This is so because, the inhibition against allowing deduction is worded in quite similar terms in sections 80A(5) and 80AC, of which section 80A(5) is a provision inserted through the Finance Act 33/2009 with effect from 1.4.2013 after the insertion of section 80AC as per the Finance Act of 2006 with effect from 1.4.2006. This clearly evidences the legislative intendment that the inhibition contained in sub section 5 of section 80A would operate by itself. In cases where returns have been filed, the question of exemptions or deductions referable to section 80P would definitely have to be considered and granted if eligible.

20 Hence, question would arise as to whether belated returns filed beyond the period stipulated under section 139(1) or section 139(4) as well as following sections 142(1) and 148 proceedings could be considered for exemption. If those returns are eligible to be accepted in terms of law, going by the provisions of the statute and the governing bind precedents, it goes without saying that the claim for exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration.

21 When a notice under section 142(1) is issued, the person may furnish the return and while doing so, could also make claim for deduction referable to section 80P. Not much different is the situation when pre-assessment enquiry is carried forward by issuance of notice under section 142 (1) or when notice is issued on the premise of escaped assessment referable to section 148 of the IT Act. This position notwithstanding, when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in

*modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. Under such circumstances, the Tribunal was not justified in denying exemption under section 80P of the IT act on the mere ground of belated filing of return by the assessee concerned. A return filed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non-est in law and invalid for the purpose of deciding exemption under section 80p o the IT Act. We thus, answer substantial questions of law Band C formulated and enumerated above."*

6.2 In light of the above judgment of the Hon'ble High Court, the belated filing of return of income by the assessee does not disentitle it from the benefit of deduction u/s 80P(2) of the Act. Further, the assessee, in the instant case, is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The certificate has been issued by the Registrar of Cooperative Societies to the above said effect and the same is on record. The Hon'ble High Court, in the case of Chirakkal Service Co-operative Bank Ltd reported in 384 ITR 490(Ker), had held that primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of deduction u/s 80P(2). Since there is a certificate issued by the Registrar of Cooperative Societies, stating that the assessee is a primary agricultural credit society, I hold that the assessee is entitled to the benefit of deduction u/s 80P(2) of the Act. It is ordered accordingly.

7 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 3<sup>rd</sup> day of Jan 2017.

Sd/-  
**GEORGE GEORGE K**  
Judicial Member

Cochin: Dated 3<sup>rd</sup> Jan 2017

**Raj\***

Copy to:

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

By order

Assistant Registrar  
ITAT, COCHIN