

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

ITA.No. 103 of 2011 ()

ITA 506/COCH/2010 of I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT :

**KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK LTD., KASCARDB BUILDINGS,
POST BOX NO.56, STATUE JUNCTION
THIRUVANANTHAPURAM-695001.REPRESENTED BY IT
MG.DIRECTOR(I/C) SMT. K.USHA DEVI.**

**BY ADVS.SRI.GEORGE POONTHOTTAM
SRI.GEORGE POONTHOTTAM,SC,KSCORDBANK L
SRI.ANIL D. NAIR**

RESPONDENTS :

- 1. THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM-695001.**
- 2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX, CIRCLE-1(2), TRIVANDRUM-695001.**

**BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX**

**THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 23/9/2015, THE COURT ON 26-11-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S ANNEXURES :

- ANNEXURE A: COPY F THE ASSESSMENT ORDER DT 22/12/2009.**
- ANNEXURE B: COPY OF THE APPELLATE ORDER BY THE COMMISSIONER OF INCOME-TAX(APPEALS), TRIVANDRUM DT 30/7/2010.**
- ANNEXURE C: COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH DT 23/2/2011.**
- ANNEXURE D: COPY OF THE NOTICE NO. AAAAK4391F/CIRCLE1(2)TVM/2011-12 DT 31/3/2012.**
- ANNEXURE E: COPY OF THE NOTICE NO. AAAAK391F/CIRCLE 1(2)/TVM/2012-13 DT 7/6/2012.**

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

“CR”

Thottathil B.Radhakrishnan

&

Babu Mathew P. Joseph, JJ.

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I.T.A.No.103 of 2011

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Dated this the 26th day of November, 2015

Judgment

Thottathil B.Radhakrishnan, J.

1.Having heard the learned counsel appearing for the appellant and the learned senior advocate for the Revenue, we encapsulate the question for decision in this appeal under Section 260A of the Income Tax Act, 1961, “IT Act”, for brevity, as follows:

Are the provisions of Section 80P of IT Act excluded in terms of Sub-section 4 of that Section; from application in relation to the Kerala State Co-operative Agricultural and Rural Development Bank Limited; governed by

the provisions of the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984; hereinafter, the 'CARDB Act'?

2. We are dealing with the assessment year 2007-2008 or thereafter, and are therefore concerned with the impact of the insertion of Sub-section 4 of Section 80P in the IT Act with effect from 1.4.2007. We proceed accordingly.

3. In this appeal we do not propose to consider whether the appellant would be entitled to different deductions with respect to Sub-sections 1 and 2 of Section 80P of the IT Act as may be claimed by it; even if it does not escape from the application of Section 80P by recourse to Sub-section 4 of that Section. We do so because no such issue appears to have been pointedly addressed by the Appellate Tribunal, which could be decided by us in this appeal; without prejudicing the contentions of the appellant and the department in another appeal; namely, ITA.

No.137 of 2011 filed by the department.

4.The learned counsel appearing for the appellant argued that the provisions of the CARDB Act and the legislations which preceded it unequivocally show that the provisions of Section 80P of the IT Act do not apply to the appellant in view of Sub-section 4 of that Section. It is pointedly argued that the appellant is a co-operative bank, other than a 'primary agricultural credit society' or a 'primary co-operative agricultural and rural development bank' and therefore, Section 80P of the IT Act does not apply to it in view of Sub-section 4 thereof.

5.Per contra, the learned senior advocate appearing for the Revenue argued that the view taken by the Tribunal does not warrant interference at the hands of this Court and that those findings of the Tribunal are in accordance with the relevant statutory provisions which govern the situation in hand.

6. Before further proceeding, we may acknowledge that the learned counsel for the appellant and the learned senior advocate for the Revenue made copious reference to the relevant provisions of the aforementioned legislations and the Banking Regulation Act, 1949, 'BR Act', for short; as well as the National Bank for Agricultural and Rural Development Act, 1981, 'NABARD Act', for short; and the provisions of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as 'KCS Act'. Certain provisions of the Reserve Bank of India Act, 1934, 'RB Act', for short, were also referred to.

7. Sub-section 1 of Section 80P of the IT Act authorises deductions in respect of co-operative societies; in terms of Sub-section 2 of Section 80P. That is a provision made in the case of an assessee being a co-operative society. 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'. Therefore, the exclusion provided through Section 80P(4) applies only when the assessee is a co-operative bank, which is either a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

8. For the purpose of Section 80P(4), the term 'primary co-operative agricultural and rural development bank' is defined in Clause (b) in the Explanation thereto. Apart from its principal object and activities, an assessee can fall under that Explanation only if it is a society having its area of operation confined to a taluk. The appellant does not have a case that its area of operation is confined to a taluk. Therefore, the appellant does not belong to that category.

9. The question, therefore, would be as to whether

the appellant is a 'co-operative bank' which is a 'primary agricultural credit society'. Hereinafter, we proceed to decide that issue.

10. To define the terms 'co-operative bank' and 'primary agricultural credit society' for the purpose of Section 80P of the IT Act; the Parliament, through the Explanation to Sub-section 4 of Section 80P of that Act; has incorporated by reference, the definitions of those terms in Part V of the BR Act. Reverting to the BR Act, it can be seen that what has been done through Part V of that Act is to prescribe the modifications regarding the application of that Part to co-operative societies. By the effect of Section 56 among Part V of the BR Act, among other things; Section 5 of the BR Act, which is the interpretation clause of that statute, got modified by incorporation of different definitions, including the terms 'co-operative bank' and 'primary agricultural credit society'. Those terms stood thus incorporated at

sequences (cci) and (cciv) respectively in Section 5 of the BR Act. We may here and now note that both those definition clauses open using the term 'means'.

11.Clause (cci) of Section 5 of the BR Act, incorporated as aforementioned, provides that:

“Co-operative bank” means a state co-operative bank, a central co-operative bank and a primary co-operative bank.

12.As per clause (ccvii) of Section 5 read with Section 56 of the BR Act, “central co-operative bank” and “state co-operative bank” shall have the meaning respectively assigned to them in the NABARD Act. Those terms are defined in Clauses (d) and (u) of Section 2 of the NABARD Act to, respectively, mean the principal co-operative society in a district, or, in a State; the primary object of which is the financing of other co-operative societies in the district and State

respectively.

13. The primary element required to be satisfied to fall under either of the definitions in Clause (d) or Clause (u) of Section 2 of the NABARD Act is that it should be a “co-operative society”; which term is defined in Section 2(f) of the NABARD Act to mean a society registered, or deemed to be registered, under the Co-operative Societies Act, 1912 (Central Act), or any other law relating to co-operative societies for the time being in force in any State. The appellant is not a society registered either under the Central Act or under the provisions of the KCS Act. Section 2(a) of the CARDB Act defines the “Agricultural and Rural Development Bank” as the one registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951 and it is that entity which, in turn; under Section 2(a) of the CARDB Act, is to be thereafter known as the “Kerala State Co-operative Agricultural and Rural Development Bank

Limited.” Obviously therefore, while the affairs of that institution, namely, the Kerala State Co-operative Agricultural and Rural Development Bank Limited, fall to be regulated by the provisions of the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984; nonetheless, it continues to be a society registered under the provisions of the Travancore-Cochin Co-operative Societies Act, 1951. That Act was repealed as per Section 110 of the KCS Act, however with a saving clause in Sub-section 2 of Section 110 of the KCS Act, whereby, among other things, any society existing in the State on the date of commencement of the KCS Act, which has been registered or deemed to be registered under the provisions of any of the enactments repealed through Section 110 of the KCS Act shall be deemed to be registered under the KCS Act, and the bye-laws of such society shall, so far as they are not inconsistent with the provisions of the KCS Act, continue in force until altered or rescinded. Therefore, the

appellant, Kerala State Co-operative Agricultural and Rural Development Bank Limited is a society which is deemed to be one registered under the KCS Act. So much so, it is a society registered under the law relating to co-operative societies for the time being in force in the State of Kerala and is a co-operative society as defined in Section 2(f) of the NABARD Act.

14.As per Section 47 of the CARDB Act, there is an entire transition of the assets and liabilities of the Kerala Co-operative Central Land Mortgage Bank and primary land mortgage banks whereby they stand transferred and vested in the Agricultural and Rural Development Bank and its primary banks. The Central Land Mortgage Bank and the primary land mortgage banks referred to in Section 47 of that Act are respectively the Central Mortgage Bank and the primary mortgage banks which stood governed by the provisions of the Kerala Co-operative Land Mortgage Banks Act, 1960 which enactment stood repealed as per Section 52(1) of

CARDB Act with saving clauses relating to all matters including the relationship between the Central Land Mortgage Bank and the primary banks and also the bye-laws, unless inconsistent with the provisions of the CARDB Act. Carrying forward the structuring and operations provided for by the Kerala Co-operative Land Mortgage Banks Act, 1960, the CARDB Act provides for the Kerala State Co-operative Agricultural and Rural Development Bank Limited (appellant) as the principal co-operative society in the State for the purpose of agricultural credit facility. The provisions of the CARDB Act provide an operational mechanism through the primary banks and primary agricultural credit societies as defined in Clauses (g) and (h) of Section 2 of the CARDB Act. These provisions would show that the appellant falls within the term “co-operative bank” in Clause (cci) of Section 5 of the BR Act and thereby is a co-operative bank for the purpose of Section 80P of the IT Act.

15. Having held as aforesaid, the question for further consideration is as to whether the appellant is also a primary agricultural credit society. We proceed to decide that issue.

16. In terms of Clause (a) of the Explanation to Section 80P(4), "primary agricultural credit society" takes the meaning assigned to it in Part V of the BR Act. Clause (cciv) of Section 5 of BR Act defines the term 'primary agricultural credit society'. It reads as follows:

(cciv) "primary agricultural credit society" means a co-operative society,-

(1) 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

(2) the bye-laws of which do not permit admission of any other co-

operative society as member:

Provided that this sub-clause 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.

To fall under the aforesaid definition of "primary agricultural credit society", an assessee has to satisfy the two conditions under Sub-clauses (1) and (2) of that Clause; which are conjunctive, and, not alternative.

17. The condition in Sub-clause (2) of Clause (cciv) of Section 5 of the BR Act is to the effect that a primary co-operative society should not be one which permits admission of any other co-operative society as member, to be a 'primary agricultural credit society'. The provisions of the Kerala Co-operative Land Mortgage Banks Act, 1960 and of the CARDB Act show that the appellant Kerala

State Co-operative Agricultural and Rural Development Bank Limited may admit a primary bank as its member. 'Primary bank' as defined in Section 2(h) of the CARDB Act means, among other things, a co-operative society. Therefore, the appellant does not satisfy the condition prescribed in Sub-clause (2) of Clause (cciv) of Section 5 of the BR Act and hence, it is not a co-operative bank which is a primary agricultural credit society.

18. The learned counsel for the appellant drew our attention to the judgments of the Karnataka High Court in ITA.No.598 of 2013 and ITA.No.5006 of 2013. We have examined those judgments. They deal with credit co-operative societies engaged in providing credit facilities to their members. Those decisions have no application to the case in hand. We say so because, in terms of the definition clauses of the BR Act which apply to the interpretation of the terms in Section 80P(4) of the IT Act in view of the Explanation to that

sub-section as enunciated above, an assessee co-operative society which has other co-operative societies as members is not eligible to the exemption and the appellant is not a primary agricultural credit society as found above.

19. In view of the aforesaid conclusion, we answer the question formulated above holding that the assessee does not fall within sub-section 4 of Section 80P of the IT Act for the assessment year in question. Hence, the impugned decision of the Tribunal does not warrant interference and this appeal by the assessee fails.

In the result, this appeal is dismissed. No costs.

Sd/-
Thottathil B. Radhakrishnan
Judge

Sd/-
Babu Mathew P. Joseph
Judge

Sha/

-true copy-

PS to Judge