

IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN

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

ITA No.523/Coch/2016 : Asst.Year 2012-2013

The Income Tax Officer Ward 1, TPS Aluva.	Vs.	M/s.The Ernakulam Co- operative Agricultural & Rural Development Bank Limited, No. E-87, Bye Pass Junction, Aluva - 683 101. <b>PAN : AAAAE1659C.</b>
(Applicant)		(Respondent)

CO No.7/Coch/2017 : Asst.Year 2012-2013

M/s.The Ernakulam Co- operative Agricultural & Rural Development Bank Limited, No. E-87, Bye Pass Junction, Aluva - 683 101.	Vs.	The Income Tax Officer Ward 1, TPS Aluva.
(Cross Objector)		(Respondent)

Revenue by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : Sri.T.M.Sreedharan

Date of Hearing : 04.10.2018	Date of Pronouncement : 05.10.2018
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the Revenue and the Cross Objection preferred by the assessee are directed against CIT(A)'s order dated 19.10.2016. The relevant assessment year is 2012-2013.

2. The grounds raised by the Revenue read as follows:-

*"1. The Order of the Commissioner of Income tax (Appeals-II), Kochi, in ITA No.15A/ALY/CIT(A)-II/15-16 dated 19-10-2016, is opposed to law, facts and circumstances of the case.*

*2. The learned Commissioner of Income Tax (A) erred in allowing the assessee's appeal holding the facts and circumstance of the case as identical to the case of Chirakkal Service Co-operative Bank Ltd, Kannur Vs. CIT 2016(2) KHC 726 decided by the Honourable High Court of Kerala. The decision of the Honourable High Court relates to the exemption in terms of Section 80P(4) in respect of Co- operative Banks classified as 'Primary Co-operative Agricultural Credit Society whereas the assessee is registered as 'Primary Co-operative Agricultural and Rural Development Bank' under the Kerala Co-operative Societies Act 1969.*

*3. The learned Commissioner of Income Tax (A) ought to have considered the Assessing Officer's contention that the assessee does not meet the definition of a Primary Co-operative "Primary Co-operative Agricultural and Rural Development Bank' as given in explanation (b) of Section 80P(4), as its area of operation is not confined to a Taluk.*

*The learned Commissioner of Income Tax (A) ought to have considered the decisions of ITAT, Jaipur Bench 'B' Jaipur in ITA No.764/JP/2011 dated 23-03-2012 in the case of Kekri Sahakari Bhumi Vikas Bank Ltd. and ITAT, Indore in the case of M/s. Vidisha Bhopal Kshetriya Gramin Bank in ITA No.215& 216/Ind/2011 dated 18-06-2012 which have considered the explanation (b) to Section 80P(4). It states that 'Primary Co-operative Agricultural and Rural Development Bank' means a society having its area of operation confined to a taluk and primary object of which is to provide for long term credit for agricultural and rural development activities'. It has been held that the explanation (b) to section 80P(4) is*

*a defining provision employing the word 'means'. The same had to be strictly construed. The Honourable Supreme Court in the case of West Bengal State Warehousing Corporation Vs Indrapuri Studio Pvt. Ltd. (in Civil Appeal NO.3865 of 2006 dated 19-10-2010) held that the word 'means' in a definition signifies a hard and fast definition.*

*The learned Commissioner of Income Tax {A} erred in not considering the Assessing Officer's finding that during the Assessment year 2012-13, for a period of seven months from 01-04-2011 to 31-10-2011, the area of operation of the assessee extended to two taluks, Aluva and Paravur and as such for the A.Y 2012-13 the condition of Explanation (Q) of Section 80P(4) of a "society having its area of operation confined to a taluk" is not met.*

*4. The learned Commissioner of Income Tax (A) erred in not considering the Assessing Officer's finding that the bye-laws of the bank do not specify that the principal object of the bank is to provide long term credit for agriculture and rural development.*

*5. The learned Commissioner of Income Tax (A) erred in treating the rental income as the 'profits and gains' mentioned in Section 80P(2)(c) which is assessable under the specific head "Income from House Property" under the Income Tax Act.*

*6. For these and other grounds that may be urged at the time of hearing, it is requested that the order of the Commissioner of Income tax (Appeals) may be set aside and that of the Assessing Officer restored."*

3. Brief facts of the case are as follows:-

The assessee is a Co-operative Agricultural and Rural Development Bank, registered under the Kerala Co-operative

Societies Act, 1969. For the assessment year 2012-2013, the assessment was completed u/s 143(3) of the I.T.Act vide order dated 31.3.2015. In the said order, the claim of deduction u/s 80P of the I.T.Act was disallowed for two reasons, viz., (i) assessee was primarily engaged in the business of banking and in view of insertion of section 80P(4) of the I.T.Act with effect from 01.04.2007, the assessee is not entitled to deduction u/s 80P; and (ii) assessee's area of operation is not confined to a taluk.

4. Aggrieved by the assessment completed, the assessee preferred an appeal to the first appellate authority. The CIT(A), following the judgment of the Hon'ble jurisdictional High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. & Ors. v. CIT [(2016) 384 ITR 490 (Ker.)]*, held that the assessee is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act as well as 80P(2)(c) of the I.T.Act. The relevant finding of the CIT(A) read as follows:-

*"7. I have gone through assessment order and submission of the appellant. I find this issue squarely covered by the decision of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd., Kannur Vs. CIT 2016 (2) KHC 726, as the facts and circumstances of the instant case is identical to the one decided by Hon'ble Kerala High Court.*

*Respectfully following the decision of Hon'ble Kerala High Court in the above mentioned case, I hold that the appellant is eligible for deduction u/s 80P(2)(a)(i) and 80P(2)(c) and the assessing officer is directed to allow the deduction to the appellant."*

5. Revenue being aggrieved by the order of the CIT(A), has filed the present appeal before the Tribunal. The learned Departmental Representative relied on the grounds raised.

5.1 The learned AR, on the other hand, submitted that the insertion of section 80P(4) of the I.T.Act w.e.f. 01.04.2007 would not affect the allowability of deduction u/s 80P(2)(a)(i) of the I.T.Act in respect of assessee. It was submitted that the assessee was registered under the Kerala Co-operative Societies Act, 1969, as a Co-operative Rural Development Bank, therefore, the provisions of section 80P(4) of the I.T. Act will not have application. The learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. & Ors. (supra)*.

5.2 As regards the assessee's area of operation to more than one taluk, it was submitted that the amendment was carried out in the bye-laws of the assessee and its area of operation was confined to Aluva taluk in Ernakulam District. It was submitted that these changes were carried in the financial year 2011-2012, relevant to the assessment year 2012-2013.

6. We have heard the rival submissions and perused the material on record. Section 80P(2)(a)(i) was denied for two reasons by the Assessing Officer. The CIT(A) while allowing the claim of the assessee had not adjudicated the issue whether the assessee can be granted deduction u/s 80P, when the assessee's area of operation is confined to more than one taluk. Provisions of section 80P is very clear and benefit of the

section can be granted only to those co-operative societies, whose activities are confined only to one taluk. In the instant case, the Assessing Officer has held that the assessee's operations during the relevant assessment year have extended to two taluks, viz., Aluva and Paravoor. This finding of the Assessing Officer has been objected to by the assessee by stating that the bye-laws have been amended during the relevant assessment year and the assessee's operations were confined to only Aluva taluk. We find that this issue was not adjudicated by the CIT(A), and therefore, in the interest of justice and equity, we deem it appropriate to restore the matter to the CIT(A) for *de novo* consideration. We also noticed that the CIT(A) has directed the A.O. to grant deduction u/s 80P(2)(c) of the I.T.Act. There is no discussion by the CIT(A) for granting benefit of deduction u/s 80P(2)(c) of the I.T.Act. For this reason also, we vacate the finding of the CIT(A) and direct him to consider the entire case afresh. The CIT(A) shall also take into consideration the orders of the Cochin Bench of the Tribunal in the cases of (i) M/s.Kottayam Agricultural & Rural Development Bank Limited v. ITO (order dated 25.05.2017) and (ii) M/s.Meenachil Agricultural & Rural Development Bank Limited v. ITO (order dated 03.10.2017), wherein it was categorically held that a co-operative society having an area of operation in more than one taluk is not entitled to deduction u/s 80P of the I.T.Act. The assessee shall produce necessary material to prove its case of eligibility u/s 80P(2)(a)(i) and 80P(2)(c) of the I.T.Act. It is ordered accordingly.

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7. The Cross Objection filed by the assessee is only supporting the CIT(A)'s order. Since we have disposed off the Revenue's appeal, the CO is dismissed as infructuous.

8. In the result – (i) the Revenue's appeal is allowed for statistical purposes; and (ii) the Cross Objection filed by the assessee is dismissed.

Order pronounced on this 05<sup>th</sup> day of October, 2018.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 05<sup>th</sup> October, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Applicant.
2. The Respondent.
3. The CIT (A) – II, Kochi.
4. The CIT, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**