

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

MONDAY, THE 15TH DAY OF FEBRUARY 2016/26TH MAGHA, 1937

ITA.No. 212 of 2013 ()

**AGAINST THE ORDER IN ITA 309/2012 OF INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH DATED 28-02-2013**

APPELLANT:

**THE CHIRAKKAL SERVICE CO-OPERATIVE BANK LTD
P.O.CHIRACKAL, KANNUR, KANNUR-670 011.**

**BY ADVS.SRI.I.V.PRAMOD
DR.K.P.PRADEEP**

RESPONDENT(S)/RESPONDENT :

**THE COMMISSIONER OF INCOME TAX
AYKAR BHAVAN, MANANCHIRA, KOZHIKODE-1.**

**BY SRI.P.K.R.MENON, SENIOR SC, GOI(TAXES)
SRI.JOSE JOSEPH, SC**

**THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 02-02-2016 ALONG WITH ITA.273/2013 & CONNECTED CASES,
THE COURT ON 15-02-2016 DELIVERED THE FOLLOWING:**

MKS

I.T.A 212 OF 2013

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE-A-TRUE COPY OF THE ORDER OF ASSESSMENT FOR 2009-10 DATED 16/12/2011.

ANNEXURE-B-TRUE COPY OF THE ORDER IN APPEAL IN ITA 196/KNR/CIL/CLT/2011-12 DATED 21/09/2012 OF THE COMMISSIONER OF INCOME TAX (APPEAL), KOZHIKODE

ANNEXURE-C-TRUE COPY OF THE ORDER IN APPEAL IN ITA NO. 309/COC/2012 DATED 28/02/2013 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

RESPONDENT'S ANNEXURE

NIL

\TRUE COPY

P.S. TO JUDGE

MKS

“C.R.”

Thottathil B.Radhakrishnan & K.Harilal, JJ.

= = = = =

I.T.A.Nos.212, 273, 278, 292, 299 & 313 of 2013,
156, 188, 189, 190, 191, 192, 193, 197, 198, 199,
201, 202, 203, 204, 205, 206, 207, 209, 211, 212,
214, 216, 217, 218, 219, 220, 221, 222, 223, 224,
225, 227, 228, 229, 230, 231, 237, 238, 239, 240,
241, 243, 247, 250, 251, 252, 253, 254, 255, 265,
266, 268, 269, 270, 271,272,273,275 & 281 of 2014

and

25, 26, 29, 30, 32, 34, 35, 37, 38, 39, 40,
41, 42, 45, 46 & 53 of 2015

= = = = =

Dated this the 15th day of February, 2016

Judgment

Thottathil B.Radhakrishnan, J.

1.These appeals by primary agricultural credit societies registered and classified as such under the provisions of the Kerala Co-operative Societies Act, 1969, for short, 'KCS Act', relate to exemptions claimed by them with reference to section 80P(4) of Income Tax Act, 1961; hereinafter, 'IT Act'. Issues are also raised relating to the validity or otherwise of the returns filed by the assesseees beyond the period

stipulated under section 139(1)/(4) or section 142(1)/148 for the purpose of deciding exemption under section 80P of the IT Act. Incidental issues relating to doubtful debts proportionate to the gross total income and the status of rural branch to claim deduction referable to section 36(1)(vii) of the IT Act are also raised.

2. Heard Snr. Adv. Firoze B. Andhyarujina and Snr. Adv. T. M. Sreedharan and other learned advocates for the appellants and Snr. Adv. P. K. R. Menon, learned senior standing counsel for the Government of India (Taxes) assisted by Adv. Jose Joseph, standing counsel for Income Tax Department and Adv. Ajay V. Anand.

3. ITA.No.212 of 2013 was admitted on 21.11.2013 and the following substantial questions of law were formulated at the time of admission for consideration:

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?

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?

D) Whether the Tribunal is correct in law or is justified in restricting the provisions for bad and doubtful debt at the 7.5% of the gross total income, on the reason that the

assessee is not entitled for the status of rural branch to claim 10% of the aggregate average advances as bad and doubtful debt, under section 36(1)(viiia) of the Income Tax Act, 1961?

4. Thereafter, noticing that all the captioned appeals give rise to the same questions of law, the other appeals were also admitted on the substantial questions of law as framed in ITA.No.212 of 2013 and those substantial questions of law were incorporated into the other appeals as well.

5. Before proceeding further, we may note that the Income Tax Appellate Tribunal also proceeded to decide many of the fundamental issues as if they are common to all these cases. Some of the matters before the Tribunal were either bunched up and decided in one go, while the others were rendered following the earlier decisions on the same issue.

6. Of prime importance is the plea of the appellants that they are primary agricultural credit societies and are, therefore, eligible to exemption in terms of sub-section 4 of section 80P of the IT Act. The characteristics of the appellants as primary agricultural credit societies including the fact that they are registered under the KCS Act and that their fund management is in terms of the regulatory directions of the Registrar of Co-operative Societies and other aspects are referred to, to show that all the appellants are eligible to the exemption provided for through section 80P(4) of the IT Act. We will detail the relevant statutory provisions as pointed out by the learned senior counsel for the appellants as we proceed with the consideration of the issue in this regard.

7. Submissions were also made on the questions raised relating to the belated filing of returns. Some of the cases are those where returns were filed belatedly; some relate to claim of exemption after best of judgment assessments;

and, yet another group relates to cases where notices were issued under sections 147 and 148 of the IT Act which may have a bearing on the question of delay.

8. On behalf of the department, it is argued that the Tribunal was justified in holding that the appellants are not entitled to exemption in terms of section 80P(4) and therefore, they fall into the tax net by virtue of section 80(1), subject only to the permissible deductions under subsection 2 of section 80P. The findings of the Tribunal are sought to be supported also as regards the belated filing of returns and claim for exemption. It is argued that the appellants are, essentially, Co-operative Banks; and, not merely primary agricultural credit societies; and hence the appellants' plea as to exemption under section 80P(4) is unfounded.

9. Section 80P of the IT Act deals with deduction in respect of income of co-operative societies. Subsection 1 of that section provides that where, in

the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section 2 of that section, there shall be deducted, in accordance with and subject to the provisions of section 80P, the sums specified in sub-section 2 thereof, in computing the total income of the assessee. Sub-section 4 of section 80P provides that the provisions of section 80P shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. This provision in sub-section 4 of section 80P means that the provisions of section 80P shall not apply to a primary agricultural credit society. Hence, the levy of tax in terms of the provisions of section 80P does not apply to a primary agricultural credit society.

10. The terms 'co-operative bank' and 'primary agricultural credit society'; for the purpose of sub-section 4 of section 80P of the IT Act, shall have the meanings respectively assigned to them

in Part V of the Banking Regulation Act, 1949; for short; BR Act, going by Explanation (a) occurring after section 80P(4) of the IT Act. For the purpose of that sub-section, 'primary co-operative agricultural and rural development bank' is defined to mean what is stated in Explanation (b) to Section 80P(4) of the IT Act.

11. Part V of the BR Act carries section 56 of that Act, which prescribes modifications to the provisions of the BR Act in their application and in relation to co-operative societies.

12. 'Co-operative bank' is a term defined in section 5(cci) of the BR Act to mean, inter alia, a primary co-operative bank. A primary co-operative bank is a co-operative society other than a primary agricultural credit society, going by clause (ccv) of section 5 of the BR Act. Therefore, a primary agricultural credit society is not to be treated as a primary co-operative bank and therefore, not to be reckoned as a co-operative Bank. We state this here and now to

point out that the appellants which are primary agricultural credit societies are not of such type that they would fall for consideration as a co-operative bank for the purpose of sub-section 4 of section 80P of the IT Act. Resultantly, the consequential legal implication is that a primary agricultural credit society is one among the two types of institutions which gain the benefit of sub-section 4 of section 80P to ease themselves out from the coverage of section 80P. The argument advanced on behalf of the Revenue, to the contrary is repelled.

13. Reverting to section 5(cciv) of the BR Act; 'primary agricultural credit society' means a co-operative society, the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops; and the bye-laws of which do not permit admission of any other co-operative society as member. However, the provisions in

sub-clause 2 of section 5(cciv) shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose. This is the effect of the proviso occurring after sub-clause 2 of section 5(cciv) which is referred to herein only for continuity, though we are not really concerned with the effect of that proviso. Keeping in mind that 'primary agricultural credit society' is defined with reference to the term 'co-operative society'; reverting to section 5(cciia) of the BR Act, it can be seen that for the purpose of that Act, 'co-operative society' means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force.

14. In all the clauses referred to above, the

legislative tool used is 'means'; and not 'includes'. Therefore, when the term 'co-operative society' is defined to mean, inter alia, a society registered under any State law relating to co-operative societies for the time being in force; one such is a co-operative society for the purposes of the BR Act and if that co-operative society satisfies the definition of 'primary agricultural credit society', it would be one to which the exemption as per sub-section 4 of section 80P of the IT Act would apply.

15. Appellants in these different appeals are indisputably societies registered under the Kerala Co-operative Societies Act, 1969, for short, 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 subsection 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.

18. Questions B and C relate to denial of exemption on ground referable to belated filing of return, that is to say, returns filed beyond the period stipulated under section 139(1) or section 139

(4), as the case may be, as well as section 142 (1) or section 148, as the case may be. There are no cases among these appeals where returns were not filed. There are cases where claims have been made along with the returns and the returns were filed within time. Still further, there are cases where returns were filed belatedly, that is to say, beyond the period stipulated under sub-section 1 or 4 of section 139; and, there are also returns filed after the period with reference to sections 142(1) and 148 of the IT Act.

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 where 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 sub-section 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 B and C formulated and enumerated above.

With the aforesaid, we remit all these matters for reconsideration by the Income Tax Appellate Tribunal in the light of the answers rendered herein on substantial questions of law A, B and

C. The Tribunal will thereupon consider the issues relating to the bad and doubtful debts and the claim of the assessee in that regard by treating that in all cases where exemptions are claimed under section 80P and such matters were pending before the assessing authority or before the appellate authority, including in these appeals, the question of exemption available under section 80P was still available for decision.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
K.Harilal
Judge

Sha/040216

-true copy-

PS to Judge