

**आयकर अपीलीय अधिकरण**  
**कोचिन पीठ, कोचिन**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**COCHIN BENCH, COCHIN**  
**सर्व श्री बी.पी. जैन, लेखा सदस्य एवं जॉर्ज जॉर्ज के., न्यायिक सदस्य के समक्ष**  
**BEFORE S/SHRI B. P. JAIN, AM & GEORGE GEORGE K., JM**  
**आयकर अपील संख्./ I.TA No.106/Coch/2016**  
**(निर्धारण वर्ष/Assessment Year : 2012-13)**

M/s. Mundakkayam Service Co-operative Bank Ltd., Mundakkayam, Kottayam-686 513.	Vs	The I.T.O. Ward-5, Kottayam.
<b>(अपीलार्थी/Assessee- Appellant)</b>		<b>(प्रत्यर्थी/Revenue -Respondent)</b>

स्थगित आवेदन/S.P. No. 10/Coch/2016

**आयकर अपील संख्./ I.TA No.106/Coch/2016**  
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<b>(अपीलार्थी/Assessee- Appellant)</b>		<b>(प्रत्यर्थी/Revenue -Respondent)</b>

स्था. ले. संख्./PAN No.	AAAAT8803H
अपीलार्थी की ओर से/Assessee By	Dr. K.P. Pradeep, Adv.
प्रत्यर्थी की ओर से/Revenue By	Shri A. Dhanaraj, Sr. DR
सुनवाई की तारीख/ Date of Hearing	28/09/2016
घोषणा की तारीख/Date of pronouncement	31 <sup>st</sup> /10/2016

## आदेश/ORDER

### PER GEORGE GEORGE AM:

This appeal at the instance of the assessee, is directed against the order of the CIT(A), Kottayam dated 29/01/2016. The relevant assessment year is 2012-13.

2. There are several grounds raised in the Memorandum of Appeal, however, only three issues were argued. The three issues argued by both sides are as follows:

*i) Whether the CIT(A) is justified in confirming the disallowance made by the Assessing Officer with regard to the claim of deduction u/s. 80P(2) of the Act?*

*ii) Whether the interest received from the Government Treasury is to be included under the head "income from other sources" or "income from business?"*

*iii) Whether the CIT(A) is justified in confirming the disallowance of interest paid on deposit amounting to Rs.17,17,183/-?.?*

3. We shall take up for adjudication issueswise as under:-

i) Whether the CIT(A) is justified in confirming the disallowance made by the Assessing Officer with regard to the claim of deduction u/s. 80P(2) of the Act.

Briefly stated the facts of the issue are as follows:

4. The assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. For the assessment year 2012-13, the return of income was filed declaring 'nil' income after claiming deduction u/s. 80P of the Income Tax Act. The Assessing Officer passed the best judgment assessment u/s. 144 of the Act by denying the benefit of deduction u/s. 80P(2) of the Act. The Assessing Officer was of the view that as the assessee-Society was primarily engaged in the business of banking and in view of the provisions of section 80P(4) of the Act, the assessee-Society is not entitled to the benefit of deduction u/s. 80P of the Act.

4.1 Aggrieved by the denial of the benefit of deduction u/s. 80P(2) of the Act, the assessee preferred appeal to the first appellate authority. The first appellate authority confirmed the view taken by the Assessing Officer.

4.2 Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. The Ld. Counsel for the assessee submitted that the issue in question whether the assessee is entitled to the benefit of deduction u/s. 80P(2) of the Act is squarely covered in favour of the assessee by the judgment of the Hon'ble High Court of Kerala in the case of **Chirakkal Service Co-op Bank Ltd. reported in 384 ITR 490.**

4.3 The Ld. DR present was duly heard.

4.4 We have heard the rival submissions and perused the material on record. Admittedly, the assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The certificate issued by the Registrar of Cooperative Societies to the above said effect is placed on record. The Hon'ble High Court of Kerala in the case of Chirakkla Service Co-op Bank Ltd. (supra) had held that a primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969 is entitled to the benefit of deduction u/s. 80P(2). 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?*

4.5 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 co-operative societies Act, 1969, for sort, 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 things, 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 visualise as due reciprocative legislative exercise by the Parliament recognising 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 sub-section 4 of that section. 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."

4.6 In view of the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd. (supra), we hold that the assessee-Society is entitled to the benefit of deduction u/s. 80P(2) of the Act.

ii) Whether the interest received from the Government Treasury is to be included under the head "income from other sources" or "income from business"

5. The CIT(A) decided the issue against the assessee by observing as under:-

"4.2 Verification of assessment order shows that assessee received interest income of Rs.1,53,311/- out of the deposits made in Treasury. The issue is similar to the case of Totgar's Co-operative Sale Society Ltd. vs. ITO (2010) (322 ITR 283), in which the Hon. Supreme Court held that the assessee being co-operative society is engaged in providing credit facilities to its members (or) marketing agricultural produce to its members, interest earned by it by investing surplus funds in short term deposits would fall under the head "income from other sources" taxable u/s. 56 of the Income Tax Act and it cannot be said to be attributable to the activities of society and therefore, the interest did not qualify for deduction u/s. 80P(2)(a)(i) of the Income Tax Act. The same issue has been upheld in favour of Revenue in the case of Mutholy Service Co-operative Bank in I.T.A. No. 11/Coch/2014."

5.1 We have heard both sides and perused the material on record. As regards the interest from treasury and banks, we find on identical facts, the Cochin Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd in ITA No. 372/Coch/2010 had decided the matter in favour of the assessee. The Cochin Bench of the Tribunal in the case of Muttom Service Cooperative Bank Ltd (supra) has distinguished the judgment of the Hon'ble Apex Court in the case of Totgar's Cooperative Sale Society Ltd (supra). The

relevant finding of the coordinate Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd (supra) read as follows:

*"5. We have considered the rival submission on either side and also perused the material available on record. We have also carefully gone through the order of the lower authority. No doubt, the latest judgment in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the Apex court found that the deposit of surplus funds by the co-operative society is not eligible for deduction u/s 80P(2). In the case before the Apex Court in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the assessee co-operative society was to provide credit facility to its members and market the agricultural produce. The assessee is not in the business of banking. Therefore, this Tribunal is of the opinion that the judgment of the Apex court in Totgar's Co-operative Sale Society Ltd (supra) is not applicable in respect of the co-operative society whose business is banking. Admittedly, the assessee has invested funds in state promoted treasury small savings fixed deposit scheme. Since Government of India has withdrawn India Vikas Patra, as a small savings instrument, funds invested at the discretion of the bank is one of the activities of the banking as per the Banking Regulation Act. Since the assessee co-operative society is in the 4 ITA No.372/Coch/2010 business of banking the investment in the state promoted treasury small savings fixed deposit certificate scheme is a banking activity, therefore, the interest accrued on such investment has to be treated as business income in the course of its banking activity. Once it is a business income, the assessee is entitled for deduction u/s 80P(2)((a)(i). therefore, this Tribunal is of the opinion that the judgment of the Larger Bench of the apex Court in Karnataka State Cooperative Apex Bank (supra) is applicable to the facts of this case. By respectfully following the judgment of the Apex court in Karnataka State Co-operative Bank (supra), the order of the Commissioner of Income-tax(A) is upheld."*

5.2 In the instant case, the assessee is a cooperative Bank. The investment in treasury/banks and earning interest on the same is part of the banking activity of the assessee's cooperative bank. Therefore, the said income is eligible for deduction u/s 80P(2)(a)(i) of the Act. **Therefore, the Income Tax Authorities were not justified in treating interest income received by the**

assessee as 'income from other source' and denying the benefit of section 80P(2) of the Act. Thus this ground of the assessee is allowed.

iii) Whether the CIT(A) is justified in confirming the disallowance of interest paid (Rs. 17,17,183)

Briefly stated the facts of the issue are as follows:

6. For the year under consideration, the assessee had claimed interest expenditure to the tune of Rs.3,43,43,667/- . In the course of assessment, the Assessing Officer issued notice u/s. 142(1) of the Act directing the assessee to furnish the details of interest paid. Since the assessee did not furnish the requisite details, the Assessing Officer had disallowed 5% of the interest paid on deposit.

6.1 Aggrieved the assessee preferred appeal to the first appellate authority. Before the CIT(A), the assessee had furnished the details of the interest expenditure. However, the CIT(A) rejected the plea of the assessee for want of time. The relevant finding of the CIT(A) is reproduced as under:-

“7. It is seen that the assessee did not give any details before the Assessing Officer. However during the course of appellate proceedings, assessee produced many details, which had not been given to the Assessing Officer. However, there is no time available for calling for remand report in view of the Hon'ble Court direction that the appeal should be disposed off within 6 months. Because of the time constraint, this office does not have the option of verifying the claim of assessee that the “interest paid” are

genuine. Because of the said reason the addition made by the Assessing Officer under this head is also confirmed.”

6.2 We have heard the rival submissions and perused the material on record. The CIT(A) has very candidly admitted that the additional evidence placed before him could not be verified due to time constraints. In the interest of justice and equity, we are of the view that the matter needs fresh consideration by the CIT(A). Accordingly, we restore this issue to the file of the CIT(A). The CIT(A) shall dispose off the matter as expeditiously as possible in accordance with law, after affording reasonable opportunity of being heard to the assessee. It is ordered accordingly.

S.P. No. 10/Coch/2016

7. Since the appeal has already been disposed off, the Stay Petition is rendered infructuous and the same is dismissed as such.

8. In the result, the appeal filed by the assessee is partly allowed as indicated above and the Stay Petition filed by the assessee is dismissed.

Order pronounced in the open court on 31<sup>st</sup>-10-2016

sd/- <b>(बी.पी. जैन)</b> <b>(B. P. JAIN)</b>	sd/- <b>(जोर्ज जोर्ज के.)</b> <b>(GEORGE GEORGE K.)</b>
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

स्थान/Place: कोचि/Cochin

दिनांक/Dated: 31<sup>st</sup> October, 2016

GJ/जीजे

आदेश की प्रतिलिपि अग्रेषित/copy to:

1. अपीलार्थी/M/s. Mundakkayam Service Co-operative Bank Ltd., Mundakkayam, Kottayam-686 513.
2. प्रत्यर्थी/The Income Tax Officer, Ward-,5, Kottayam.
3. आयकर आयुक्त (अपील)/The Commissioner of Income-tax(Appeals), Kottayam.
4. आयकर आयुक्त/The Commissioner of Income-tax, Kottayam.
5. विभागीय प्रतिनिधि, कोचिन पीठ/The DR/ITAT, Cochin Bench.
6. गार्ड फाईल/Guard File.

निदेशानुसार/By Order

सहायक पंजीकर/Assistant Registrar  
आई. टी. ऐ. टी., कोचिन/I.T.A.T., COCHIN

