

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

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

ITA No. 355/Coch/2020
(Assessment Year: 2017-18)

SA No. 194/Coch/2020
(Assessment Year: 2017-18)

M/s. Mugu Service Co-Operative Bank Ltd. Mugu P.O., Puthige Kasaragod 671321	Vs.	Income Tax Officer, Ward-1 & TPS Kasaragod
---	-----	--

PAN – AACAM7915R

Appellant

Respondent

Appellant by: Shri T.M. Sreedharan
Respondent by: Shri B. Sajjiv, Sr. DR

Date of Hearing: 21.10.2020
Date of Pronouncement: 21.10.2020

ORDER

Per Bench :

These appeal at the instance of the assessee is directed against the orders of the CIT(A), dated 08.09.2020. The assessee has also preferred stay application seeking to stay the recovery of outstanding tax arrears. The relevant assessment year is 2017-18.

2. The solitary issue 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) 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 2017-18, return was filed after claiming deduction u/s 80P of the I.T. Act. The assessment

order was passed for the relevant assessment years, wherein the Assessing Officer disallowed the claim of deduction u/s 80P of the I.T. Act by passing order u/s 154 of the 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. 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 years 2014-2015 and 2015-2016.

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

- "1. The order of the Commissioner of Income Tax(Appeals), Kozhikode, in I.T.A. No.11113/2019-20 dated 8.09.2020 for the Assessment Year 2017--18 is opposed to law, facts & circumstances of the case.*
- 2. The CIT(A) went wrong in sustaining the gross total income assessed as per the Assessment Order dated 13.12.2019.*
- 3. The CIT(A) went wrong in his finding that the appellant is not eligible for deduction u/s 80P(2)(a)(i) of the Income Tax Act. In this connection, it is respectfully submitted that the Assessing Officer and the CIT(A) should have held that the appellant is a Primary Agricultural Credit Society(PACS) and is governed by the Kerala Co-operative Societies Act, 1969.*

4. *The Appellate Authority should have found that the exclusion from exemption as per Sub Sec.(4) of Sec.80P would not apply to the appellant, since the appellant is a Primary Agricultural Credit Society.*
5. *In this connection, the appellant respectfully submits that the appellant is a Co-operative Society registered under the Kerala Co-operative Societies Act 1969. The area of operation of the Society is Mugu village from the time of its inception. The principal object of the Society is to provide short term and medium term loan for various agricultural purposes to its members, such as procurement of seeds, manure, pesticides and agricultural impediments etc. The dealings of the Society are with its own members. The Society has been enjoying the exemptions and deductions as per Section 80P of the Act in the past.*
6. *For the Assessment Year 2011-12, the deduction u/s 80P(2) was denied by the Assessing Officer. However, the Income Tax Appellate Tribunal, Cochin Bench as per ITA No.68/C/2015 dated 17.8.2016 accepted the claim for exemption/deduction and also the claim that the assessee is a Primary Agricultural Credit Society. The Certificate of Registration issued under the Kerala Co-operative Societies Act and bye-laws were also considered to come to the conclusion that the assessee is a Primary Agricultural Credit Society and providing agricultural credit facility to its members.*
7. *In this connection, it is also submitted that the people of Mugu Village are basically agriculturists and are members of the Society. The people of the village are agriculturists. The principal object is to lend money for agriculture and rural development activity in the area. The assessee is lending money for the agriculture and rural development activities of the area. Granting of loans to its members is for agricultural purposes, as also sometimes, on the strength of personal security, jewel loan etc. Loans are given for rural development and such other permissible activities at concessional rate of interest to its members. Rural development also includes education, medical facility, employment, housing and upliftment of population of the area and other developmental activities of the locality to be performed by the members of the society.*
8. *It is also respectfully submitted that Section BOP of the Act provides for deduction from gross total income, income referred to in sub section (2) of Section BOP, in accordance with and subject to the provisions of Section in computing the total income of the assessee.*
9. *Clause A(1) and sub section (2) provides for deduction of the income from carrying on business of banking or providing credit facilities to its members as well as any other income falling under sub clauses (ii), (iii), (iv), (v), (vi) and (vii).*

10. Sub Section (4) of BOP restricts the claim for deduction to a co-operative Bank, other than a Primary Agricultural Credit Society or Primary Co- operative Agricultural and Rural Development Bank.
11. The CIT(A) also failed to consider that in Part-V of the Banking Regulation Act, 1949, a "Primary Agricultural Credit Society" whose primary object or principal business, is (i) to provide financial accommodation to its members for agricultural purposes or for the purposes connected with agricultural activities, including the marketing of crops; and (ii) the bye- laws of which do not permit admission of any other Co-operative Society as a member are eligible for exemption/deduction. These provisions were highlighted before the CIT(A), who has failed to appreciate and consider the above grounds judiciously.
12. A perusal of the order of the CIT(A), would also show that the impugned order passed by him is mechanically and without application of mind and hence, liable to be set aside.
13. Kind attention of this Hon'ble Tribunal is also invited to the CBDT Circular NO.133 of 2007 dated 9.05.2007 explaining the scope of Sub Sec.(4) of Sec.80P. It was clarified that Sec.80P(4) will exclude only Co-operative Banks which are not credit Societies. So much so, Credit Co-operative Societies, which are not Co-operative Banks are not excluded under Sub Sec.(4) of Sec.80P and that Sub Section would not apply .
14. This Hon'ble Appellate Tribunal has taken a decision, in the case of M/s Pattambi Service Co-operative Bank Ltd., in favour of the Society under similar circumstances and the same principle is applicable to the assessee's case vide I.T.A. NO.97/Coch/2020 and similar other connected appeals.
15. The appellant humbly prays that the grounds of appeal before the CIT(A), may kindly be treated as part of these grounds.
16. The appellant craves leave to raise additional grounds at the time of hearing.

For these and other grounds that may be urged at the time of hearing, the appellant humbly prays that the Hon'ble Income Tax Appellate Tribunal, Cochin Bench, Cochin, may kindly be pleased to set aside the order of the CIT(A), Kozhikode, in I.T.A. No.11113/2019-20 dated 8.09.2020 and the order of the Assessing Officer dated 13.12.2019, allow the appeal and render justice."

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. 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 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 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 in 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 is not 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 periods under consideration, 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 be conclusive to prove whether loan is an 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's. 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)*, 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 is for agricultural purpose or not. The A.O. shall list out the instances where loans have been disbursed for non-agricultural purposes and accordingly conclude that the assessee's activities are not in compliance with the activities of a 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. Needless to state, the assessee shall co-operate with the A.O. and shall furnish the necessary details called for. Further, the assessee shall not seek unnecessary adjournment. It is ordered accordingly.

7. Since we have disposed of the appeal, the stay application filed by the assessee is dismissed as infructuous.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay application is dismissed.

Order pronounced on this 21st day of October, 2020.

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Cochin, Dated: 21st October, 2020

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -Kozhikode
4. The Pr.CIT - Kozhikode
5. The DR, ITAT, Cochin
6. Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p