

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, COCHIN**

Before Shri George George K, Judicial Member

ITA No.176/Coch/2020 : Asst.Year 2014-2015

M/s. The Sholayoor Service Co-operative Bank Limited No.P-1169, Kottathara Palakkad – 678 581. [PAN : AABAT6892R.	Vs.	The Income Tax Officer Ward 4 Palakkad.
(Appellant)		(Respondent)

Appellant by : Sri.Sivadas Chettoor, CA

Respondent by : Sri.B.Sajjive, Sr.AR

Date of Hearing : 08.06.2020	Date of Pronouncement : 08.06.2020
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ORDER

This appeal at the instance of the assessee is directed against the order of the CIT(A), dated 17.02.2020. The relevant assessment year is 2014-2015.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming the Assessing Officer's order in denying the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act.

3. 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 2014-2015, 'Nil' return was filed after claiming deduction u/s 80P of the I.T.Act. The assessment order was passed for assessment year 2014-2015, wherein the Assessing Officer disallowed 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)(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.

4. Aggrieved by the order passed by the Assessing Officer disallowing the claim of deduction u/s 80P(2) of the I.T.Act, the assessee preferred appeal before the first appellate authority for assessment year 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 and assessee cannot be termed as primary agricultural credit society. Accordingly disallowance 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 appeal filed by the assessee was rejected by the CIT(A) for assessment year 2014-2015.

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

"The appellant, Viz Sholayoor Service Cooperative Bank Ltd is assessed as A.O.P by Income Tax Officer, Ward-4, Palakkad. For Assessment Year 2014-15 appellant filed return on 10/06/2015 declaring income at Rs.NI.L after claiming deduction u/s 80P amounting to Rs.42,172/-. The case was selected for scrutiny under CASS Notice U/S 143(2) was issued on 27-07-2016 following notice u/s 142(1) on 01-09-2016 calling for certain particulars which were duly

furnished. Shri Sivadas Chettoor, FCA, attended hearing on various dates.

The Learned Income Tax Officer (AO) took the view that the appellant is not eligible for deduction U/s 80P as the appellant lend only-a small portion for agricultural' purposes and therefore cannot be claimed as a primary Agricultural society for Financial Year 2013-14. After elaborate discussion AO came to conclusion that the appellant is not eligible for deduction u/s 80P. The Income Tax Officer also mentioned about the admission of SLP by Honorable Supreme Court on 25/11/2016 against the Kerala High Court judgment in ITA 156/2014 dated 15/02/2016 in the case of Madai service cooperative bank Ltd v/s ITO.

Thus the AO passed the final order on 19/12/2016 refixing the total income at Rs.5,23,997/-. As per the audit report issued by the Registrar of Cooperative Societies under the Kerala Cooperative Societies Act 1969 net profit was shown at Rs.42,172/- to which he added 29,61,431/- being inadmissible claims of expenses and reserves etc. He also deducted Rs. 24,79,606/- being income which is not liable to be included in the total income. He also initiated penalty proceedings U/S 271(1) (c), 271 B & 271 F of the Income Tax Act 1961 for concealment of income, delay in filing audit report/filing return etc.

Assessment order along with the demand notice was served on 29/12/2016. The appellant, being aggrieved by the illegal action taken by the department, filed an appeal before the Hon'ble Commissioner of Income Tax (Appeals), Thrissur, seeking relief and justice based inter alia on the Grounds of Appeal attached separately on 28/01/2017. The appellant was called for hearing and the authorised representative of the appellant appeared and the case was discussed with him. The Appellant relied on the decision of Kerala High Court in Chirakkal Service co-operative Bank Ltd and Others [2016] 384 ITR 490 (Kerala).

The Learned CIT(A), after referring the submissions made by the appellant and the analyzing the view taken by the assessing officer on the appellant's grounds, came to a conclusion that based on the decision of the Hon'ble High Court of Kerala In Mavilayi case and Citizen Co-operative Society case, the onus is cast on the appellant to prove with evidence that the activities of the appellant are conducted in accordance with the objectives of the PACS and in this case the appellant failed to do the same. Hence, the appellant is not eligible for 80P deduction.

Also, the assessment done by the officer in the status of AOP is acceptable as the appellant is not held as PACS. The learned CIT(A) also denied the appellant's eligibility to avail the deduction u/s 36(1)(viiia). The appeal filed by the appellant was dismissed by the CIT(A) and passed an Order under section 143(3) dated 17.02.2020.

It is against the illegal demand that the appellant is now before the Hon'ble Income Tax Appellate Tribunal, Kochi seeking justice based on grounds of appeal attached and other grounds and evidences that may be raised and adduced."

5.1 The learned AR relied on the grounds raised. The learned Departmental Representative, on the other hand, strongly supported the orders passed by the Income Tax Authorities.

6. I 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."

6.1 In the instant case, the Assessing Officer had denied the 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 that the assessee cannot be treated as co-operative society. The Assessing Officer after perusing the narration of the loan extracts in the statutory audit report for assessment year 2014-2015, came to the conclusion that out of the total loan disbursement, only a minuscule portion has been advanced for agricultural purposes. I am of the view that the narration in loan extracts in the 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 this case, such a detailed examination has not been conducted 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. In the light 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)*, I am 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 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 this appeal 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.

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

Order pronounced on this 08th day of June, 2020.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 08th June, 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