

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.436 to 438/Coch/2016
Assessment Years : 2009-10 to 2011-12

The Income Tax Officer, Ward-3, Tirur	Vs.	M/s. Nannambra Service Co-operative Bank Ltd. No. 393, Kodinhi P.O., Malappuram-676 309. [PAN: AABAN 8024D]
(Revenue-Appellant)		(Assessee-Respondent)

C.O. Nos. 40 to 42/Coch/2016 (Arsg. out of I.T.A. Nos.436 to 438/Coch/2016)
Assessment Years : 2009-10 to 2011-12

The Income Tax Officer, Ward-3, Tirur	Vs.	M/s. Nannambra Service Co-operative Bank Ltd. No. 393, Kodinhi P.O., Malappuram-676 309 [PAN: AACAT 1200G]
(Assessee- Appellant)		(Revenue-Respondent)

Revenue by	Shri A. Dhanaraj, Sr. DR
Assessee by	Shri M. Ram Kumar Menon, CA

Date of hearing	29/01/2018
Date of pronouncement	8 th /02/2018

ORDER

Per GEORGE GEORGE K. JUDICIAL MEMBER:

These appeals at the instance of the Department and the Cross Objections filed by the assessee are directed against the consolidated order of the CIT(A) dated 27/06/2016. The relevant assessment years are 2009-10 to 2011-12.

2. Since common issue is raised in these appeals and the Cross Objections, they were heard together and are being disposed of by this consolidated order.

3. Identical grounds are raised in the appeals filed by the Revenue and they read as follows:

1 The order of the learned Commissioner of Income Tax(Appeals) is against law, facts and circumstances of the case.

2. Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax(Appeals) is right in law in holding that the assessee is eligible for claiming deduction under section 80P of the Income Tax Act when the assessee failed to fulfil the principal objective of providing agricultural credits to members?

3. The Kerala Co-operative Societies Act(Amendment) Act, 2010, Act 7 of 2010 stipulates that if the principal objective of providing agricultural credits to members is not fulfilled, such society shall lose all characteristics of a Primary Agricultural Credit Society. In view of this, is not the decision of the CIT(A) is against law?

4. The Hon'ble High Court of Kerala had in the case of M/s Perinthalmanna Service Co-operative Bank Vs CIT in ITA No 4 of 2014 held that "an enquiry has to be conducted into the factual situation whether cooperative bank is conducting the business as Primary Agricultural Credit Society or a Primary Co-operative agricultural and rural development bank and

depending upon the transactions, the Assessing Officer has to extend the benefits available and not merely looking at the registration certificate by the Kerala Co-operative Societies Act or the nomenclature".

5. In view of the above, the reliance placed by the CIT(A) in the decision of the Hon'ble High Court of Kerala in the case of M/s. Chirakkal Service Co-operative Bank and others in ITA No. 212 of 2013 is not correct, especially when a contrary view was taken by another division bench of the High Court of Kerala in the case of M/s. Perinthalmanna Service Co-operative Bank in ITA No. 4 of 2014.

6. The decision of the Hon'ble High Court of Kerala in the case of M/s. Chirakkal Service Co-operative Bank and others in ITA No. 212 of 2013, relied on by the Commissioner of Income Tax(Appeals) has not become conclusive as the deduction was not accepted by the department and SLP is being filed in the Supreme Court.

7. For these and other grounds that may be urged at the time of hearing, it is requested that the order of the CIT(A) may be set aside and that of the Assessing Officer restored.

3.1 The Revenue has also filed additional ground which is identical for all the assessment years. The additional ground raised reads as follows:

1. The learned CIT(Appeals) ought to have seen that the Hon'ble Supreme Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. V. CIT reported in 203 ITR 1027(SC) had held that eligible deduction under section 81(l)(d) [substituted by section 80P by the Finance (No.2) Act,1967 w.e.f. 01/04/1968] of the Income Tax Act,1961 in respect of cooperative societies/banks doing both agricultural and non-agricultural activities should not be 100% of the gross profits and gains of business of such societies etc. but should be limited to the profits generated from agricultural activities alone performed by such assesses.

2. The learned CIT(Appeals) ought to have seen that the above Apex Court's decision is in sharp contrast to the decision of the Kerala High Court in the case of M/s Chirakkal Service Co-operative Bank & Ors. in ITA No.212 of 2013 that held that the authorities under the Income Tax Act cannot probe into question whether the assessee cooperative Society is a 'primary agricultural credit society', once it is registered and classified as 'primary agricultural credit society' by the competent authorities under the provisions of the Kerala Co-operative Societies Act,1969.

3. The learned CIT(Appeals) ought to have brought his attention to the decision of the Honourable High Court in the case of Perinthalmanna Service Co-operative Bank Ltd. reported in (2014) 363 ITR 268 (Kerala) wherein it was held that 'with introduction of section 80P(4) necessarily, an enquiry has to be conducted into factual situation whether co-operative bank is conducting business as a primary agricultural credit society or primary co-operative agricultural and rural development Bank and depending upon transactions, Assessing officer has to extend benefits available, and he would not merely look at the registration certificate issued under the relevant Cooperative Societies Act or at nomenclature of Co-operative Bank.

4. The learned CIT(Appeals) ought to have seen that the Apex court has admitted the SLPs filed by the Department against the decisions of (1) the Honourable Kerala High Court in the case of M/s Karakulam Service Cooperative Bank and (2) the Honourable Karnataka High Court in the case of CIT V. Lokmanya Multipurpose Cooperative Society Ltd. Reported in Part 4 of 394 ITR (ST.)

4. Briefly stated the facts of the case are as follows:

The assessee is a primary agricultural credit society registered under the Kerala Co-operative Societies Act, 1969. For the assessment years 2009-10, 2010-11 and 2011-12, the assessments were completed by denying the benefit of deduction u/s. 80P(2) of the I.T. Act. The Assessing Officer had denied the claim of deduction u/s. 80P(2) of the Act for the reason that the assessee cannot be considered as primary agricultural credit society as it was engaged in the business of banking and only negligible percentage of loans disbursed by the assessee was for agricultural purposes.

5. Aggrieved by the denial of deduction u/s. 80P(2) of the Act, the assessee preferred appeals to the first appellate authority. The CIT(A) decided the issue in favour of the assessee by following the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. vs.CIT reported in 384 ITR 490.

6. Aggrieved by the consolidated order of the CIT(A), the Revenue has filed the present appeals before the Tribunal. The Ld. DR, apart from relying on the grounds and the additional grounds raised by the Revenue, has filed a brief written submission. The contents of the same are reproduced below:

"In the case of NSCB Ltd, out of the total loan sanctioned, only negligible percentage given for agricultural purpose.

Return filed	A.Y.	percentage (only agriculture)	Agriculture Allied
17-10-2013 (in response to 148)	2009-10	5.90 %	48.21%
17-10-2013 (do)	2010-11	9.40 %	47.22%
17-10-2013 (do)	2011-12	9.40 %	47.22%.

Hence the Assessing Officer denied the exemption claimed u/s 80 P. The CIT (A) allowed the appeal of the assessee relying on the Kerala High Court decision in the case of M/s. Chirackkal Co-Op. Bank Ltd Vs CIT in ITA No: 212/Coch/2013 dated 15-02-2016.

The SLP is being filed by the Department before the Hon. Supreme Court. Further reliance is placed on the Hon. Supreme Court judgment reported in 203 ITR 1027-case of Sabarkanthe Zilla Kharid Vechan Sangh Vs. CIT(held- what was deductible u/s 80P((1) was only that portion of said amount as can be called total income attributable to activities

defined in clause (5) of 80 B. i.e. deduction from tax available only in relation to net profit and not gross profit)

2. Further in view of the provisions of 80 P (4) of the I.T. Act and amendment made to S-2(v)v) in the Kerala Co-Op. Societies Act (Amendment) Act 2010, Act 7 of 2010, order of A.O & CIT (A) be upheld and appeal filed by assessee be dismissed.

3. As may be seen from para 1 above, appellant assessee has filed return of income for the A.Y. 2007-08 to 2010-11 beyond limit given u/s 139(1). In view of the judgement reported in 266 ITR 1 (SC) - Prakashnath Khanna & Another vs. CIT, order of the AO & CIT (A) be upheld.

6.1 Apart from the written submission, the Ld. DR has also relied on the judgment of the Hon'ble Apex Court in the case of Citizen Service Co-operative Bank Ltd. vs. ACIT reported in 397 ITR 1.

6.2 The Ld. AR has filed paper book comprising of 163 pages enclosing, argument notes for the assessment years 2009-10, 2010-11 and 2011-12, bye-laws of the assessee-Society, certificate of registration certifying that the assessee is a primary agricultural credit society etc. The Ld. AR reiterated the submissions made before the CIT(A) and strongly relied on the findings of the CIT(A).

7. We have heard the rival submissions and perused the material on record. An identical issue was considered by this Tribunal in the case of Edanad-Kannur Service Co-operative Bank Ltd. and others in I.T.A. Nos. 431 to 433/Coch/2017 &

others dated 10/01/2018. The Tribunal followed the judgment of the Hon'ble High Court of Kerala in the case of Chirakkal Service Co-operative Bank Ltd. (supra). The Tribunal held that the judgment of the Hon'ble Apex Court in the case of The Citizens Co-Operative Society Limited vs Assistant Commissioner of Income Tax, reported in 397 ITR 1 (SC) is not applicable to the facts of the case.

The relevant finding of the Tribunal dated 10/01/2018 is reproduced below:

"8. I have heard the rival submission and perused the material on record. The undisputed facts are that the assesseees in these cases are all primary agricultural credit society and they are registered as such under the Kerala Cooperative Societies Act. The Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Limited & Ors. (supra) had categorically held in para 17 page 14 of the judgment that when a primary agricultural credit Society is registered as such under the Kerala Co-operative Societies Act, 1969, such society is entitled to the benefit of deduction u/s 80P(2) of the Income-tax Act. 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?"

8.1 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 Cooperative societies Act 1969, for short, 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 thing 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 visualize as due reciprocative legislative exercise by the Parliament

recognizing 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 subsection 4 of that sect; on. In this view of the matter, the appeals succeed.

17. In the light of the aforesaid, we answer substantial 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."

8.2 In the instant case, the assessee's are all 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 cited supra, 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, going by the judgment of the Hon'ble jurisdictional High Court, assessee is entitled to

deduction u/s 80P(2). However, the Revenue's contention is that the Hon'ble Apex Court in the case of Citizens Cooperative Society Ltd. (supra) categorically decided when deposits are received from general public / nominal members or loans are disbursed to general public / nominal members, the assessee would be doing the business of banking and therefore, would not be entitled to deduction u/s 80P(2) of the Income-tax Act. In the context of the submission made by the Revenue let me examine whether the judgment of the Hon'ble Apex Court in the case of Citizens Co-operative Society Ltd. (supra) has application to the facts of the present case.

9. The Hon'ble Apex Court judgment in the case of Citizen Co-operative Society (supra) Ltd. was rendered in the context of eligibility of a Credit Co-operative Society for deduction under section 80 P of the Act. The Apex Court, referring to the specific facts of the case held that the assessee therein is not entitled for deduction under section 80P of the Income-tax Act. In the aforesaid case, the Hon'ble Apex Court was not dealing with a case of eligibility of a Primary Agricultural Credit Society for deduction under section 80P of the Income-tax Act. The Hon'ble Supreme Court at Para 23 of the aforesaid judgment had emphasized that even after the amendment made to the provisions of section 80 P of the Act by insertion of section 80P(4) of the Income-tax Act, the Primary Agricultural Credit Society is eligible for deduction under section 80 P of the Act.

9.1 The assessee society in the case considered by the Hon'ble Supreme Court was established on 31-5-1997 and was registered under section 5 of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. Thereafter as the operations of the assessee had increased manifold and spread over states of Erstwhile, Andhra Pradesh, Maharashtra and Karnataka, the assessee-society got itself registered on 26.07.2005 under the Multi State Co-operative Societies Act, 2002 (MACSA)

9.2 The Hon'ble Apex Court in the aforementioned case specifically took note of the factual findings of the assessing officer (which was stated in para 15 of the judgment) referring to the bye laws and the provisions of Mutually Aided Cooperative Societies Act, 1995. The assessing officer was of the view that the assessee therein cannot admit 'nominal members' and most of the deposits were taken from such category of person (as they were not members as per the provisions referred). The Apex Court in para 25 of the Judgment has pointed out that the main reason for disentitling the assessee from getting the deduction provided under section 80 P of the Act is not sub-section (4)

of the Act. On the contrary, the Hon'ble Apex Court held that the Credit Co-operative Society was not entitled for deduction u/s 80P of the Act for the reason of categorical finding of the A.O. that the activities of the assessee are in violation of the Provisions of the MACSA under which it is formed as the substantial deposits were from 'nominal members' who are actually non-members as per the provisions of law referred. The Hon'ble Apex Court specifically took note of the fact that the assessee therein has carved out a category of 'nominal members' who are infact not the members in the real-sense. Therefore the deposits received from the carved out category viz nominal members who are not the members as per the provisions of the law referred to therein and without the permission of the Registrar of Societies was held to be violative of the provisions and were treated/ proceeded with as deposits from the Public.

In other words, in the case before the Hon'ble Supreme Court, the finding on the principle of mutuality was arrived at interalia; on the factual finding that the assessee was receiving deposits mostly from a carved out category of member viz 'nominal member' who are not members as per the provisions of law referred,, and that most of the business of the assessee therein was with this carved out category of person and also granting loans to public and without the approval from the Registrar of the Societies.

9.3 As far as the Kerala Co-operative Societies Act which is applicable to the present cases are concerned, the definition of a 'member' as provided in Section 2(1) of the Kerala Cooperative Societies Act includes a nominal member. Section 2 (1) of the said Act is as follows:

"Member" means a person joining in the application for the registration of a co-operative society or a person admitted to membership after such registration in accordance with this Act, the Rules and the Bye law and includes a nominal or associate member"

9.4 The 'nominal member' is defined under 2(M) of the Kerala Co-operative Societies Act, 1969, which reads as follow: -

"(m) nominal or associate member' means a member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in the bye-laws;"

9.5 Therefore, in the present cases, the nominal members are members as provided in law and deposits from such nominal members cannot be

considered or treated as from the non-members or from public as was noted by the Apex Court judgment cited supra.

9.6 In this context, it is relevant to mention that the Hon'ble Supreme Court in the case of U.P. Co-operative Cane Union v. Commissioner of Income-tax (1999) 237 ITR 574 (SC)-para 8 of the judgment has observed as under:-

"8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the co-operative society claiming exemption, has been formed. It is, therefore, necessary to construe the expression "members" in Section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Co-operative Societies Act."

9.7 The Bombay High Court in Jalgaon District Central v. UOI (2004) 265 ITR 423 (Bom) in the light of the above Supreme Court judgment had held that nominal member is also member under the Maharashtra Co-operative Societies Act and entitled for benefits under section 80P. [Para 17 to 20 of the judgment], as under:-

"17. In case of M/s U. P. Co-op. Cane Union Federation Ltd., Lucknow (cited supra), the Supreme Court has held that the expression "Member" is not defined in the Income Tax Act. Since the Co-operative Society has to be established under the provisions of law made by the State Legislature in that regard, the expression "Member" in Section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of law enacted by the State Legislature under which the co-operative society claiming exemption has been formed. The Supreme Court has further observed that it is necessary to construe the expression "Member" in Section 80P(2)(a)(i) of the Act in the light of the definition of "Member" given under Section 2(n) of the U.P. Co-operative Societies Act, 1965.

18. The definition of "Member" given in Section 2(19) of the Maharashtra Co-operative Societies Act, 1960 takes within its sweep even a nominal member, associate member and sympathizer member. There is no distinction made between duly registered member and nominal, associate and sympathizer member.

19. In the case of K.K.Adhikari (cited supra), Division Bench of this Court has held that the definition of a Member under Section 2(19) of the Maharashtra Co-operative Societies Act, 1960 includes a nominal member or a sympathizer member. It is further held that notwithstanding the fact that a nominal member does not enjoy all the rights and privileges which are available to an ordinary member, his status is that of a member as defined in Section 2(19) of the Act.

20. Division Bench of this Court in the case of The Commissioner of Income Tax, Nasik (cited supra) has also taken a similar view that the definition of "Member" under section 2(19)(a) of the Maharashtra Co-operative Societies Act, 1960 includes a nominal member. It is further held by the Division Bench that there is nothing in Section 80P(2)(iii) of the Income Tax Act to the contrary."

9.8 As per section 3 of the Banking Regulation Act, 1949 the provisions of Banking Regulation Act shall not apply to Primary Agricultural Credit Societies. The explanation to section 80P(4) states that 'Primary Agricultural Credit Society' and 'Co-operative Bank' will have the same meaning as provided in Part V of the Banking Regulation Act, 1949. The explanation provided after clause (ccvi) of section 5 r.w.s 56 of the Banking Regulation Act specifically provides that if any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final. The Reserve Bank of India, which is the competent authority as per the Banking Regulation Act, treats assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within the ambit of Banking Regulation Act. The Reserve Bank of India has given letters to the societies similar to assessee stating that they are Primary Agricultural Credit Societies and therefore in terms of section 3 of the Banking Regulation Act are not entitled for banking license; (Copies of such letter from RBI are placed on record).

9.9 That being the case, the assessing officer was not competent and did not possess the jurisdiction to resolve / decide the issue as to whether the assessee was a 'Primary Agricultural Credit Society' or a 'Co-operative bank', within the meaning assigned to it under the provisions of the Banking Regulation Act and to take a contrary view especially in view of the Explanation provided after the clause (ccvi) of section 5 r.w.s Section 56 of the Banking Regulation Act.

9.10 In view of the aforesaid reasoning, I hold that the judgment of the Hon'ble Apex Court in Citizen Co-operative Society Ltd. is not applicable to the facts of the present case. According to me, the judgment of the Hon'ble jurisdictional High Court is identical to the facts of the present cases and is squarely applicable. Therefore, I hold that the CIT(A) has correctly allowed the claim of deduction in the above cases and I uphold the orders of the CIT(A). It is ordered accordingly.

10. In the result, these appeals filed by the Revenue are dismissed."

7.1 The facts of the instant cases are identical to the facts considered by the Tribunal in the above cases. Following the order of the Tribunal in the above mentioned cases, we hold that the CIT(A) is justified in directing the Assessing Officer to grant deduction u/s. 80P(2) of the Act.

7.2 Before concluding, it has to be mentioned that the case law relied on by the Revenue in the grounds, additional grounds are not applicable to the facts of the present case. Undisputedly, the assessee is a primary agricultural credit society and is providing credit facilities to its members for agriculture and agriculture allied activities. The competent authority of Co-operative Department of Government of Kerala having been satisfied with the activities of the assessee, has classified the assessee as PACS (primary agricultural credit society). The Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Limited & Ors. (supra) has elaborately considered the issue and has categorically held that the certificate issued by the competent authority in this regard is binding and the income tax authorities have no right to probe further.

7.3. In Ground Nos. 4, 5 & 6 of the Memorandum of Appeal, it is mentioned that the CIT(A) has erred in not placing reliance on the judgment of the Hon'ble Jurisdictional High Court in the case of M/s. Perinthalthana Service Co-operative Bank Ltd. vs. CIT reported in 363 ITR 268. The Hon'ble High Court in the above mentioned case was disposing of the appeal filed by the assessee, challenging the order passed by the ITAT upholding the validity of the order passed by the Commissioner u/s 263 of the Act. In the said judgment, the Hon'ble High Court upheld the order of the ITAT, after directing the Assessing Officer to pass a fresh assessment order untrammelled by any of the views expressed by the revisionary authority. Whereas the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. (supra) was in respect of the assessment order passed by the Assessing Officer denying the deduction u/s. 80P and is identical to the facts of the present case.

7.4 Further the Reserve Bank of India, which is the authority under the Banking Regulations Act to decide as to whether a Co-operative Society is a Primary Agricultural Credit Society or not, has vide letter UBD(T) No. 438/12-01-008/2013-14 dated 25/10/2013 informed The Secretary, The Madai Co-operative Rural Bank Ltd. No. F.1233, Head Office, Payangadi Kannur-670303 and vide letter No. UBD(T) No.440/12-01-008/2013-14 dated 25/10/2013, The Kadirur Service Co-operative Bank Ltd. No.F 1262 HO – Kadirur, Kannur-670 642 that an

institution registered as a Primary Agricultural Credit Society (PACS) is not entitled to obtaining a Banking License, which implies that an entity which is registered as a Primary Agricultural Credit Society cannot be a Bank. A copy of said letter is on record.

7.5 In the additional grounds of appeal, the Revenue has placed reliance on the judgment of the Hon'ble Apex Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. vs. CIT reported in 203 ITR 1027 (SC). In the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra), the assessee-society was effecting sales of agricultural inputs of both members as well as non members. The assessee claimed share of the gross profit out of the transactions with members as a deduction from the combined net profit. On the contrary, in the instant case, the assessee had extended credit facilities only to the members. The Revenue does not have a case that such credit facilities are extended to the outsiders. Therefore the income generated in the instant case is only out of the transaction with the members. Deduction u/s. 80P is allowed only for the said income. The assessee had claimed deduction u/s. 80P only in respect of net income which is derived by extending credit facilities to the members. For the aforesaid reasons, the judicial pronouncements relied on by the Revenue in the grounds and the additional grounds does not have application to the instant case. Therefore, we hold that CIT(A)'s order is correct and in accordance with law. It is ordered accordingly.

8. The Cross Objections filed by the assessee are supportive of the orders of the CIT(A). Since we have dismissed the appeals of the Revenue, the Cross Objections filed by the assessee have been rendered infructuous and we dismiss the same as infructuous. It is ordered accordingly.

9. In the result, the appeals filed by the Revenue are dismissed and the Cross Objections filed by the assessee are also dismissed.

Pronounced in the open court on 8th February, 2018.

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER
Place : Kochi

Dated: 8th February, 2018

GJ

Copy to:

1. M/s. Nannambra Service Co-operative Bank Ltd. No. 393, Kodinhi P.O., Malappuram-676 309
2. The Income Tax Officer, Ward-2, Tirur.
3. The Commissioner of Income-tax(Appeals), Kozhikode.
- 4.. The Pr. Commissioner of Income-tax, Kozhikode.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin