IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No. 141/Coch/2019
Assessment Year: 2013-14

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax officer, Ward-2(1), Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

I.T.A. No. 47/Coch/2019
Assessment Year: 2013-14

The Income Tax officer, Ward-2(1), Trivandrum.	**Vs.**	M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]
(Assessee-Appellant)		**(Assessee-Respondent)**

C.O. No. 10/Coch/2019 (Arising out of I.T.A. No. 47/Coch/2019)
Assessment Year : 2013-14

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax officer, Ward-2(1), Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

I.T.A. No. 563/Coch/2018
Assessment Years : 2013-14

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax Officer, Ward-2(1),Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

S.P. No. 43/Coch/2018 (Arising out of I.T.A. No. 563/Coch/2018)
Assessment Year : 2013-14

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax Officer, Ward-2(1),Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

I.T.A. No. 93/Coch/2018
Assessment Year : 2014-15

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax Officer, Ward-2(1),Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

S.P. No.06/Coch/2018 (Arising out of I.T.A. No. 93/Coch/2018)
Assessment Year : 2014-15

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax Officer, Ward-2(1),Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

I.T.A. No. 400/Coch/2018
Assessment Year : 2014-15

M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram. PAN: AAAAP 3974B]	**Vs.**	The Income Tax Officer, Ward-2(1),Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

Revenue by	Smt. A.S. Bindhu, Sr. DR
Assessee by	Shri Amaljith P.J., FCA

Date of hearing	20/06/2019
Date of pronouncement	26/06/2019

O R D E R

Per CHANDRA POOJARI, AM:

These appeals filed by the Revenue and the assessee are directed against the different orders of the CIT(A), Trivandrum and pertain to the assessment years 2013-14 & 2014-15. The assessee has also filed Cross Objection in C.O. No.10/

Coch/2019 and Stay petitions in S.P. Nos.43 & 06/Coch/2018 for the assessment years 2013-14 and 2014-15.

2. First we shall take up the appeal in ITA No. 141/Coch/2019 for the assessment year 2013-14. This appeal is directed against the order of the Pr. CIT, Trivandrum passed u/s. 263 of the Act vide order dated 24/03/2017.

2.1 The facts of the case are that original assessment was completed u/s. 143(3) of the Act. The assessee's income was assessed at Rs.1,04,84,857/- against the nil income returned by the assessee. On examination of the records, the CIT(A) was of the opinion that the Assessing Officer has not made proper enquiry and there was a serious error in the order of the Assessing Officer which caused prejudice to the interest of the Revenue. In view of the same, he initiated revision proceedings u/s. 263 of the Act directing the Assessing Officer to frame the assessment order afresh in the following manner:

> A. Compute profit and gains of business and profession in accordance with provisions of Chapter IV-D including verification of the following:
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> > i. ensuring that the proof and identity of persons to whom interest payable is debited is established before granting deduction u/s. 80P of the Act.
> >
> > ii. making necessary disallowance of provisions and reserves and other ineligible similar sums.

iii. disallowance of sums including sums paid in cash in violation of section 40A(3), including interest, rent, salary and other business expense where payment in cash exceeding Rs.20,000 and not covered by Rule 6DD.

iv. disallowance of interest and other sums under section 40(a)(i), if any, if section 195 is violated.

v. disallowance under section 40(a)(ia), after due examination (due care is to be taken not to disallow sums mentioned in section 194A(3)(viia).

vi. examining whether contingency expense claimed is an allowable item.

vii. Ensure that interest income on deposits is accounted for in accordance with provisions of section 145.

viii. computation of income in accordance with cash or mercantile system as applicable.

ix. consideration of Form 3CD which is to be called for.

B. Determine income from house property, capital gains and income from other sources, if any, in accordance with provisions of relevant chapters after making due enquiries and calling for information.

C. Compute Gross Total Income being A+B above.

D Determine profits from accounts eligible to be deducted under section 80P(2)(a) to (f) covering only items included in each of the sub-sections.

E. Determine assessed income at C-D (if any) subject to provisions of section 80AB.

F. The assessee must be given opportunity of being heard before finalizing the computation and for furnishing relevant information adequate time within the statutory time limit under section 153 is to be granted.

2.2 The CIT also observed that as judicial discipline is vital, the decision in case of Chirakkal Servicce Co-operative Bank Ltd. vs. CIT (284 ITR 490) subject to final decision in SLP in admitted case of Karakulam SCB Ltd. for the assessment year 2008-09 is to be borne in mind by the Assessing Officer at the time of giving effect to this order. Against this, the assessee is in appeal before us.

3. We have heard the rival submissions and perused the record. Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner is well within his powers to treat an order as erroneous on the ground that the Assessing Officer should have made further inquiries before accepting the wrong claims made by the assessee. The Assessing Officer cannot remain passive in the face of a claim, which calls for further enquiry to know the genuineness of it. In other words, he must carry out investigation where the facts of the case so require and also decide the matter judiciously on the basis of materials collected by him as also those produced by the assessee before him. The Assessing Officer was statutorily required to make the assessment under Section 143(3) after scrutiny and not in a summary manner as contemplated by

Sub-section (1) of Section 143. The Assessing Officer is therefore, required to act fairly while accepting or rejecting the claim of the assessee in cases of scrutiny assessments. The Assessing Officer should protect the interests of the revenue and to see that no one dodged the revenue and escaped without paying the legitimate tax. The Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return. The order passed by the Assessing Officer becomes erroneous when an enquiry has not been made before accepting the genuineness of the claim which resulted in loss of revenue.

3.1 In the present case, the Assessing Officer was under obligation to determine income from other sources being deposits for which source was not explained. The assessee is not a co-operative Bank having the meaning assigned to it in part V of the Banking Regulation act, 1949 (10 of 1949). The Assessing Officer should have called for details of deposits and anyalysed identity, genuineness and creditworthiness of the same. Even if the benefit of section 80P(4) of the Act is available to Primary Agricultural Co-operative Society, this does not imply that eligibility u/s. 80P(2) automatically flows to the assessee which has to be established. Further, the accounts were not subjected to audit under section 44AB. In the present case, the profit and loss account and balance sheet were not filed

either by an accountant or under co-operative audit. The assessee was liable to file further report by an accountant in the prescribed format as per the provisions of section 44AB of the Act. It appears that all these aspects were not enquired into and no proper efforts were made to find out whether the assessee was eligible for deduction u/s. 80P(2) of the Act. Without making any enquiry into these issues, the Assessing Officer accepted the assessee's claim. The failure on the part of the Assessing Officer to make necessary enquiry rendered the assessment order erroneous which also resulted in loss to the revenue. The CIT had observed in his order that it is to be decided by the Assessing Officer after fresh examination . Hence, the order of the CIT cannot be held as erroneous. The CIT's approach was correct. Further, CIT had observed that no proper enquiry has been made that resulted in erroneous order and further it resulted in loss of revenue. Hence the Assessing Officer has to pass the order after hearing the assessee. Therefore, the CIT exercised his power conferred u/s. 263 of the Act in setting aside the assessment and remanded the case back to the file of the Assessing Officer to make enquiry into the issue and decide the same. As such, the CIT remitted the issue back to the file of the Assessing Officer for de novo consideration.

3.2 Being so, in our opinion, there is no infirmity in the order of the CIT and the same is confirmed. Accordingly, this ground of appeal of the assessee is dismissed. Thus, the appeal filed by the assessee in ITA No. 141/Coch/2017 is dismissed.

I.T.A. No. 47/Coch/2019 : 2013-14 : Revenue Appeal

4. This appeal filed by the Revenue is directed against the order of the CIT(A), Trivandrum dated 07/11/2018 for the assessment year 2013-14. The assessee has also filed Cross objection in C.O. No. 10/Coch/2019.

4.1 The Revenue has raised the following grounds of appeal:

1) The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that *"the appellant is eligible for deduction under section. 80P(2)(a)(i) of the Act on the business income."*

2) It is respectfully submitted that the respondent is essentially, a co-operative Bank and not merely a primary agricultural credit society and hence the allowance of deduction u/s. 80P to the respondent assessee while computing the total income was irregular in nature and also against law.

3) The present appeal involves substantial question of law:

(i) Whether on the facts and in the circumstances of the case, the order of CIT(A) deleting the additions made during the completion of assessment as per the provisions of Income Tax Act, considering the provisions of section 80P(4) is correct?

(ii) Whether on the facts and circumstances of the case, the order of CIT(A) is correct in considering the fact that reserve/provision is neither actual expenses nor ascertain liability and not entitled to deduction u/s. 80P(2)?

(iii) Whether on the facts and in the circumstances of the case, the order of the CIT(A) is correct in not duly considering that the interest income received from deposits made with bank cannot be attributable as p[rofit and gains from out of providing credit facilities to its members u/s. 80P(2)(a)(i)?

(iv) Whether on the facts and in the circumstances of the case, the order of the CIT(A) is correct in not duly considering that the assessee has invested surplus funds like an ordinary investor and it has to be taxed as income from other sources?

(v) Whether on the facts and in the circumstances of the case, the order of the CIT(A) is correct in not duly considering the judgment of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT, Circle-9(1), Hyderabad dated 08/08/2017 reported in 397 ITR 1 (SC), wherein it has been held that if a co-operative society is violating the principle of mutuality in the garb of persons who actually are not real members and indulging in banking business per se that it cannot claim the benefit of section 80P(2)(a)(i).

(vi) Whether on the facts and in the circumstances of the case, the order of CIT(A) is correct in not duly considering the following case laws

(a) Sabargantha Zilla Kharid Vechar Sangh Ltd. (203 ITR 1027) (SC)

(b) Perinthalmanna Service Co-operative Bank (363 ITR 68) (Kerala)

(c) CIT Vs Kerala State Co-operative Marketing Federation (234 ITR 201) (Ker.)

4. For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax(Appeals), Trivandrum on the above points may be set aside and that of the Assessing Officer restored.

5. The facts of the case are that the assessee is a Co-operative Society engaged in banking business and filed its return of income for AY 2013-14 declaring total income for the year at Rs. Nil after claiming deduction under section 80P of the I.T. Act. The Assessing Officer denied the deduction claimed by the assessee u/s. 80P of the Act for AY 2013-14 vide order passed u/s. 143(3) of the Act on the ground that the principal business carried out by the society was not according to the objectives of the primary agricultural credit society.

5.1. On appeal, the CIT(A) held that the issue of eligibility of Primary Agricultural Credit Society to claim deduction u/s. 80P was covered in favour of the assessee by the judgment of the High Court of Kerala in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT in 384 ITR 490. The CIT(A) also relied on the decision of the ITAT, Cochin Bench in the case of Kararikanam Service Co-operative Bank Ltd. for AY 2009-10 in ITA No.293/Coch/2013 dated 14th October, 2016. Following the above judgments, as the assessee is a registered Primary Agricultural Credit Co-operative Society, the CIT(A) held that the assessee is eligible for deduction u/s. 80P of the Act.

5.2 Against this, the Revenue is in appeal before us. The Ld. DR relied on the order of the Assessing Officer.

5.3 We have heard the rival submissions and perused the record. In our opinion, the issue was considered by the Jurisdictional High Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT reported in ITA No.97/2018 dated 19.03.2019 wherein it was held that the Assessing Officer is not obliged to grant deduction by merely looking at the certificate of registration issued by the competent authority under the Co-operative Societies Act. Instead, he has to conduct an enquiry into the factual situation as to the activities of the assessee and arrive at a conclusion whether the benefits of section 80P can be extended or not.

Thus, the Full Bench overruled the earlier judgment of the Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT (384 ITR 490). The Full Bench had followed the judgment of the Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT reported in 397 ITR 1 (SC). In view of the latest judgment of the Jurisdictional High Court cited supra, this issue is remitted to the file of the Assessing Officer with the direction to examine the actual activities carried on by the assessee so as to grant deduction u/s. 80P of the Act. Accordingly, the issue in dispute is remitted to the file of the Assessing Officer for fresh consideration in accordance with the above direction. This ground of appeal of the Revenue is partly allowed for statistical purposes.

6. The next issue for the assessment year 2013-14 is with regard to deduction u/s. 80P(2)(a)(i) of the Act. This issue was allowed by the CIT(A) in the light of the order of the Tribunal in the case of Kizhathadiyoor Co-operative Bank Limited for AY 2009-10 in ITA No. 525/Coch/2014, order dated 20.07.2016 wherein it was held that the interest income earned from the investment in Treasury and Banks is part of the banking activity and therefore, the said income is eligible for deduction under section 80P(2)(a)(i) of the Act.

6.1 Against this, the Revenue is in appeal before us. The Ld. DR relied on the order of the Assessing Officer.

6.2 We have heard the rival submissions. With regard to the interest income earned by the assessee from other Banks and Treasury on which deduction u/s. 80P(2)(i)(a) of the Act is to be granted, there is no dispute that the assessee has made investments in the course of banking activities and such interest income was received on investments made with cooperative banks and other scheduled banks. The co-ordinate bench of the Tribunal in the case of Kizhathadiyoor Co-operative Bank Limited cited supra had held that such interest income received by the assessee should be assessed as "income from business" instead of "income from other sources". In view of the order of the co-ordinate bench, we hold that the CIT(A) is justified in holding that interest income received by the assessee should be assessed as "income from business".

6.3 As regards grant of deduction u/s. 80P(2)(i)(a) of the Act, the Assessing Officer shall follow the law laid down by the Larger Bench of the Jurisdictional High Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT cited supra and examine the actual activities of the assessee so as to grant deduction u/s. 80P(2)(i)(a) of the Act. Accordingly, we remit this issue to the file of the Assessing Officer for fresh consideration in accordance with the above direction. Thus, this ground of appeal of the Revenue is partly allowed for statistical purposes for both the assessment years. Thus, the appeal filed by the Revenue in ITA No. 47/Coch/2019 is partly allowed for statistical purposes.

C.O. No. 10/Coch/2019

7. Since the Revenue's appeal has been remitted to the Assessing Officer for fresh consideration, the Cross Objection filed by the assessee is rendered as infructous and the same is dismissed as such. Thus, the Cross Objection filed by the assessee in C.O. No. 10/Coch/2019 is dismissed.

ITA No. 563/Coch/2018 :AY 2013-14: Assessee's Appeal

ITA No. 93/Coch/2018 : A.Y. 2014-15:Assessee's Appeal

8. The assessee has raised following common grounds of appeal:

> 1. Assessing Officer has erred in arriving at a conclusion that the appellant is co-operative bank and disallowing the deduction u/s. 80P without considering the CBDT Circular 133 of 2007 dated 09/05/2007).
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> 2. Assessing Officer has erred in treating the deposits received from members as 'unexplained cash credit' u/s. 68.
>
> 3. Assessing Officer ought to have seen that even if the deposits are treated as unexplained cash credit u/s. 68, deduction u/s. 80P is available to the appellant as per CBDT Circular No.37/2016 dated 02/11/2016.

8.1 The first ground for both the assessment years does not require adjudication as we have already remitted the issue in dispute to the file of the Assessing Officer for fresh consideration.

8.2 Regarding addition u/s. 68 of the Act, the facts of the case are that the assessee was asked to furnish the details of persons from whom deposits have been received. However, the assessee had not furnished the details of depositors.

Therefore, the Assessing Officer treated the increase in deposits as unexplained credits u/s. 68 of the Act.

8.3 On appeal, the CIT(A), by placing reliance on the decision of the ITAT, Hyderabad in the case of Citizen Co-operative Society, 24 taxmann. com 347, held that the onus is on the assessee to prove the identity of the depositor and such onus can be discharged only by furnishing the proper proof of address and identity to the satisfaction of the Assessing Officer. In this case, the CIT(A) observed that the assessee had failed to furnish the details of depositors and therefore, had not proved the identity of the depositors. According to the CIT(A), the assessee had not discharged the onus cast on it to prove the identity of the depositors as required under the provisions of section 68 of the Act. Therefore, the CIT(A) confirmed the addition made by the Assessing Officer u/s. 68 of the Act.

8.4 Against this, the assessee is in appeal before us. The Ld. AR submitted that the provisions of section 68 are not applicable to the deposits received by the co-operative societies.

8.5 The Ld. DR relied on the order of the CIT(A) .

8.6 We have heard the rival submissions and perused the record. Under section 68 of the Act, where any sum is found credited in the books of the assessee maintained in any previous year and no explanation is offered by the assessee for the nature and source thereof, the sum so credited may be charged to income tax as the income of the assessee in that previous year. According to the provisions of section 68, what is required by the assessee is:

a) identity of depositors.

b) Source and genuineness of such credits is to be explained.

In the present case, the explanation of the assessee is that the deposits were received from the members of the Society/customers. It was submitted that the deposits were collected in the normal course of assessee's business and duly filled application of each deposit is available with the assessee. In our opinion, it is the duty of the assessee to prove the identity of the depositors to the satisfaction of the Assessing Officer. It is seen that the assessee has not furnished the details of names and addresses and PAN Nos. of the concerned depositors. In our opinion, the assessee has to fulfil the above requirements. However, we make it clear that the assessee, being a Co-operative Society, need not prove the creditworthiness and genuineness of the deposits, but it has to prove the identity of the depositors by furnishing proof of address and PAN details of the depositors to the satisfaction of the Assessing Officer as held by the Hyderabad Bench of the Tribunal in the case of ACIT vs. Citizen Co-operative Society Ltd. (54 SOT 196) (URO)(Hyd.).

Accordingly, we remit this issue to the file of the Assessing Officer with a direction to the assessee to furnish the identity of the depositors with PAN details before the AO and decide the issue in accordance with law. Thus, this ground of appeals of the assessee is partly allowed for statistical purposes.

9. The next common Ground, Ground No. 3 is with to disallowance of deduction u/s. 80P of the Act on addition of unexplained income under section 68 of the Act.

9.1 The facts of the case are that the Assessing Officer made addition u/s. 68 of the Act by holding that such amount does not fall under business profits.

9.2. On appeal, the CIT(A) denied deduction u/s. 80P of the Act on the unexplained income u/s. 68 of the Act by following the judgment of the Jurisdictional High Court in the case of Kerala Sponge Iron Ltd. (79 taxmann. com 350) wherein it was held that unexplained income assessed under section 68 of the Act cannot be treated as business income and consequently, no deduction u/s. 80P of the Act can be allowed for the unexplained income assessed u/s. 68 of the Act.

9.3 Against this, the assessee is in appeal before us. The Ld. AR submitted that the income assessed under section 68 of the Act is to be treated as business income and accordingly, deduction u/s. 80P is to be allowed.

9.4 We have heard the rival submissions and perused the record. The contention of the learned AR is misplaced. According to the AR, the additions made u/s. 68 of the Act are to be considered as income from business so as to grant deduction u/s. 80P of the Act. The only dispute before us is with regard to granting of deduction u/s. 80P of the Act for the resultant income on account of additions u/s. 68 of the Act. The income resulting on account of addition u/s. 68 of the Act cannot be considered as income derived from business though it is income of the assessee. Even if the addition is made u/s. 68, it does not necessarily follow that such credit represents business income of the assessee as a general practice unless there is clear evidence that it represents business receipts. In the present case, it relates to granting of deduction with regard to profit/grain derived from business and unless it is proved that it is from business, deduction u/s. 80P cannot be granted. The contention of the assessee is not acceptable in view of the clear provisions of section 80P of the Act and the impugned additions cannot be said to be business receipts. This is because the source of income is income from other sources and the Department does not have to locate any particular source of income. It is pertinent to place reliance on the judgment of jurisdictional High Court in the case of G.M. Chenna Basappa vs. CIT (34 ITR 576) (AP) wherein it was held that addition on account of unexplained cash credits which is altogether is from an unknown source and they are legally sustainable additions.

9.5 The Hon'ble Supreme Court also held in the case of CIT vs. Orissa Corporation Pvt. Ltd. (159 ITR 78) held that although section 68 provides that the previous year for which the books of account are maintained may be taken as the previous year for assessing the cash credit, it does not further provide that cash credit should necessarily be deemed to be the profit of the business for which the books are maintained. The cash credit may be assessed as business profit or as income from other sources as the case may be. There is no rule that the amount is credited in the business account, which must be taken as receipt from business. Whether the amount of credit u/s. 68 is income from business or income from other sources depends on the evidence and explanation furnished by the assessee.

9.6 It was held in the case of Laxmichand Baijnath vs. CIT (35 ITR 416) (SC) that if credits are found in business account of the assessee and the explanation as to the nature and source of account is rejected by the Income-tax authorities, such authorities are entitled to treat the credit as income from business. The said decision cannot be interpreted to mean that in all cases such credits must be treated as income from business. Merely because the assessee is running a business in which are found certain unexplained cash credits, it does not necessarily follow that such credits represent suppressed business receipts and there would be no error of law in regarding the unexplained cash credits as income of the assessee from some independent and unknown sources unless there are strong reasons for

connecting the unexplained cash credits with known sources of income of the assessee, there would be no alternative to treating them as income from other sources.

9.7 Reliance is also placed on the judgment of Supreme Court in the case of CIT vs. Deviprasad Viswanath Prasad (72 ITR 194) wherein it was held that when the assessee pleads that the impugned cash credits came out of suppressed profit, it is for him to prove that it is so. If these receipts are allowed by treating as business receipts, then the assessee will be entitled to set off of business expenditure against these receipts which is not permissible. The assessee's business is carrying on of export activities in granite slabs and not dealing in unexplained credits. Being so, we are inclined to hold that the assessee is not entitled for deduction under section 80P of the Act on account of addition u/s. 68 of the Act. This ground of appeals of the assessee is dismissed.

9.8 The assessee has also submitted that the assessment was not made within the time specified u/s. 153 as the assessment order was served on 03/01/2017. However there is no ground raised by the assessee relating to this issue in its appeal. Hence, this ground of the assessee is dismissed. Thus, the appeals of the assessee in I.T.A. No. 563/Coch/2018 and 93/Coch/2018 are partly allowed for statistical purposes.

10. In ITA No.93/Coch/2018 for the assessment year 2014-15, the assessee has also raised the following grounds of appeal:

> 5. The AO has erred in classifying the interest income received from deposits as income from other sources and denying deduction of proportionate expenses incurred to earn the interest income.
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> 6. The AO ought to have seen that in case the appellant is classified as a co-operative bank, expense u/s. 36(1)(viia) had to be allowed.
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> 7. The assessment order was served on 03/01/2017 resulting in time barred assessment.

10.1. Ground No. 5 is with regard to treatment of interest income received from deposits as income from other sources and denying deduction of proportionate expenses incurred to earn the interest income.

10.2 The facts of the case are that the AO brought to tax a sum of Rs.20,68,89,029/- rejecting the claim of deduction made u/s. 80P(2) of the Act while treating the same as income from other sources. According to the AO the said amount of interest is liable to be taxed under the head income from other sources since the assessee-Society has invested the surplus fund as an ordinary investor. According to the AO the benefit of section 80P(2)(d) of the Act is allowable only in respect of any income by way of interest derived by the co-operative society from its investments with another co-operative society but not to

the interest income earned from a District Co-operative Bank and Consumer Federation as in the case of the assessee. The AO relied on the decision of Supreme Court in the case of Totgar's Co-operative Sales Society Ltd. vs. ITO (322 ITR 283) wherein it was held that the assessee being co-operative society is engaged in providing credit facilities to its members or marketing agricultural produce of 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 Act and it cannot be said to be attributable to the activity of the society and , the interest did not qualify for deduction u/s. 80P of the Act. The interest earned on fixed deposits with the co-operative bank cannot be considered as business income.

10.3 We have heard the rival submissions and perused the record. As discussed in paras 6.2 and 6.3, this issue is remitted to the file of the Assessing Officer on similar directions.

11. Ground No. 6 is with regard to provision for bad and doubtful debts.

11.1 The facts of the case are that the assessee claimed that they are eligible for deduction u/s. 36(1)(viia) for provision of bad and doubtful debts. This cannot be allowed since as per the list of rural branches furnished by the assessee, none of the branches of the bank/society are situated in the villages where the population is

less than 10,000. Hence, it was held that the assessee was not eligible for deduction u/s. 36(1)(viia) of the Act. It was further observed that neither any provision for bad and doubtful debts in the books of account was created nor made any claim in the return of income filed. According to the Assessing Officer as per section 36(2)(v) of the Act, no deduction shall be allowed unless the assessee debits the amount on such debt in that previous year to the provision for bad and doubtful debts. The AO relied on the judgment of the Supreme Court in the case of Goetze (India) Ltd. (284 ITR 232) wherein it was held that claim of deduction/provision not made in the return can be entertained by the AO only if such claim is made through a revised return and not otherwise. This being the position of law as per the decision of the Supreme Court, the Assessing Officer held that the claim made by the assessee was unsustainable and devoid of merit. Therefore, the AO held that the assessee is not entitled for any deduction u/s. 36(1)(viia) of the Act.

11.2 On appeal, the CIT(A) observed that if the expenditure disallowed is related to the business activity against which Chapter VI-A deduction has been claimed, the deduction is to be allowed on the enhanced profit. He observed that exemption u/s. 80P(2)(a)(i) is available to the assessee on this part of disallowance made on account of provision for bad and doubtful debts and accordingly deleted the disallowance made to that extent.

11.3 Against this, the assessee is in appeal before us.

11.4 The Ld. DR relied on the order of the CIT(A).

11.5. We have heard the rival submissions and perused the record. Admittedly, the CIT(A) gave a finding that exemption u/s. 80P(2)(a)(i) is available to the assessee on the part of disallowance made on account of provision of bad and doubtful debts and the disallowance made to that extent was deleted. Being so, the assessee cannot have any grievance against this finding of the CIT(A) on this issue. Hence, the ground raised by the assessee with regard to exemption u/s. 36(1)(viia) of the Act is misconstrued. Accordingly, this ground of appeal of the assessee is dismissed.

12. The final ground of appeal stating that the order was not passed in time was dismissed by the CIT(A) since the order was rightly passed on 30/12/2016 which was within the stipulated time limit envisaged in section 153 of the Act. Accordingly, we do not find any infirmity in the order of the CIT(A) and the same is confirmed. Hence, this ground of appeal of the assessee is dismissed. Thus, the appeal of the assessee in ITA No. 93/Coch/2018 is partly allowed for statistical purposes.

S.P. No. 43/Coch/2019 : 2012-13 & S.P. 06/Coch/2018 : 2014-15

13. Since assessee's appeals in ITA No.563/Coch/2018 and ITA No. 93/Coch/2018 have been disposed off, the above Stay Petitions filed by the assessee are rendered infructuous and the same are dismissed as such.

ITA No. 400/Coch/2018 : A.Y. 2014-15: Assessee's Appeal

14. The only ground in this appeal is with regard to levy of penalty u/s. 271B for non-filing of audit report by an accountant within the prescribed format.

14.1 The facts of the case are that the return for the year under consideration was belatedly filed on 20/03/2015 but without filing the audit report as required u/s. 44AB of the Act. The assessee was required to file the audit report within the stipulated time limit i.e. on 30/09/2014. In the absence of such audit report, the Assessing Officer levied penalty u/s. 271B of the Act. According to the Assessing Officer audit report along with Form 3CA is required to be filed u/s. Rule 6G(1) of the I.T. rules which provides that in the case of an assessee who carries on business and is required under any other law to get his accounts audited, the report of such audit of accounts of the assessee is required to be furnished u/s. 44AB of the Act. In the absence of satisfactory explanation from the assessee, the Assessing Officer levied penalty u/s. 271B of the Act.

14.2 On appeal, the CIT(A) confirmed the order of the Assessing Officer by observing that the assessee had failed to get his accounts audited before the specified date and furnish the audit report by that date to the Assessing Officer. Further, according to the CIT(A), sec. 271B provides for imposition of penalty if any person fails without reasonable cause to get his accounts audited within stipulated time.

14.3 Against this, the assessee is in appeal before us. The Ld. AR submitted that the audit of the Society is done as per the provisions of Kerala Co-operative Societies Act, 1969. The Society does not have any power in appointing auditor under the said Act or getting his accounts audited in time. The Ld. AR submitted that the delay in completion of audit was not because of any default on the part of the assessee Society. The ld. AR relied on the judgment of the High Court of Uttarakhand in the case of CIT vs. Iqbalpur Cooperative Cane Development Union Ltd. (356 ITR 343) wherein it was held that delay in submitting the audit report in such a situation is a reasonable cause for the purpose of section 273B and penalty under section 271B shall not be imposed.

14.4 According to the Ld. AR, the Tax Audit Report is required to be submitted if it is called for by the Income Tax Officer during the Assessment proceedings as explained in CBDT Circular No 3 of 2009. In the case of the assessee-Society, the

audit of the accounts was completed after due date and the assessee was not asked by the assessing officer to file audit report at any point of time during the assessment proceedings. According to the Ld. AR, as per proviso to Section 44AB, if a person is required by or under any other law to get his accounts audited, getting accounts audited under that law before specified date and furnishes by that date the report of such audit report and a further report by an accountant in the form prescribed would be enough to comply with the provisions of section 44AB. Audit was completed late. Only further report was not furnished. 271B speaks only about report of such audit and not about further report. The Ld. AR submitted that penalty u/s Section 271B is applicable for (1) failure to get accounts audited; or (2) failure to furnish report of such audit. The scope of Section 27IB cannot be expanded for non-compliance of Section 44AB. It was submitted that penalty u/s 271B cannot be imposed for not completing the audit or not furnishing the report in time. According to the Ld. AR, as per Section 44AA read with Rule 6F books of accounts to be maintained by different class of business are prescribed. Section 44AA and Rule 6F is silent about the books of accounts need to be maintained by the assessee. When books of accounts itself are not prescribed levy of penalty for not getting the accounts audited is not valid. For this proposition, the Ld. AR relied on the decision of the ITAT Cochin Bench in the case of K.V Ramachandran vs. DCIT Circle 1(1) Kannur. 2013 SB SOT 264 (Cochin Trib). Further, he relied on CBDT Circular No. 3/2009 dated 21/05/2009 wherein it was stated that audit report u/s.

44AB should not be attached with the return. As per the Circular, the assessee should retain the report with himself and it need to be furnished only if the Assessing Officer request the assessee to furnish it. The Circular also states that no penalty u/s. 271B shall be imposed for not furnishing the audit report within due date.

14.5. The Ld. DR relied on the order of the CIT(A).

14.6. We have heard the rival submissions and perused the record. The Ld. AR submitted that in this case the assessee is a co-operative society. As per proviso to section 44AB, if a person is required under any other law to get his accounts audited, getting the account audited under that law before the specified date and furnished by that date, the report of such audit report would be constituted as sufficient compliance of section 44AB of the Act. In the present case, the assessee is required to get its accounts audited under Co-operative Societies Act ad it has to file the return of income on 20/03/2015 as per second proviso to section 44AB of the Act which reads as follows:

> "in case of persons whose accounts are required to be audited under any other law, getting accounts audited under such law is enough to comply with the provisions of section 44AB."

As seen from the assessment order in para 3, the assessee furnished documents such as Annual Report of the Financial year 2013-14 depicting the audited financial statements, copy of receipts and distribution statement etc. The audit report by the accountant in the prescribed format was not produced before the Assessing Officer. In our opinion, non production of audit report in the prescribed format can be a reason for levying penalty u/s. 271B of the Act. Thus, this is a fit case for levying penalty u/s. 271B of the Act as the assessee has not given explanation regarding reasonable cause for not filing the audit report within the prescribed time limit. Accordingly, we confirm the penalty levied u/s. 271B of the Act. Thus, the appeal of the assessee in ITA No. 400/Coch/2018 is dismissed.

15. In the result, the appeal of the Revenue in I.T.A. No. 47/Coch/2019 is partly allowed for statistical purposes and the Cross Objection of the assessee in C.O. No.10/Coch/2019 is dismissed. The appeals of the assessee in ITA Nos. 93/Coch/2018 and 563/Coch/2018 are partly allowed for statistical purposes.

15.1 The appeals of the assessee in 141/Coch/2017 and in ITA No. 400/Coch/2018 and the Stay Petitions of the assessee are dismissed.

Order pronounced in the open Court on this 26th June, 2019

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 26th June, 2019

GJ
Copy to:
1. M/s. Peroorkada Service Co-operative Bank Ltd., Peroorkada, Thiruvananthapuram.
2. The Income Tax Officer, Ward-2(1), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin