

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

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

ITA No.200/Coch/2018 : Asst.Year 2012-2013
SA No.19/Coch/2018

ITA No.201/Coch/2018 : Asst.Year 2013-2014
SA No.20/Coch/2018

M/s.The Pazhavangadikkara Service Co-operative Bank Limited, Pazhavangadi PO, Ranni, Pathanamthitta-689 673 PAN : AAAAT6882G.	Vs.	The Income Tax Officer Ward - 4 Thiruvalla.
(Appellant)		(Respondent)

ITA No.202/Coch/2018 : Asst.Year 2014-2015

The Income Tax Officer Ward - 4 Thiruvalla.	Vs.	M/s.The Pazhavangadikkara Service Co-operative Bank Limited, Pazhavangadi PO, Ranni, Pathanamthitta-689 673
(Appellant)		(Respondent)

Revenue by : Sri. A.Dhanaraj, Sr.DR
Assessee by : Smt.Parvathy Ammal, CA

Date of Hearing : 04.07.2018	Date of Pronouncement : 09.07.2018
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ORDER

Per Bench

These are two appeals at the instance of the assessee concerning assessment years 2012-2013 and 2013-2014 and

one appeal at the instance of the Revenue concerning assessment year 2014-2015. The assessee had also filed stay petitions seeking to stay the recovery of outstanding tax arrears. Since common issue is raised in these appeals, they were heard together and are being disposed off by this consolidated order.

2. First we shall adjudicate the assessee's appeals and the stay applications:

ITA No.200/Coch/2018 & 201/Coch/2018

3. Briefly stated facts of the case are as follows:-

The assessee is a primary agricultural credit society registered under the Kerala Co-operative Societies Act, 1969. It is engaged in the business of providing loans and advances to its members as well as accepting deposits from them. For the assessment years 2012-2013 and 2013-2014, returns of income were filed disclosing loss of Rs.1,94,61,920 and Rs.3,01,57,865, respectively. In the returns of income filed, the assessee did not claim deduction u/s 80P of the I.T.Act. According to assessee, the deduction u/s 80P(2) of the I.T.Act could not be claimed since it was not having any positive income. The assessments were completed for assessment years 2012-2013 and 2013-2014 on a total income of Rs.2,15,49,753 and Rs.1,83,80,121, respectively. The claim of deduction u/s 80P(2) of the I.T.Act was not considered by the

Assessing Officer, for the reason that no such claim was made by the assessee in the returns of income filed by the assessee.

4. Aggrieved by the orders of the assessment completed for assessment years 2012-2013 and 2013-2014, wherein the claim of deduction u/s 80P(2) of the I.T.Act was not considered, the assessee preferred appeals before the first appellate authority. The CIT(A) after referring to the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-op Bank Ltd vs CIT* reported in 384 ITR 490 confirmed the view taken by the Assessing Officer.

5. Aggrieved by the orders of the CIT(A), the assessee has preferred the present appeals before the Tribunal for assessment years 2012-2013 and 2013-2014. The learned Counsel for the assessee submitted that the issue in question is squarely covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-op Bank Ltd vs CIT* (supra), wherein it was categorically held that return filed at any stage of appellate proceedings cannot be treated as non est in law and invalid for the purpose of claim of deduction u/s 80P(2) of the I.T.Act. It was submitted that the assessee in the course of assessment proceedings had made a claim of deduction u/s 80P(2)(a)(i) of the I.T.Act and that apart had filed returns of income subsequently for assessment years 2012-2013 and 2013-2014 making the specific claims of deduction u/s 80P(2) of the I.T.Act. Copies of the returns filed for Asst.Year 2012-

2013 and 2013-2014 are enclosed as Annexure II and III of the paper book filed by the assessee.

6. The learned Departmental Representative, on the other hand, supported the orders of the Income-tax authorities.

7. We have heard the rival submissions and perused the material on record. For assessment years 2012-2013 and 2013-2014, the assessee had declared loss returns. When loss returns were filed, the assessee could not have made the claim of deduction u/s 80P(2) of the I.T.Act, since it was not having any positive income. The assessee had specifically mentioned in the Note filed along with the returns that deduction u/s 80P was not claimed since the return was showing loss. The assessments were completed denying certain claims of deduction u/s 36(1)(viia) of the I.T.Act, therefore, the loss income was converted into positive income. The Assessing Officer was duty bound to consider whether the assessee was entitled to the claim of deduction u/s 80P(2) of the I.T.Act when assessments were completed on positive income. Moreover, subsequently the assessee had filed returns of income for both the assessment years 2012-2013 and 2013-2014 making the claim of deduction u/s 80P(2) of the I.T.Act. The revised returns claiming the deduction u/s.80P(2) of the I.T.Act was not acted upon since the same was filed beyond the time limit prescribed under the Act. The Hon'ble High Court in the case of *Chirakkal Service Co-op Bank Ltd vs CIT (supra)* had held at para 21 that

appeals are continuation of assessment proceedings and even if the return of income was filed before the appellate authority claiming deduction u/s 80P(2), the same has to be acted upon. The Hon'ble High Court was considering the following substantial questions of law:-

“(B) Whether the Tribunal is justified in denying the exemption under section 80P of the Income Tax 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 under section 139(1)/(4) or section 142(1) / 148 can be held as non est in law and invalid for the purpose of deciding exemption under section 80P of the Income Tax Act, 1961?”

7.1 In deciding the above questions, the Hon'ble High Court held as follows:-

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 here 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 intendiment that the inhibition contained in subsection 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. Here, questions 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 binding 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 of the IT Act. We thus answer substantial questions of law Band C formulated and enumerated above."

7.2 In para 21 of the judgment, the Hon'ble High Court has categorically held that return filed beyond the period stipulated u/s 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 I.T.Act. In view of the above conclusions of the Hon'ble High Court, we direct the Assessing Officer to consider the claim of deduction u/s 80P of the I.T.Act as expeditiously as possible. Therefore, the appeals filed by the assessee are allowed for statistical purposes. It is ordered accordingly.

SA No.19 & 20/Coch/2018

7. Since the appeals are disposed off, the stay applications are dismissed as infructuous.

ITA No.202/Coch/2018 : Revenue's appeal :

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

For the assessment year 2014-2015, the return of income was filed on 19.02.2015 claiming carried forward loss of Rs.2,73,62,290. The assessment was completed u/s 143(3) vide order dated 27.12.2016, wherein the total income assessed was at Rs.2,02,45,618. In the assessment completed, the claim of deduction u/s 80P(2) of the I.T.Act was denied by the A.O. for the reason that in the original return of income filed, the assessee did not claimed deduction u/s 80P and the revised return of income claiming deduction u/s 80P(2) was filed beyond the due date and the same cannot be accepted.

9. Aggrieved by the denial of claim of deduction u/s 80P(2) of the I.T.Act, the assessee filed appeal before the first appellate authority. The CIT(A) followed to the judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd vs CIT reported in 384 ITR 490. The CIT(A) noticed that the assessee had filed the revised return of income during the course of assessment proceedings and the claimed deduction u/s 80P(2) of the I.T.Act. Therefore, the CIT(A) held that going by the dictum laid down by the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-operative Bank Ltd. (supra)*, the claim of deduction u/s 80P of the I.T.Act is to be allowed, though

the revised return was filed belatedly. The relevant finding of the CIT(A) reads as follows:-

"4.5 In the above decision, Hon'ble High Court was dealing with the claims made under section 80P of the Act in the return of income filed belatedly and the Court held that claim made in the return of income filed belatedly also required to be considered and allowed. In this case, the assessee filed revised return of income during the course of assessment proceedings and claimed deduction under section 80P of the Act. Therefore, the claim made in the revised return even though belated is covered by the decision of the High Court, as above. Hence, it is held that the assessee is eligible for deduction under section 80P of the Act and the grounds raised by the assessee are allowed."

10. Aggrieved by the order of the CIT(A), the Revenue has preferred the present appeal before the Tribunal. The learned Departmental Representative relied on the grounds raised. The learned AR, on the other hand, submitted that the issue in question is squarely covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in the case of *Chirakkal Service Co-op Bank Ltd vs CIT (supra)*.

11. We have heard the rival submissions and perused the material on record. The Assessing Officer had denied the claim of deduction u/s 80P(2) of the I.T.Act since the revised return was filed beyond the time limit prescribed u/s 139 of the I.T.Act. Therefore, it was concluded by the Assessing Officer that in view of the provisions of section 80A(5) of the

I.T.Act, the assessee is not entitled to claim of deduction u/s 80P(2). The Hon'ble High Court in the case of *Chirakkal Service Co-op Bank Ltd vs CIT (supra)* had held at para 21 that appeals are continuation of assessment proceedings and even if the return of income was filed before the appellate authority claiming deduction u/s 80P(2), the same has to be acted upon. The Hon'ble High Court was considering the following substantial questions of law:-

"(B) Whether the Tribunal is justified in denying the exemption under section 80P of the Income Tax 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 under section 139(1)/(4) or section 142(1) / 148 can be held as non est in law and invalid for the purpose of deciding exemption under section 80P of the Income Tax Act, 1961?"

11.1 In deciding the above questions, the Hon'ble High Court held as follows:-

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 here 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 intendiment that the inhibition contained in subsection 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. Here, questions 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 binding 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 of the IT Act. We thus answer substantial questions of law Band C formulated and enumerated above."

11.2 In para 21 of the judgment, the Hon'ble High Court has categorically held that return filed beyond the period stipulated u/s 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 I.T.Act. In view of the above order of the Tribunal, we hold that the CIT(A) is justified in directing the A.O. to grant deduction u/s 80P(2)(a)(i) of the I.T.Act. It is ordered accordingly.

12. In the result, the appeals filed by the assessee are allowed for statistical purposes and the appeal filed by the Revenue is dismissed. The stay applications filed by the assessee are also dismissed.

Order pronounced on this 09th day of July, 2018.

Sd/-

(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 09th July, 2018.
Devdas*

Sd/-

(George George K.)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin