IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.97/2016()

I.T.A. NO.255/COCH/2012 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2009-10

APPELLANT/APPELLANT/ASSESSEE

THE MAVILAYI SERVICE CO-OPERATIVE BANK LTD.
MOONAMPALAM, MAVILAYI P.O., KANNUR DIST.670 622

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA, Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.135/2016()

I.T.A. NO.340/COCH/2012 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2009-10

APPELLANT/APPELLANT/ASSESSEE

M/S.KODIYERI SERVICE CO-OPERATIVE BANK LTD.
KALLITHAZHA, PARAL, THALASSERY, KANNUR-670 671,
REPRESENTED BY ITS SECRETARY-IN-CHARGE, SMT.K.M.RUKMINI.

RESPONDENT/RESPONDENT/REVENUE

THE COMMISSIONER OF INCOME TAX,
1st FLOOR, AAYAKAR BHAVAN, NEW ANNEX BUILDING,
(NORTH BLOCK), MANANCHIRA, KOZHIKODE- 673 001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.V.P.NARAYANAN AND DIVYA RAVINDRAN, Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.3/2017()

I.T.A. NO.191/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2010-11

APPELLANT/RESPONDENT

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/APPELLANT

M/S.VAZHAPPALLY SERVICE CO-OPERATIVE BANK LTD.
VAZHAPPALY, CHANGANACHERRY,DT.KOTTAYAM- 686103.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of M/S.M.GOPIKRISHNAN NAMBIAR, P.GOPINATH, K.JOHN MATHAI, JOSON MANAVALAN AND KURYAN THOMAS, Advocates for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.11/2017()

I.T.A. NO.358/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2012-13

APPELLANT/APPELLANT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE

THE ETTUMANOOR SERVICE CO-OPERATIVE BANK LTD.
PEROOR ROAD, ETTUMANOOR-686631,
KOTTAYAM DISTRICT

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of M/S.FIROZE B.ANDHYARUJINA(SENIOR) along with ARUN RAJ.S, Advocates for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.12/2017()

I.T.A. NO.300/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2012-13

APPELLANT/RESPONDENT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE

M/S.KIDANGOOR SERVICE CO-OPERATIVE BANK LTD.
KIDANGOOR P.O., KOTTAYAM DISTRICT- 686572

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of SRI.O.D.SIVADAS, Advocate for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.22/2017()

I.T.A. NO.106/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2012-13

APPELLANT/RESPONDENT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE

THE MUNDAKKAYAM SERVICE CO-OPERATIVE BANK LTD.
MUNDAKKAYAM, KOTTAYAM- 686513

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of M/S.K.P.PRADEEP AND LIJI VADAKKEDAM Advocates for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.26/2017()

I.T.A. NO.361/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2012-13

APPELLANT/APPELLANT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE

THE KADAKKARAPPALLY SERVICE CO-OPERATIVE BANK LTD.
KADAKKARAPPALY P.O., ALAPPUZHA.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of M/S.C.A.JOJO, MATHEWS JOSEPH AND SREENATH V.GOPAL, Advocates for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.25/2017()

I.T.A. NO.360/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2012-13

APPELLANT/APPELLANT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE

THE KIZHKKENALPATHIL SERVICE CO-OPERATIVE BANK LTD.
CMC 28, CHERTHALA P.O., ALAPPUZHA - 688524

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of M/S.JACOB CHACKO, C.A.JOJO AND SREENATH V.GOPAL, Advocates for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.32/2017()

I.T.A. NO.517/COCH/2014 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2010-11

APPELLANT/APPELLANT/ASSESSEE

M/S.KODIYERI SERVICE CO-OPERATIVE BANK LTD.
KALLITHAZHE, P.O. PARAL, THALASSERY, KANNUR-670 741,
REPRESENTED BY ITS SECRETARY, SHRI ARUN KUMAR K.P.

RESPONDENT/RESPONDENT/REVENUE

THE COMMISSIONER OF INCOME TAX,
1st FLOOR, AAYAKAR BHAVAN, NEW ANNEX BUILDING,
NORTH BLOCK, MANANCHIRA, KOZHIKODE- 673 001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.V.P.NARAYANAN AND DIVYA RAVINDRAN, Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.33/2017()

I.T.A. NO.516/COCH/2014 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2008-09

APPELLANT/APPELLANT/ASSESSEE

M/S.KODIYERI SERVICE CO-OPERATIVE BANK LTD.
KALLITHAZHE, P.O. PARAL, THALASSERY, KANNUR-670741,
REPRESENTED BY ITS SECRETARY, SHRI ARUN KUMAR K.P.

RESPONDENT/RESPONDENT/REVENUE

THE COMMISSIONER OF INCOME TAX,
1st FLOOR, AAYAKAR BHAVAN, NEW ANNEX BUILDING,
NORTH BLOCK, MANANCHIRA, KOZHIKODE- 673 001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.V.P.NARAYANAN AND DIVYA RAVINDRAN, Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.55/2017()

I.T.A. NO.58/COCH/2015 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2009-10

APPELLANT/RESPONDENT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE

M/S.POONJAR SERVICE CO-OPERATIVE BANK LTD.,
POONJAR P.O.,KOTTAYAM DISTRICT- 686681.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of SRI.A.KUMAR, Advocate for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.68/2017()

I.T.A. NO.340/COCH/2016 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2012-13

APPELLANT/RESPONDENT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.
1st FLOOR, AMAL JYOTHI BUILDING, CATHEDRAL ROAD,
KANJIRAPPALLY, KOTTAYAM 686507.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of SRI.JOSE JOSEPH, STANDING COUNSEL for the petitioner and of M/s.A.KUMAR AND G.MINI, Advocates for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.69/2017()

I.T.A. NO.339/COCH/2015 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2010-11

APPELLANT/APPELLANT/ASSESSEE

THE CHOVVA CO-OPERATIVE RURAL BANK LTD.
CHOVVA P.O., KANNUR -670 006
REPRESENTED BY ITS SECRETARY AJAYAKUMAR C.V.

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA , Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.72/2017()

I.T.A. NO.330/COCH/2012 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2009-10

APPELLANT/RESPONDENT/ASSESSEE

THE MULLAKKODI CO-OPERATIVE RURAL BANK LTD.
MULLAKKODI, P.O.KOLANCHERY, KANNUR DIST-670601.

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA , Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.73/2017()

I.T.A. NO.561/COCH/2014 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2007-08

APPELLANT/APPELLANT/ASSESSEE

THE MAYYIL SERVICE CO-OPERATIVE BANK LTD.
MAYYIL, KANNUR-670006, REPRESENTED BY ITS SECRETARY,
C.RAJAN.

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA, Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.74/2017( )

I.T.A. NO.179/COCH/2015 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2008-09

APPELLANT/APPELLANT/ASSESSEE

THE KARARINAKAM SERVICE CO-OPERATIVE BANK LTD.
KURUVA, KADALAYI(P.O.) KANNUR -670 007

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA, Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday, the 19th day of March 2019/28th Phalguna, 1940

ITA.No.75/2017()

I.T.A. NO.563/COCH/2014 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2010-11

APPELLANT/APPELLANT/ASSESSEE

THE MAYYIL SERVICE CO-OPERATIVE BANK LTD.
MAYYIL, KANNUR-670006, REPRESENTED BY ITS SECRETARY,
C.RAJAN.

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA , Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

IN THE HIGH COURT OF KERALA AT ERNAKULAM

present:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

Tuesday,the 19th day of March 2019/28th Phalguna, 1940

ITA.No.76/2017()

I.T.A. NO.562/COCH/2014 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
FOR THE A.Y: 2008-09

APPELLANT/APPELLANT/ASSESSEE

THE MAYYIL SERVICE CO-OPERATIVE BANK LTD.
MAYYIL, KANNUR-670006, REPRESENTED BY ITS SECRETARY,
C.RAJAN.

RESPONDENT/RESPONDENT/REVENUE

COMMISSIONER OF INCOME TAX,
CALICUT - 673001.

This appeal again coming on for orders along with connected cases upon perusing the appeal and the affidavit filed in support thereof and this court's reference order dated 9/7/18 and upon hearing the arguments of M/s.S.ARUN RAJ and C.T.SUJA , Advocates for the petitioner and of SRI.CHRISTOPHER ABRAHAM, STANDING COUNSEL for Respondent, the court passed the following:-

p.t.o

"CR"

P.R. RAMACHANDRA MENON, ANIL K. NARENDRAN & DEVAN RAMACHANDRAN (JJJ)

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ITA Nos.97 and 135 of 2016, 3, 11, 12, 22, 25, 26, 32, 33, 55, 68, 69, 72, 73, 74, 75 and 76 of 2017

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Dated this the 19th day of March, 2019

ORDER

ANIL K. NARENDRAN, J.

This batch of Income Tax Appeals are listed before the Full Bench, after obtaining orders from the Hon'ble Acting Chief Justice, based on a reference order dated 09.07.2018 of the Division Bench. One of the substantial questions of law raised in these appeals is as to whether the respective assessees are eligible for exemption under Section 80P of the Income Tax Act, 1961, after the introduction of sub-section (4) thereof.

2. Before the Division Bench, the assessees contended that the issue is covered by the decision of a Division Bench of this Court in **Chirakkal Service Co-operative Bank Ltd. v. Commissioner of Income Tax [(2016) 384 ITR 490 (Ker)]**. On the other hand, the Revenue contended that the aforesaid decision was rendered without noticing the decision of yet another Division Bench in **Perinthalmanna Service Co-operative Bank Ltd. v. Income Tax Officer and another [(2014) 363 ITR 268 (Ker)]**. A reading of the order of reference would show that the learned Senior Counsel/learned counsel for the assessees raised certain grounds to dissuade the Division Bench from

referring the issue to a Larger Bench. After considering those contentions and going through the decisions in **Perinthalmanna Service Co-operative Bank [363 ITR 268]** and **Chirakkal Service Co-operative Bank [384 ITR 490]**, the Division Bench referred the matter to be placed before the Larger Bench, relying on the judgment of the Apex Court in **Assistant Commissioner of Income Tax v. Victory Aqua Farm Ltd [(2015) 280 CTR 32 (SC)]**. The Division Bench noticed that there is divergence of opinion expressed by the two Division Benches in **Perinthalmanna [363 ITR 268]** and **Chirakkal [384 ITR 490]**. In **Perinthalmanna** the action of the Assessing Officer in having extended the benefit of deduction under Section 80P of the Income Tax Act, by reasons of sub-section (4) thereof, by merely looking at the registration certificate under the Kerala Co-operative Societies Act, 1969 and the nomenclature given by the Department of Co-operative Societies was the subject of suo motu revision and the revisional order was approved by the Division Bench and it was also held that the Assessing Officer has to complete assessment taking clue from the observations made by the Revisional Authority, which will provide an insight to the nature of enquiry and ascertainment of the factual situation. In **Chirakkal**, the Division Bench did not notice the earlier judgment in **Perinthalmanna**. After referring to the provisions under the Kerala Co-operative Societies Act and the Banking Regulation Act, 1949 the Division Bench held that

the certificate of registration issued by the Department categorising the assessee as Primary Agricultural Credit Society could be relied on solely to grant deduction under Section 80P of the Income Tax Act.

3. Brief facts of the respective Income Tax Appeals, necessary for answering the reference, are as follows;

3.1. **ITA No.97 of 2016**:- The appellant, which is a Primary Agricultural Credit Society (for brevity 'PACS') registered under the Kerala Co-operative Societies Act, 1969 (for brevity 'the KCS Act') and the Rules made thereunder, i.e., the Kerala Co-operative Societies Rules, 1969 (for brevity 'the KCS Rules') is an assessee on the rolls of the Income Tax Officer, Ward-1, Kannur. The appellant has filed this appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the IT Act') challenging Annexure-C order dated 31.01.2013 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.255/Coch/2012 for the Assessment Year 2009-2010, arising out of Annexure-A assessment order dated 19.12.2011 of the Income Tax Officer, Ward-1, Kannur and Annexure-B appellate order dated 21.08.2012 of the Commissioner of Income Tax (Appeals)-II, Kozhikode.

3.2. **ITA No.135 of 2016**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-1, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-D order dated 22.04.2013 of the Income Tax

Appellate Tribunal, Cochin Bench in ITA No.340/Coch/2012, for the Assessment Year 2009-2010, arising out of Annexure-B assessment order dated 15.12.2011 of the Income Tax Officer, Ward-1, Kannur and Annexure-C appellate order dated 21.09.2012 of the Commissioner of Income Tax (Appeals)-II, Kozhikode.

3.3. **ITA No.3 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-3, Thiruvalla. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 19.07.2016 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.191/Coch/2016, for the Assessment Year 2010-2011, arising out of Annexure-A assessment order dated 26.03.2013 of the Income Tax Officer, Ward-3, Thiruvalla and Annexure-B appellate order dated 10.02.2016 of the Commissioner of Income Tax (Appeals), Kottayam.

3.4. **ITA No.11 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-5, Kottayam. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 17.11.2016 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.358/Coch/2016, for the Assessment Year 2012-2013, arising out of Annexure-A assessment order dated 13.03.2015 of the Income Tax Officer, Ward-5, Kottayam and Annexure-B appellate order dated 06.06.2016 of the Commissioner of

Income Tax (Appeals), Kottayam.

3.5. **ITA No.12 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-5, Kottayam. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 31.10.2016 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.300/Coch/2016, for the Assessment Year 2012-13, arising out of Annexure-A assessment order dated 19.03.2015 of the Income Tax Officer, Ward-5, Kottayam and Annexure-B appellate order dated 20.01.2016 of the Commissioner of Income Tax (Appeals), Kottayam.

3.6. **ITA No.22 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-5, Kottayam. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 31.10.2016 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.106/Coch/2016, for the Assessment Year 2012-13, arising out of Annexure-A assessment order dated 13.03.2015 of the Income Tax Officer, Ward-5, Kottayam and Annexure-B appellate order dated 29.01.2016 of the Commissioner of Income Tax (Appeals), Kottayam.

3.7. **ITA No.25 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-5, Alappuzha. The Revenue has filed this appeal under Section 260A of the IT Act

challenging Annexure–C order dated 18.11.2016 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.360/Coch/2016, for the Assessment Year 2012-13, arising out of Annexure-A assessment order dated 27.03.2015 of the Income Tax Officer, Ward-5, Alappuzha and Annexure-B appellate order dated 02.06.2016 of the Commissioner of Income Tax (Appeals), Kottayam.

3.8. **ITA No.26 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-5, Alappuzha. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure–C order dated 18.11.2016 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.361/Coch/2016, for the Assessment Year 2012-13, arising out of Annexure-A assessment order dated 27.03.2015 of the Income Tax Officer, Ward-5, Alappuzha and Annexure-B appellate order dated 02.06.2016 of the Commissioner of Income Tax (Appeals), Kottayam.

3.9. **ITA No.32 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-2, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure–C order dated 12.02.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.517/Coch/2014, for the Assessment Year 2010-11, arising out of Annexure-A assessment order dated 26.03.2013 of the Income Tax Officer, Ward-2, Kannur and

Annexure-B appellate order dated 30.09.2014 of the Commissioner of Income Tax (Appeals)-II, Kozhikode.

3.10. **ITA No.33 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-2, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 12.02.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.516/Coch/2014, for the Assessment Year 2008-09, arising out of Annexure-A assessment order dated 28.03.2013 of the Income Tax Officer, Ward-2, Kannur and Annexure-B appellate order dated 30.09.2014 of the Commissioner of Income Tax (Appeals)-II, Kozhikode.

3.11. **ITA No.55 of 2017**:- The respondent, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-3, Kottayam. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 22.03.2017 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.58/Coch/2015, for the Assessment Year 2009-10, arising out of Annexure-A assessment order dated 30.12.2011 of the Income Tax Officer, Ward-3, Kottayam and Annexure-B appellate order dated 31.10.2014 of the Commissioner of Income Tax (Appeals)-V, Kochi.

3.12. **ITA No.68 of 2017**:- The respondent, which is a Multi-State Co-operative Society registered under Section 7 of the Multi-State Co-

operative Societies Act, 2002 is an assessee on the rolls of the Income Tax Officer, Ward-4, Kottayam. The Revenue has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 26.05.2017 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.340/Coch/2016, for the Assessment Year 2012-13, arising out of Annexure-A assessment order dated 31.03.2015 of the Income Tax Officer, Ward-4, Kottayam and Annexure-B appellate order dated 31.05.2016 of the Commissioner of Income Tax (Appeals), Kottayam.

3.13. **ITA No.69 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-1, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 02.11.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.339/Coch/2015, for the Assessment Year 2010-11, arising out of Annexure-A assessment order dated 04.03.2013 of the Income Tax Officer, Ward-1, Kannur and Annexure-B appellate order dated 20.03.2015 of the Commissioner of Income Tax (Appeals), Kozhikode.

3.14. **ITA No.72 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-4, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 06.03.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.330/Coch/2012, for the

Assessment Year 2009-10, arising out of Annexure-A assessment order dated 21.12.2011 of the Income Tax Officer, Ward-4, Kannur and Annexure-B appellate order dated 21.09.2012 of the Commissioner of Income Tax (Appeals)-II, Kozhikode.

3.15. **ITA No.73 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-4, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 02.11.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.561/Coch/2014, for the Assessment Year 2007-08, arising out of Annexure-A assessment order dated 26.03.2013 of the Income Tax Officer, Ward-4, Kannur and Annexure-B appellate order dated 30.09.2014 of the Commissioner of Income Tax (Appeals), Kozhikode.

3.16. **ITA No.74 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-1, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 02.11.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.179/Coch/2015, for the Assessment Year 2008-09, arising out of Annexure-A assessment order dated 07.12.2010 of the Income Tax Officer, Ward-1, Kannur and Annexure-B appellate order dated 03.12.2014 of the Commissioner of Income Tax (Appeals), Kozhikode.

3.17. **ITA No.75 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-4, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 02.11.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.563/Coch/2014, for the Assessment Year 2010-11, arising out of Annexure-A assessment order dated 28.03.2018 of the Income Tax Officer, Ward-4, Kannur and Annexure-B appellate order dated 30.09.2014 of the Commissioner of Income Tax (Appeals), Kozhikode.

3.18. **ITA No.76 of 2017**:- The appellant, which is a PACS is an assessee on the rolls of the Income Tax Officer, Ward-4, Kannur. The appellant has filed this appeal under Section 260A of the IT Act challenging Annexure-C order dated 02.11.2015 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.562/Coch/2014, for the Assessment Year 2008-09, arising out of Annexure-A assessment order dated 28.03.2013 of the Income Tax Officer, Ward-4, Kannur and Annexure-B appellate order dated 30.09.2014 of the Commissioner of Income Tax (Appeals), Kozhikode.

4. The learned Senior Counsel/learned counsel for the assessees would contend that the authorities under the IT Act are neither competent nor possess jurisdiction to resolve the dispute as to whether the assessee is a Primary Agricultural Credit Society or a Co-

operative Bank, within the meaning assigned to it under the provisions of the Banking Regulation Act, 1949 (for brevity, 'the BR Act'), in view of the Explanation provided after clause (ccvi) of Section 5 of the said Act, read with Section 56. The registration certificate of the assessees issued by the Registrar of Co-operative Societies under sub-section (1) of Section 8 of the KCS Act is a conclusive evidence as to the registration of the Society as a Primary Agricultural Credit Society. In such circumstances, if the assessee is having a valid registration under Section 8 of the KCS Act, the authorities under the IT Act have to extend the benefit of deduction provided under Section 80P of the IT Act, by reason of sub-section (4) thereof, to such societies. The learned counsel for the assessee in ITA No.68 of 2017, which is a Multi-State Co-operative Society registered under Section 7 of the Multi-State Co-operative Societies Act, 2002 would also raise similar contentions.

5. Per contra, the learned Senior Counsel/Standing Counsel for Revenue would contend that deduction under Section 80P of the IT Act, after the introduction of sub-section (4) thereof, cannot be allowed to an assessee merely on the strength of certificate of registration under Section 8 of the KCS Act and the Assessing Officer has ample power during the course of assessment to examine the eligibility of the assessee for such deduction, for each assessment year.

6. Since, other substantial questions of law have also been

raised in the respective Income Tax Appeals, we deem it appropriate only to answer the question referred to the Full Bench, with reference to the claim for deduction under of Section 80P of the IT Act, by reason of sub-section (4) thereof. Though the learned Senior Counsel/the learned counsel for the assessees and also the learned Standing Counsel for the Revenue raised various contentions on merits, as to the claim made by the respective assessees for deduction under Section 80P of the IT Act, by reason of sub-section (4) thereof, we do not propose to consider those issues in this order.

7. Before proceeding to answer the question referred to the Full Bench, we deem it apposite to refer the relevant provisions under the KCS Act, the KCS Rules, the IT Act and the BR Act.

8. Clause (f) of Section 2 of the **KCS Act** define 'Co-operative Society' or 'Society' to mean a Co-operative Society registered or deemed to be registered under the said Act. Clause (l) of Section 2 define 'member' to mean a person joining in the application for registration of a Co-operative Society or person admitted to membership after such registration in accordance with the Act, the Rules and the Bye-laws and includes a nominal or associate member. Clause (m) of Section 2 define 'nominal or associate member' to mean a member, who possesses only such privileges and right of a member who is subject only to such liabilities of a member as may be specified in the bye-laws.

8.1. Clause (oa) of Section 2 of the KCS Act inserted by the Kerala Co-operative Societies (Second Amendment) Act, 1997, with effect from 29.12.1997, define 'Primary Agricultural Credit Society' to mean a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities. Clause (oa) was substituted by the Kerala Co-operative Societies (Amendment) Act, 1999, with effect from 01.01.2000, which define 'Primary Agricultural Credit Society' to mean a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and having its area of operation confined to a Village Panchayat or a Municipality. Clause (oa) was substituted by the Kerala Co-operative Societies (Amendment) Act, 2010, with effect from 28.04.2010, which define 'Primary Agricultural Credit Society' to mean a Service Co-operative Society, Service Co-operative Bank, a Farmers' Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances shall be fixed by the Registrar and having its area of operation confine to a Village, Panchayat or Municipality. The first proviso to clause (oa) provides that, the restriction regarding the area of operation shall not

apply to societies or banks in existence at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999. The second proviso to clause (oa) provides further that, if the above principal object is not fulfilled, such Societies shall lose all characteristics of a Primary Agricultural Credit Society as specified in the Act, Rules and Bye-laws, except the existing staff strength. Clause (oa) of Section 2 of the KCS Act was re-numbered as clause (oaa) by the Kerala Co-operative (Amendment) Act, 2013, with effect from 14.02.2013.

8.2. Chapter II of the KCS Act deals with registration of Co-operative Societies. As per Section 4, subject to the provisions of the Act, a Co-operative Society which has its object the promotion of the economic interest of its members or the interests of the public in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under the Act. Section 6 deals with application for registration of Co-operative Societies. As per sub-section (1) of Section 6, an application for the registration of a Co-operative Society shall be made to the Registrar in such form as may be prescribed and the applicant shall furnish to him such information about the society as he may require. As per sub-section (2) of Section (6), every such application shall conform to the requirements enumerated in clauses (a) to (c) of sub-section (2). Clause (a) to sub-section (2) provides that the application shall be

accompanied by three copies of the proposed bye-laws of the society. Section 7 of the Act deals with registration. As per sub-section (1) of Section 7, if the Registrar is satisfied (a) that the application complies with the provisions of Act and the Rules; (b) that the objects of the proposed society are in accordance with Section 4; (c) that the area of operation of the proposed society and the area of operation of another society of similar type do not overlap; (d) that the proposed bye-laws are not contrary to the provisions of the Act and the Rules; and (e) that the proposed society complies with the requirements of sound business; he may register the society and its bye-laws within a period of 90 days from the date of receipt of the application.

8.3. Section 8 of the KCS Act deals with Registration Certificate. As per sub-section (1) of Section 8, where a Co-operative Society is registered under the Act, the Registrar shall issue a certificate of registration signed and sealed by him, which shall be conclusive evidence that the said society is duly registered under the Act. As per Section 9 of the Act, the registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal and with the power to hold the property, enter into contracts, institute and defend suits and other legal proceedings and to do all thing necessary for the purposes for which it was constituted. The proviso to Section 9 provides that, the Government and the Registrar

shall have power to regulate the working of a society for the economic and social betterment of its members and the general public.

8.4. Section 12 of the KCS Act deals with amendment of bye-laws of a society. As per sub-section (1) of Section 12, no amendment of any bye-laws of a society shall be valid unless such amendment has been registered under the Act. As per sub-section (2) of Section 12, the provisions of Section 7 specifying the conditions to be satisfied before registration of bye-laws of a society by the Registrar shall, mutatis mutandis, apply also to the registration of amendments to bye-laws. As per Section 13, an amendment of the bye-laws of a society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

8.5. Section 15 of the KCS Act deals with cancellation of registration certificates of societies in certain cases. Sub-section (1) of Section 15 deals with cases where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of Section 14; sub-section (2) deals with cases where two or more societies are amalgamated into a new society in accordance with the provisions of Section 14; and sub-section (2) deals with cases where a society is divided into two or more societies in accordance with the provisions of Section 14.

9. Chapter II of the **KCS Rules** deals with registration of Co-

operative Societies and their bye-laws. Rule 3 deals with application for registration. As per sub-rule (1) of Rule 3, every application for registration of a Society under sub-section (1) of Section 6 shall be made in duplicate in Form No.1, accompanied by the documents enumerated in clauses (a) to (e) of sub-rule (1). Rule 4 deals with registration. As per clause (i) of Rule 4, on receipt of an application under Rule 3, the Registrar shall enter particulars of the application in the register of application to be maintained in Form No.2, give a serial number to the application, and issue a receipt in acknowledgement thereof. As per clause (ii), the Registrar shall then examine the application and the bye-laws in order to satisfy that the conditions specified in clauses (a) to (e) of Section 7 and Rule 3 are satisfied. As per clause (iii), the Registrar may call for such further information or make such enquiry as he may deem necessary or direct the Chief Promoter to make such modifications in the proposed bye-laws as he may deem fit. The Chief Promoter shall thereupon furnish such information or make such modifications in the proposed bye-laws as the Registrar may direct with the consent of the applicants within a period to be specified by him. As per clause (iv), if the Registrar is satisfied that the proposed Society has complied with the above requirements he may register the society and its bye-laws and issue to the society free of cost, a certificate of registration in Form No.3 signed by himself and bearing his official seal along with a certified copy

of the bye-laws as approved and registered by him. The certificate of registration shall contain the registration number of the society and the date of its registration. The Registrar may assign for each District and each class or such class of societies, a code symbol, for giving registration numbers to the societies. When a society has been registered, the bye-laws as approved and registered by the Registrar shall be the registered bye-laws of the society for the time being in force. As per clause (v), if the Registrar is satisfied that the proposed society will not fulfil the economic interest of the public in accordance with the Co-operative Principles mentioned in Schedule II of the Act or the registration of the society will make an adverse effect on the development of co-operative movement or he is satisfied that the objects of the proposed society is against the preamble of the Act, the Registrar shall pass an order of refusal together with the reasons thereof and communicate it by registered post or speed post or such courier services, approved by the High Court of Kerala/Government of Kerala to the Chief Promoter within 15 days of such order.

9.1. Rule 5 of the KCS Rules deals with subject matter of bye-laws. As per sub-rule (1) of Rule 5, the bye-laws of a society shall not be contrary to the provisions of the Act and the Rules and may deal with all or any of the matters specified in clauses (a) to (ab) of sub-rule (1) and with such other matters incidental to the organisation of the society and

the management of its business, as may be deemed necessary. Sub-rule (2) of Rule 5 deals with credit societies; sub-rule (3) deals with non-credit societies; and sub-rule (4) deals with composite society. Rule 9 of the KCS Rules deals with procedure regarding amendment of bye-laws and Rule 13 deals with amalgamation, transfer of assets and liabilities or division of societies.

9.2. Rule 15 of the KCS Rules deals with classification of societies according to types. As per Rule 15, after the registration of a society the Registrar shall classify the society into one or other of the types enumerated in Rule 15, according to the principal object provided in the bye-laws. As per Note (i) to Rule 15, if any question arises as to the classification of a society, it shall be referred to the Registrar for decision and his decision thereon shall be final. As per Note (ii), if the Register alters the classification of a society from one class of society to another or from the sub class thereof to another, he shall issue to the society and the Financing Bank a copy of his order and the society shall fall under that category with effect from the date of that order.

10. Chapter VIA of the **IT Act** deals with deductions to be made in computing total income. Section 80P of the IT Act deals with deduction in respect of income of Co-operative Societies. As per sub-section (1) of Section 80P, 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), there shall be deducted, in accordance with and subject to the provisions of this Section, the sums specified in sub-section (2), in computing the total income of the assessee. As per sub-section (2) of Section 80P, the sums referred to in sub-section (1) shall be those enumerated in clauses (a) to (f) of sub-section (2).

10.1. As per sub-section (4) of Section 80P of the IT Act, the provisions of this Section 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. As per Explanation to sub-section (4) of Section 80P, for the purpose of this sub-section,- (a) 'Co-operative Bank' and 'Primary Agricultural Credit Society' shall have the meanings respectively assigned to them in part V of the Banking Regulation Act, 1949; (b) 'Primary Co-operative Agricultural and Rural Development Bank' means a society having its area of operation confined to a Taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities.

11. As per Section 3 of the **BR Act**, nothing in the said Act shall apply to- (a) a Primary Agricultural Credit Society; (b) a Co-operative Land Mortgage Bank; and (c) any other Co-operative Society, except in the manner and to the extent specified in Part V. Clause (b) of Section 5 define 'banking' to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand

or otherwise, and withdrawable by cheque, draft, and order or otherwise. Clause (c) of Section 5 define 'banking company' to mean any company, which transacts the business of banking in India.

11.1. Part V of the BR Act deals with application of the said Act to Co-operative Banks. As per Section 56, the provisions of the BR Act, as in force for the time being, shall apply to, or in relation to, Co-operative Societies as they apply to, or in relation to, banking companies subject to the modifications enumerated in clauses (a) to (zl) of Section 56. As per clause (a) of Section 56, throughout the BR Act, unless the context otherwise requires- (i) references to a 'banking company' or 'the company' or 'such company' shall be construed as references to a Co-operative Bank ; and (ii) reference to 'commencement of this Act' shall be construed as reference to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965). As per clause (b) of Section 56, in Section 2, the words and figures 'the Companies Act, 1956 (1 of 1956), and' shall be omitted.

11.2. As per sub-clause (i) of clause (c) of Section 56 of the BR Act, clauses (cci) to (ccvii), as enumerated in sub-clause (i) of clause (c) shall be inserted in Section 5 of the BR Act, after clause (cc). As per clause (cci), 'Co-operative Bank' means a State Co-operative Bank, Central Co-operative Bank and a Primary Co-operative Bank. As per clause (cciia), '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 Multi-State Co-operative Society or any other Central or State law relating to Co-operative Societies for the time being in force. As per clause (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 a member. As per the proviso to sub-clause (2) of clause (cciv), the said 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. Clause (ccv) define 'Primary Co-operative Bank' and clause (ccvi) define 'Primary Credit Society'. As per Explanation to clauses (cciv), (ccv) and (ccvi), if any dispute arises as to the primary object or the principal object of any Co-operative Society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final.

11.3. As per clause (d) of Section 56, Section 5A of the BR Act was substituted. As per Section 5A, as substituted by clause (d) of Section 56, the BR Act shall override the bye-laws, etc. As per sub-section (1) of

Section 5A of the BR Act, the provisions of the said Act shall have effect, notwithstanding anything to the contrary contained in the bye-laws of a Co-operative Society, or in any agreement executed by it, or in any resolution passed by it in general meeting, or by its Board of Directors or other body entrusted with the management of its affairs, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965). As per sub-section (2) of Section 5A of the BR Act, any provision contained in the bye-laws, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

11.4. Similarly, as per clause (f) of Section 56, Section 7 of the BR Act was substituted. Section 7, as substituted by clause (f) of Section 56, deals with use of words 'bank', 'banker' or 'banking'. As per sub-section (1) of Section 7 of the BR Act, no Co-operative Society other than a Co-operative Bank shall use as part of its name or in connection with its business any of the words 'bank', 'banker', or 'banking', and no Co-operative Society shall carry on the business of banking in India unless it uses as part of its name at least one of such words. As per sub-section (2) of Section 7, nothing in this section shall apply to- (a) a Primary Credit Society, or (b) a Co-operative Society formed for the protection of

the mutual interest of Co-operative Banks or Co-operative Land Mortgage Banks, or (c) any Co-operative Society, not being a Primary Credit Society, formed by the employees of- (i) a banking company or the State Bank of India or a corresponding new bank or a subsidiary bank of such banking company, State Bank of India or a corresponding new bank; or (ii) a Co-operative Bank or a Primary Credit Society or a Co-operative Land Mortgage Bank, in so far as the words 'bank', 'banker', or 'banking' appear as part of the name of the employer bank, or as the case may be, of the bank, whose subsidiary the employer bank is.

11.5. Section 22 of the BR Act deals with licensing of banking companies. As per sub-clause (i) of clause (o) of Section 56, sub-section (1) and (2) of Section 22 of the BR Act were substituted. As per clause (b) of sub-section (1) of Section 22, as substituted by sub-clause (i) of clause (o) of Section 56, save as hereinafter provided, no Co-operative Society shall carry on banking business in India unless it is a Co-operative Bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose. The first proviso to sub-section (1) provides that, nothing in this sub-section shall apply to a Co-operative Society, not being a Primary Credit Society or a Co-operative Bank carrying on banking business at the commencement of the Banking Laws (Application to Co-

operative Societies) Act, 1965 (23 of 1965), for a period of one year from such commencement. The second proviso to sub-section (1) provides further that, nothing in this sub-section shall apply to a Primary Credit Society carrying on banking business on or before the commencement of the Banking Laws (Amendment) Act, 2012, for a period of one year or for such further period not exceeding three years, as the Reserve Bank may, after recording the reasons in writing for so doing, extend.

11.6. As per sub-section (2) of Section 22 of the BR Act, as substituted by sub-clause (i) of clause (o) of Section 56, every Co-operative Society carrying on business as Co-operative Bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), shall before the expiry of three months from such commencement, every Co-operative Bank which comes into existence as a result of the division of any other Co-operative Society carrying on business as a Co-operative Bank, or the amalgamation of two or more Co-operative Societies carrying on banking business shall, before the expiry of three months from its so coming into existence, every Primary Credit Society which had become a Primary Co-operative Bank on or before the commencement of the Banking Laws (Amendment) Act, 2012, shall before the expiry of three months from the date on which it had become a Primary Co-operative Bank and every

Co-operative Society shall before commencing banking business in India, apply in writing to the Reserve Bank for a licence under this Section.

11.7. As per the proviso, nothing in clause (b) of sub-section (1) of Section 22 of the BR Act shall be deemed to prohibit,- (i) a Co-operative Society carrying on business as a Co-operative Bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965); or (ii) a Co-operative Bank which has come into existence as a result of the division of any other Co-operative Societies carrying on business as a Co-operative Bank, or the amalgamation of two or more Co-operative Societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), or at any time thereafter; from carrying on banking business until it is granted a licence in pursuance of this Section or is, by a notice in writing notified by the Reserve Bank that the licence cannot be granted to it.

12. A reading of the provisions under the KCS Act and the Rules made thereunder would make it explicitly clear that, a registration certificate issued under sub-section (1) of Section 8 of the KCS Act signed by the Registrar of Co-operative Societies shall be conclusive evidence that such a Society is duly registered under the provisions of that Act. As per Section 9, the registration of a Society shall render it a body corporate by the name under which it is registered, having

perpetual succession, etc. However, a reading of Sections 7 and 8 of the KCS Act would show that, at the time of registration of a society, the Registrar of Co-operative Societies need only confirm that the objects of the proposed society in the proposed bye-laws accompanying the application for registration are in accordance with Section 4 of the Act. As per clause (ii) of Rule 3 of the KCS Rules, on receipt of an application for registration, the Registrar has to examine the application and the bye-laws, in order to satisfy that the conditions specified in clauses (a) to (e) of Section 7 of the KCS Act and Rule 3 of the KCS Rules are satisfied.

13. As per Rule 15 of the KCS Rules, after the registration of a society, the Registrar shall classify the society into one or other of the types enumerated in Rule 15, according to the principal object provided in the bye-laws. As per Note (i) to Rule 15, if any question arises as to the classification of a society, it shall be referred to the Registrar for decision and his decision thereon shall be final. As per Note (ii), if the Registrar alters the classification of a society from one class to another or from one sub-class to another, he shall issue to the society and the Financing Bank a copy of that order and the society shall fall under that category with effect from the date of that order. When the classification of a society, as per the provisions of the KCS Act and the Rules made thereunder, at the time of registration, are solely on the basis of the principal object provided in the bye-laws, it cannot be contended that the

certificate of registration of a society as PACS is a conclusive evidence that the primary object or the principal business undertaken by that society is providing financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities, and as such, that society is entitled for deduction under Section 80P of the IT Act, by reason of sub-section (4) thereof, merely on the strength of the certificate registration issued under sub-section (1) of Section 8 of the KCS Act.

14. As per clause (oa) of Section 2 of the KCS Act, which was later re-numbered as clause (oaa), the principal object of a PACS should be to undertake agricultural credit activities and provide loans and advances for agricultural purposes, at the rate of interest on such loans and advances fixed by the Registrar, and a PACS shall have its area of operation confined to a Village, Panchayat or Municipality. As per the second proviso to the said clause, inserted with effect from 28.04.2010, if the aforesaid principal object is not fulfilled, such societies shall lose all characteristics of a PACS, as specified in the KCS Act, KCS Rules and the Bye-laws, except the existing staff strength. Therefore, in order to claim the benefit of deduction under Section 80P of the IT Act, after the introduction of sub-section (4) thereof, the assessee society should be a PACS falling within the definition clause, i.e., clause (oa) of Section 2 of the KCS Act, [which was re-numbered as clause (oaa) by the Kerala Co-

operative Societies (Amendment) Act, 2013] read with clause (cciv) of Section 5 of BR Act inserted by sub-clause (i) of clause (c) of Section 56. Once the principal object as per the aforesaid clause is not fulfilled by a PACS for a particular financial year, such a society will be disentitled from claiming the benefit of deduction under Section 80P of the IT Act, after the introduction of sub-section (4) thereof. After 28.04.2010, in view of the second proviso to the said clause, such societies shall even loose all characteristics of a PACS, as specified in the KCS Act, KCS Rules and the Bye-laws, except the existing staff strength.

15. In **Antony Pattukulangara v. E.N. Appukuttan Nair and others [2012 (3) KHC 726]**, in the context of clause (oa) of Section 2 of the KCS Act [which was later renumbered as clause (oaa) by the Kerala Co-operative Societies (Amendment) Act, 2013 with effect from 14.02.2013], a Division Bench of this Court held that, going by the definition clause of 'Primary Agricultural Credit Society' in order to constitute the Society in that category, the principal activity should be to undertake agricultural credit activities and provide loans and advances for agricultural purposes. It is further stated in the second proviso to the said definition clause that if the society does not achieve its objective i.e., to function like an Agricultural Credit Society it will lose its identity by virtue of the operation of the said proviso. The Division Bench noticed that the society has taken deposits above Rs.22.22 crores and has made

advances above Rs.20.4 crores to non-agricultural sector and advances for agricultural purposes was only insignificant amounts compared to the total lending by the Society. Therefore, the society has ceased to be a Primary Agricultural Credit Society, at least in the previous year in which the election was notified. The Division Bench held that, going by the factual position stated as above, it was the duty of the Registrar to order alteration of classification of society in terms of powers conferred on him under Note (ii) of Rule 15 of the KCS Rules, which is not so far done. Probably the Registrar never bothered to find out the operations of the society to justify retention of the identity and that is why the society continues to retain the registration originally obtained. In any case what can be noticed from second proviso to clause (oa) of Section 2 of the KCS Act is that, as and when the society ceases to be a Primary Agricultural Credit Society, it shall loose that identity irrespective of whether the Registrar has made changes or not. Paragraphs 3 to 5 of the judgment read thus;

> "**3.** There is no dispute that in this case the Society is one registered as a Primary Agricultural Credit Society in terms of Section 2(oa) of the Act. However, appellant's case is that the activities of the Society reflected in the accounts establish beyond doubt that the society has ceased to be a Primary Agricultural Credit Society and is in fact a Primary Credit Society defined under Section 2(ob) of the Act. Counsel relied on Annexure-2 produced in WA No.1023/2012 wherein Deposits and advances are described by the Society in the letter addressed to the Assistant Registrar of Co-operative Societies

as follows:

Deposit	-	22,22,47,697.54
Loans	-	20,41,01,375.66
Kisan Credit Card (Agricultural)	-	15,47,346.00
Short Term (Agricultural)	-	8,325.00

4. It may be noted from the above figures that the society in this case has given very insignificant amounts towards agricultural loan under two categories amounting to only Rs.15.5 lakhs and odd whereas it's other advances runs above 20.4 crores. Most of the loans are funded through public deposits taken by the Society which is above Rs.22.22 crores as seen from the above figures declared by the Society to the Assistant Registrar of Co-operative Societies as on 31.03.2012. Going by the definition clause of 'Primary Agricultural Credit Society' in order to constitute the Society in that category, the principal activity should be to undertake agricultural credit activities and provide loans and advances for agricultural purposes. It is further stated in the second proviso to the said definition clause that if the society does not achieve it's objective i.e., to function like an Agricultural Credit Society it will loose it's identity by virtue of the operation of the said proviso. From the operations of the society as evident from the above figures, nobody can dispute that the society can by no stretch of imagination be treated as Primary Agricultural Credit Society. On the other hand, it squarely answers the description of the 'Primary Credit Society' as defined under Section 2(ob) of the Act, the principal objective of such society being raising funds to be lent to it's members. In this case the society has taken deposits above Rs.22.22 crores and has made advances above Rs.20.4 crores to non-agricultural sector and advances for agricultural purposes is only insignificant amounts compared to the total lending by the Society. Therefore, as rightly contended by the appellant's counsel, the Society in this case has ceased to be a Primary Agricultural Credit Society at least in the

previous year in which the election was notified. There is no need for us to consider whether from the very beginning, the Society functioned in this fashion which could be possible because the society's area of operation is not known for agricultural operations. In any case the undisputed fact is that after taking registration as Primary Agricultural Credit Society, the society carries on business as a Primary Credit Society. It may also be noticed from Annexure 6 produced in WA No.1023/2012 which is information furnished to the Appellant by the Public Information officer of the office of the Assistant Registrar of Co-operative Societies under the Right to Information Act that most of the objectives of the Society covered by various clauses of the Memorandum of Association are not undertaken by the Society. In other words, the operations of the society in accepting massive deposits from members and public and lending the same to non-agricultural operations has made it a Primary Credit Society. Probably the camouflage of Primary Credit Society as a 'Primary Agricultural Credit Society' is to get the benefit of agricultural credits from Government agencies, Debt waiver for borrowers and also to advance loans at lower rate of interest applicable to agriculture. Obviously the functioning of the Society is in a dubious manner by getting registration under one category and by functioning as a Society of a different category. None of the party respondents Including Society and also the Special Government Pleader could deny the factual position stated above in as much as the Society though registered as Primary Agricultural Credit Society has ceased to be so and it is in fact a Primary Credit Society.

5. Going by the factual position as stated above, it was the duty of the Registrar to order alteration of classification of Society in terms of powers conferred on him under Note (ii) of Rule 15 of the Rules which is not so far done. Probably the Registrar of Societies never bothered to find out the operations of the Society to justify retention of the identity and that is why the Society continues to retain the

registration originally obtained. In any case what we notice from second proviso to Section 2(oa) is that as and when the society ceases to be a Primary Agricultural Credit Society it shall loose that identity irrespective of whether the Registrar has made changes or not. As noted by us above, the procedure to be followed is for the Registrar on information whether obtained by himself or through any other source about the operation of the Society disentitling it to continue to retain it's registration in the category obtained by it should change it and issue fresh certificate of registration which is not done in this case." (underline supplied)

17. In **Thathamangalam Service Co-operative Bank Ltd. and others v. The Income Tax Officer (TDS) and others** [judgment by one among us (PRR,J) dated 14.09.2012 in W.P.(C)No.14226 of 2012 and connected cases] this Court held that Section 80P of the IT Act provides exemption only in respect of a Primary Agricultural Credit Society as mentioned in sub-section (4) and as such, the status of the society becomes more relevant, as defined under the Banking Regulation Act. However, this may not have much significance to the case in hand, as pointed out in the statement filed by the respondents, that such objective has already been brought about by amending the Kerala Statute as well, incorporating the 'second proviso' to the definition of the term 'Primary Agricultural Credit Society', as given under Section 2(oa) of the Kerala Co-operative Societies Act, as per Act 7 of 2010. True, some of the petitioners have obtained a certificate as to the classification/ registration as Primary Agricultural Credit Societies. But,

by virtue of the amendment to Section 2(oa) of the Kerala Co-operative Societies Act, if the Society does not continue to fulfill the obligation, it will lose the colour and characteristics of a Primary Agricultural Credit Society, except for the purpose of staff strength. Thus, it is very much obligatory for the petitioners societies, who claim the status and the benefits of Primary Agricultural Credit Societies, to substantiate that their main object of incorporation is being continued to be fulfilled as well. As such, they have to obtain a certificate from the competent authority by producing the relevant facts and figures including the balance sheet, profit and loss accounts etc., that they satisfy the requirements of the 'second proviso' to Section 2(oa) of the Act, to claim the status of Primary Agricultural Credit Societies so as to contend that they stand exempted by virtue of Section 194A(3)(viia)(a) of the IT Act and hence are not required to effect any TDS. As a natural consequence, they are not supposed to comply with the requirements of Section 200(3) of the IT Act as well, if they succeed. Paragraphs 15 to 17 of the judgment read thus;

> "**15.** True, there is a reference to the Banking Regulation Act, 1949, as given in sub-section (4) of Section 80P of the Income Tax Act. A Society claiming the benefit of exemption under Section 80P has necessarily to satisfy the requirements and specifications of a Primary Agricultural Credit Society as defined under the Banking Regulation Act. But coming to the instant cases and the impugned notices, the position is something else. The cause is not with regard

to the claim for exemption, but in respect of alleged necessity to have effected TDS under Section 194A, in respect of interest on the deposits and also as to the particulars of deposits generating interests of more than Rs.5000/- per year. Sections 194A and 200(3) do not make a reference to the term Primary Agricultural Credit Society, as defined under the Banking Regulation act; more so since Section 194A is applicable to all the persons concerned including the individuals and Body Corporates which takes in a Co-operative Society as well, by virtue of the definition of the term 'person' under Section 2(31). Section 80P provides exemption only in respect of a Primary Agricultural Credit Society as mentioned in sub-section (4) and as such, the status of the Society becomes more relevant, as defined under the Banking Regulation Act. However, this may not have much significance to the case in hand, as pointed out in the statement filed by the respondents, that such objective has already been brought about by amending the Kerala Statute as well, incorporating the 'second proviso' to the definition of the term Primary Agricultural Credit Society, as given under Section 2(oa) of the Kerala Co-operative Societies Act, as per Act 7 of 2010.

16. True, some of the petitioners have obtained a certificate as to the classification/registration as Primary Agricultural Credit Societies. But, by virtue of the amendment to Section 2(oa) of the Kerala Co-operative Societies Act, if the Society does not continue to fulfill the obligation, it will lose the colour and characteristics of a Primary Agricultural Credit Society, except for the purpose of staff strength. Thus, it is very much obligatory for the petitioners Societies, who claim the status and the benefits of Primary Agricultural Credit Societies, to substantiate that their main object of incorporation is being continued to be fulfilled as well. As such, they have to obtain a certificate from the competent authority by producing the relevant facts and figures including the balance sheet,

profit and loss accounts etc., that they satisfy the requirements of the 'second proviso' to Section 2(oa) of the Act, to claim the status of Primary Agricultural Credit Societies so as to contend that they stand exempted by virtue of Section 194A(3)(viia)(a) of the Act and hence are not required to effect any TDS. As a natural consequence, they are not supposed to comply with the requirements of Section 200(3) as well, if they succeed.

17. As held already, it is for the petitioners to establish their status as Primary Agricultural Credit Societies by obtaining and producing the relevant certificate from the competent authority, as mentioned hereinbefore. It is also open for the petitioners to opt to produce the relevant records before the Income Tax authorities as well, to establish their status and credentials, that there is no lapse in fulfilling the objective as Primary Agricultural Credit Societies so as to absolve from further proceedings at the hands of the Income Tax Department, in relation to Section 194A and Section 200(3) of the Act. So as to enable the petitioners to pursue such exercise, further proceedings shall be kept in abeyance for a period of three months from the date of receipt of a copy of the judgment. If the petitioners fail to produce the certificates in the manner as specified hereinbefore (with reference to the 'second proviso' to Section 2(oa) of the Kerala Co-operative Societies Act), it will be open for the respondents to proceed with further steps in connection with the requirements of Section 194A and Section 200(3) of the Act."

(underline supplied)

18. In **Perinthalmanna Service Co-operative Bank's case [363 ITR 268]** the Division Bench of this Court was dealing with a case in which the assessee, which is a Primary Agricultural Credit Society, filed return for the Assessment Year 2009-10 disclosing the total income as 'Nil'. On 03.11.2010, the return of income was processed under sub-

section (1) of Section 143 of the IT Act. As the case was selected for scrutiny under CASS (Computer Assistant Selection of Cases for Scrutiny), notice under sub-section (2) of Section 143 was issued. The assessee, who is engaged in giving credit for agricultural purposes, has accepted deposits from its members. The assessee has maintained a 15 to 20 days running deposits in Sub Treasury, Perinthalmanna. On a finding that the deposit in a Treasury is not qualified for deduction under Section 80P of the IT Act, since it will not come under the purview of clause (d) of sub-section (2) of Section 80P, an addition of Rs.6,50,000/- towards interest income earned from the said running investment was added in Annexure-A assessment order, thereby demanding a total sum of Rs.3,69,903/-, which includes Income Tax amounting to Rs.1,92,000/-.

18.1. The Commissioner of Income Tax, Kozhikode, proposed to revise Annexure-A assessment order by invoking the powers under Section 263 of the IT Act. On a perusal of the records, the Revisional Authority noticed that, while completing the assessment for the year 2009-10, an amount of Rs.76,38,143/- was allowed as deduction under Section 80P after disallowing interest income of Rs.6,50,000/- earned from investment made with Treasury. Though the Assessing Officer has treated the assessee as PACS, as per records, the agricultural loans constitute less than 0.5% of the total loans advanced during the previous

year relevant to the Assessment Year 2009-10 and the balance 99.5% were disbursed for non-agricultural purposes. Therefore, as per records, it was apparent that the assessee is not a PACS, since the principal business carried out was for non-agricultural purposes. However, the Assessing Officer, without conducting any enquiry on such aspects, allowed the claim of deduction under Section 80P, without proper verification of the status of the assessee as a PACS.

18.2. Before the Revisional Authority, the assessee contended that a certificate of registration under Section 8 of the KCS Act is conclusive evidence that the society is duly registered under the said Act and the Registrar of Co-operative Socialites has classified the society as a PACS, as per the provisions of Rule 15 of the KCS Rules. Such a registration can be maintained and continued only if the society continues to function according to its objectives, which is continuously monitored by the Registrar. The Revisional Authority, after considering the submissions made by the assessee and taking note of the relevant provisions under the IT Act and the BR Act, arrived at a conclusion that in order to be eligible for deduction under Section 80P of the IT Act, with effect from the Assessment Year 2007-08 onwards, a Co-operative Society, irrespective of carrying on the business of banking or providing credit facility to its members, should either be a Primary Agricultural Credit Society (PACS) or a Primary Co-operative Agricultural or Rural

Development Bank, which satisfy the condition prescribed under the BR Act. In order to arrive at such a conclusion, the Revisional Authority has placed reliance on paragraph 15 of the judgment of this Court in **Thathamangalam Service Co-operative Bank's case (supra).**

18.3. The Revisional Authority noticed that the bye-laws of the assessee authorises disbursement of loan for non-agricultural purposes also. Therefore, to verify the primary object of the Society, its action, plan and activity should be analysed. In such circumstances, by Annexure-B order the Revisional Authority set aside Annexure-A assessment order for making assessment afresh on the issues discussed in Annexure-B order, after considering the aspects referred to therein and the Assessing Officer was directed to pass appropriate orders as per law, after giving sufficient opportunity to the assessee.

18.4. Annexure-B order of the Revisional Authority was under challenge before the Appellate Tribunal in an appeal filed under Section 263 of the IT Act, which ended in dismissal by Annexure-C order, declining interference. Before the Appellate Tribunal, the assessee contended that it is entitled to claim deduction under Section 80P of the IT Act and also other deductions mentioned in paragraph 3 of Annexure-B order of the Revisional Authority. After considering the rival contentions, the Appellate Tribunal observed that, the Assessing Officer has passed a cryptic order and it does not contain any discussion on the

issues pointed out by the Revisional Authority in Annexure-B order. The impugned issue pointed out by the Revisional Authority would have implication on the tax computation, if it is decided against the assessee, in which case the impugned assessment order passed by the Assessing Officer would become prejudicial to the interest of the Revenue. In that view of the matter, the Tribunal dismissed the appeal filed by the assessee holding that the Revisional Authority was justified in passing Annexure-B revision order. The assessee moved M.P.No.106/Coch/2013 before the Appellate Tribunal, seeking rectification of/to recall Annexure-C order on the ground that the Tribunal has not considered additional ground Nos.2 and 3 raised by the assessee while disposing the appeal. The said application ended in dismissal by Annexure-D order of the Tribunal, holding that Annexure-C order does not suffer from any mistake calling for rectification under sub-section (2) of Section 264 of the IT Act.

18.5. Annexure-C and Annexure-D orders of the Appellate Tribunal were under challenge before this Court in ITA No.4 of 2014 filed by the assessee. In **Perinthalmanna [363 ITR 268]**, after perusing Annexure-A order of the Assessing Officer, Annexure-B order of the Revisional Authority and Annexure-C order of the Appellate Tribunal, the Division Bench noticed that, the entire controversy involved is with regard to the exact status of the assessee, whether it is Co-operative

Bank or a Primary Co-operative Credit Society and that, this question arises in the light of the assessee claiming benefits under Section 80P of the IT Act. The Division Bench observed that, once a claim is made under Section 80P, necessarily the Assessing Officer has to consider the implication of sub-section (4) of Section 80P with reference to such claim depending upon the nature of transaction conducted by the assessee, irrespective of the nomenclature of the assessee.

18.6. Before the Division Bench, the assessee contended that, its case has to be considered only by looking into the provisions of the KCS Act and nothing else, as the certificate of registration would indicate their claim and also decide what exactly the nature of business. The Division Bench held that the Revisional Authority was justified in saying that, with the introduction of sub-section (4) of Section 80P that, necessarily an enquiry has to be conducted into the factual situation whether a Co-operative Bank is conducting the business as a PACS or a Primary Co-operative Agricultural and Rural Development Bank, and depending upon the transactions, the Assessing Officer has to extent the benefits available, and not merely looking at the registration certificate under the KCS Act or the nomenclature.

18.7. On going through the orders of the Revisional Authority and the Tribunal, the Division Bench found that the reasoning of the Revisional Authority was not merely based on the name of the assessee,

but with reference to factual situation in relation to an enquiry to arrive at a conclusion whether benefits can be extended or not in the light of sub-section (4) of Section 80P of the IT Act. As there was no discussion at all by the Assessing Officer from this perspective, there was justification for the Revisional Authority to conclude that the order of the Assessing Officer was not only erroneous, but prejudicial to the interest of the Revenue. The Division Bench noticed that, a very detail discussion giving reasons why the matters should be reconsidered by the Assessing Officer came to be passed by the Revisional Authority. After referring to the relevant judgment in paragraph 7 of the order of the Revisional Authority, the Tribunal has upheld the opinion of the Revisional Authority.

18.8. The Division Bench noticed that, in Annexure-B order, the Revisional Authority observed that the Assessing Officer has to reconsider the matter in the light of the observation made in the order in the revision, by which it means what exactly should be the nature of enquiry to be conducted by the Assessing Officer and it does not mean that he has to complete his assessment proceedings after concluding the same similar to the conclusions arrived at by the Revisional Authority. The revisional order is an insight into the nature of enquiry or ascertainment of the factual situation to be made by the Assessing Officer and nothing more. The Division Bench found no erroneous observation made by the Revisional Authority in Annexure-B order and

directed the Assessing Officer to pass fresh assessment order after making necessary enquiries, as observed in the order of the Revisional Authority, untrammeled by any of the opinions expressed by the Revisional Authority. Accordingly, the Division Bench disposed of the appeal with the above observations, without interfering with the orders impugned in that appeal.

19. In Chirakkal **[384 ITR 490]**, the substantial questions of law formulated, at the time of admission, was whether on the facts and 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 of the IT Act, ignoring the fact that the assessee is a PACS; and whether the Tribunal is justified in denying the exemption under Section 80P of the IT Act on the mere grounds of belated filing of return by the assessee. The Division Bench, after referring to the provisions under sub-section (4) of Section 80P of the IT Act and Section 56 of the BR Act held that, 'Co-operative Bank' is a term defined in clause (cci) of Section 5 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. 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.

19.1. The Division Bench held that, when the term 'Co-operative Society' is defined to mean, inter alia, a society registered under any State law relating to any Co-operative Society, for the time being in force; one such is a Co-operative Society for the purpose of the BR Act, and if that Co-operative Society satisfy 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. The Division Bench noticed that, the appellants before it are indisputably societies registered under the KCS Act and the bye-laws of each of them clearly show that they have been classified as PACS by the competent authority under the provisions of that Act. The Parliament having defined the term 'Co-operative Society' for the purpose of 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 objectives have to be understood as those which have been approved by the competent authority under such State law, due to reciprocative legislative exercise by the Parliament recognising the predominance of the decisions rendered under the relevant State laws. It that view of the matter, all the appellants having been classified as PACS 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 to be 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 issues or such matter relating to such societies.

19.2. The Division Bench held further that, 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 PACS in terms of clause (cciv) of Section 5 of the BR Act, having regard to the primary object or the principal business of each of the appellants. It is clear from the materials of records that bye-laws of each of the appellants do not permit admission of any Co-operative Society as a member, except may be, in accordance with the provisions of sub-clause

(2) of clause (ccv) of Section 5 of the BR Act. The different orders of the Tribunal, which were impeached, do not contain any finding of fact to the effect that the bye-laws of any of the appellant or its declaration by the competent authority under the KCS Act is anything different from what have been stated hereinabove. Therefore, it cannot but be held that the appellants are entitled for exemption from the provisions of Section 80P of the IT Act by the virtue of sub-section (4) of that Section. Accordingly, the Division Bench answered substantial question 'A' in favour of the appellants by holding that the Tribunal erred in law in deciding the issue regarding entitlement of exemption under Section 80P against the appellants. The Division Bench held that, PACS registered as such under the KCS Act; and classified so, under that Act, including the appellants are entitled to such exemption.

20. In **Citizen Co-operative Society Ltd. v. Assistant Commissioner of Income Tax [(2017) 397 ITR 2 (SC)]**, the Apex Court was dealing with a case in which the appellant assessee was initially registered as a Mutually Aided Co-operative Credit Society under Section 5 of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. As operations of the assessee had increased and as its operations were spread over States of the erstwhile Andhra Pradesh, Maharashtra and Karnataka, the assessee got registered under Section 7 of the Multi-State Co-operative Societies Act, 2002 and issued with a

certificate of registration under Section 8 of the said Act, by the Central Registrar of Co-operative Societies, New Delhi. As per Section 8, where a Multi-State Co-operative Society is registered under that Act, the Central Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act, unless it is proved that the registration of the society has been cancelled.

20.1. The appellant assessee claimed the benefit of Section 80P of the IT Act. The Assessing Officer held that, deduction in respect of income under Section 80P is not admissible to the appellant as the benefit of deduction, as contemplated under the said provision, is *inter alia*, admissible to those Co-operative Societies, which carry on business on banking or providing credit facilities to its members. On the contrary, the appellant society was carrying on banking business for public at large and for all practical purposes it was acting like a Co-operative Bank governed by the BR Act and its operation was not confined to its members but outsiders as well.

20.2. The question that came up for consideration before the Apex Court was as to whether the appellant, which is a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 in terms of certificate of registration issued by the Central Registrar of Co-operative Societies, New Delhi is barred from claiming

deduction under Section 80P of the IT Act, in view of sub-section (4) thereof. The assessee is being assessed to income tax since its inception. It has been claiming exemption under Section 80P, which was being allowed by the authorities. As per the assessee, in the course of its operations, members deposit cash into their accounts with the society and they withdraw the same. It was claimed that, earlier, none of the Income Tax Authorities had pointed out that acceptance of deposits from its members in cash and withdrawal thereof by them in cash would violate the provisions of Sections 269SS and 269T of the IT Act, which relate to mode of taking or accepting certain loans or deposits and their repayment, respectively.

20.3. For the Assessment Year 2009-10, the assessee filed return of income before the Assessing Officer declaring 'Nil' income. In the return, the assessee claimed a sum of Rs.4,26,37,081/- as deduction under Section 80P of the IT Act. The return filed by the assessee was taken up for scrutiny under CASS and notice under sub-section (2) of Section 143 of the IT Act has been issued. In response thereto, the books of accounts were produced by the assessee and information called for was submitted. The Assessing Officer arrived at Rs.19,57,32,920/- as the net amount of tax payable by the assessee in terms of his order dated 19.12.2011. In the appeal before the Commissioner of Income Tax (Appeals), the order of Assessing Officer making disallowance under

Section 68 of the IT Act was reversed and that addition was deleted. In so far as disallowance of deduction claimed under Section 80P is concerned, the Commissioner of Income Tax (Appeal) rejected the claim for deduction thereby upholding the order of the Assessing Officer. While doing so, the Appellate Authority followed the order of the Income Tax Appellate Tribunal, in the case of the appellant itself, in respect of the Assessment Years 2007-08 and 2008-09. In that order, which was quoted in the order of the Appellate Authority, the Tribunal noticed that, for the Assessment Years 2007-08 and 2008-09, the amendment brought out to Section 80P, with effect from 01.04.2007, by the Finance Act, 2006, whereby sub-section (4) was inserted to Section 80P has to be considered. The amendment clearly barred all Co-operative Banks other than PACS or Primary Co-operative Agricultural or Rural Development Banks from claiming exemption under Section 80P. The primary activity of the assessee society is to provide banking facility to its members. The society is dealing like a bank while accepting deposits from its members. Therefore, the society is carrying on banking business and for all practical purposes, it acts like a Co-operative Bank. The Tribunal observed that, the society is governed by the BR Act. Therefore, the Society being a Co-operative Bank providing banking facilities to its members is not eligible to claim deduction under Section 80P(2)(i)(a), after introduction of sub-section (4) of Section 80P.

20.4. Before the Apex Court, one of the contentions raised by the learned Senior Counsel for the assessee, after referring to the provisions under Section 80P of the IT Act was that the entire purport and objective to enact the said provision was to encourage and promote growth of co-operative sector in the economic life of the country in pursuance of the declared policy of the Government. This is so recognised by various judgments of the Apex Court firmly laying down the rule that a provision for direction, exemption or relief should be interpreted liberally, reasonably and in favour of the assessee and it should be so construed as to effectuate the object of the legislature and not to defeat it. After referring to the objects for which the assessee society has been established, the learned counsel submitted that, the principal object of the society is to promote interest of all its members to attain their social and economic betterment through self-help and mutual aid in accordance with the co-operative principles and keeping in view the same the assessee society can engage in certain specified forms of business stipulated in the objective clause of the society. The purpose, therefore, was to promote the interest of its members and, therefore, it cannot be said that primary object of the assessee is transaction of banking business. Taking aid of the principle of mutuality, it was contended that the assessee is a mutual concern and that, there is complete identity between the contributors and the participators of the assessee.

20.5. Per contra, the learned Senior Counsel for the Revenue contended that the findings arrived at by the authorities below to the effect that the activity/business of the appellant assessee, in essence, was that of a Co-operative Bank was based on the material on record and needed no interference. The Assessing Officer scrutinised the bye-laws of the appellant and in particular those bye-laws which deal with the liability of membership, etc. as well as the provisions of the Mutually Aided Co-operative Societies Act, 1995 under which the appellant is registered. The Assessing Officer found that the Act does not accept a person to be member of more than one Co-operative Society for the same services. Moreover, Section 19 of the Mutually Aided Co-operative Societies Act does not accept every Co-operative Society to be a panacea for all problems facing the entire population in an area and leaves it to the members to decide how big they wish to grow and how much they can handle. There was a clear finding of the Assessing Officer, which was consistently approved by the higher authorities as well, that provisions of Section 80P(2)(i)(a) of the IT Act were grossly violated as the appellant society was found not dealing with its members only but also with general public as well. The principle of mutuality was missing in this case, which aspect was also discussed in detail by the Assessing Officer. In view of the aforesaid findings, no case for interference was made out by the appellant.

20.6. After considering the rival contentions, the Apex Court observed that, there cannot be any dispute to the proposition that Section 80P of the IT Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of Co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee. Such a provision has to be construed as to effectuate the object of the legislature and not to defeat it. Therefore, it hardly needs to be emphasised that all those Co-operative Societies which fall within the purview of Section 80P of the Act are entitled for deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributed to any one or more of such activities which are mentioned in sub-section (2). Sub-clause (i) of clause (a) of sub-section (2) recognises two kind of Co-operative Societies, namely, (i) those carrying on business of banking and (ii) those providing credit facility to its members. With the insertion of sub-section (4) of Section 80P of the IT Act, by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a Co-operative Bank. However, if it is a Primary Agricultural Credit Society or a Primary Co-operative Agricultural or Rural

Development Bank, the deduction would still be provided. Thus, Co-operative Banks are now specifically excluded from the ambit of Section 80P of the Act.

20.7. The Apex Court noticed that, if one has to go by the aforesaid definition of 'Co-operative Bank', the appellant assessee does not get covered thereby. In order to do the business of a Co-operative Bank, it is imperative to have a license from the Reserve Bank of India, which the appellant does not possess. Not only this, the Reserve Bank of India has itself clarified that the business of appellant does not amount to that of a Co-operative Bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P of the IT Act. The Apex Court noticed further that, the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant is that, the activities of the appellant are in violation of the provisions of the Multi-State Co-operative Societies Act under which it is formed. It was pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of nominal members. They are those members, who

are making deposits with the assessee for the purpose of obtaining loan, etc, and in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons, who have been giving deposits, which are being kept in fixed deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loan, etc. to the members of the first category. It was found, as a matter of fact, the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be terms as Co-operative Society. It was also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of Co-operative Societies. With indulgence in such kind of activities by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a Co-operative Credit Society, which is not entitled to deduction under Section 80P(2)(a)(1) of the IT Act. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. In the assessment order, the Assessing Officer found that the assessee failed to satisfy the test of mutuality at the time of making payments. There is detailed discussion in this behalf in the order of the Assessing Officer. The Apex Court found that those findings of facts have remained unshaken till the stage of the High Court. Once the aforesaid

aspects are kept in mind, the conclusion is obvious that the appellant assessee cannot be treated as a Co-operative Society meant only for its members and providing credit facility to its members. Therefore, the Apex Court held that the appellant society cannot claim the benefit under Section 80P of the IT Act.

21. In **Citizen Co-operative Society [397 ITR 1]** the Apex Court was dealing with the case of a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, [like the assessee in ITA No.68 of 2017 in this batch of cases] which claimed deduction under Section 80P of the IT Act, in view of sub-section (4) thereof. The certificate of registration issued to the said society was one issued under Section 8 of the Multi-State Co-operative Societies Act, by the Central Registrar of Co-operative Societies, New Delhi, and as per Section 8, the certificate of registration issued by the Central Registrar shall be conclusive evidence that the society therein mentioned is duly registered under this Act, unless it is proved that the registration of the society has been cancelled. The appellant assessee does not possess a license from the Reserve Bank of India to do the business of a Co-operative Bank. Moreover, the Reserve Bank of India has itself clarified that the business of appellant does not amount to that of a Co-operative Bank. As noticed by the Apex Court, the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the

Act is not sub-section (4) thereof, but the finding of the Assessing Officer, after discussing in detail the activities of the appellant, that its activities are in violation of the provisions of the Multi-State Co-operative Societies Act under which it is formed. The Assessing Officer has also found that all such activities are done without any approval from the Registrar of Co-operative Societies. Those findings of facts have remained unshaken till the stage of the High Court. Therefore, the Apex Court held that, once the aforesaid aspects are kept in mind, the conclusion is obvious that the appellant assessee cannot be treated as a Co-operative Society meant only for its members and providing credit facility to its members, and therefore, it cannot claim the benefit under Section 80P of the IT Act.

22. In **Shri.Chandraprabhu Urban Co-operative Credit Society Ltd. v. Income Tax Officer, Ward No.1, Nipani [2016 (1) TMI 317 (Kar)]** a decision relied on by the learned Counsel for the assessees, the questions of law raised for consideration before the Division Bench of Karnataka High Court were as to whether the benefit of deduction under Section 80P(2)(a)(i) of the IT Act could be denied to the assessee on the footing that, though the assessee was said to be a Co-operative Society, it was in fact that the Co-operative Bank, within the meaning as assigned to such banks under Part V of the BR Act; and whether the authorities under the IT Act were competent and possess

the jurisdiction to resolve the controversy as to whether the assessee was a Co-operative Society or a Co-operative Bank, as defined under the provisions of the BR Act. In the said decision, the Division Bench held that, whether Co-operative Society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act is carrying on the activities of a Co-operative Society or a Co-operative Bank is required to be determined by the Reserve Bank of India, before the authorities could term the assessee as a Co-operative Bank for the purpose of Section 80P of the IT Act. Similar view was expressed in the judgment in **Shri. Basaveshwar Urban Co-operative Credit Society Ltd. v. Income Tax Officer** (judgment of a Division Bench of Karnataka High Court dated 21.09.2015 in I.T.A.No.100066 of 2014).

22.1. We notice that, after the judgment of the Apex Court in **Citizen Co-operative Society [397 ITR 1]**, the aforesaid issue came up for consideration before the Division Bench of the Karnataka High Court in **Principal Commissioner of Income Tax and another v. M/s.Vijay Souharda Credit Sahakari Ltd.** (judgment dated 23.10.2017 in ITA No.100056/2016). The Division Bench noticed that, in the judgment of the Apex Court in **Citizen Co-operative Society's case**, a categorical finding was given by the Assessing Officer that the Reserve Bank of India itself has clarified that, the business of a appellant does not amount to that of a Co-operative Bank, the appellants therefore

would not come within the mischief of sub-section (4) of Section 80P of the IT Act. The Division Bench noticed that, in the order impugned, no finding is forthcoming regarding the aspect of the activities carried out by the respondent assessee, whether as a Co-operative Society or not. In the absence of such factual finding, the legal propositions rendered by the Apex Court cannot be applied and as such, the matter requires reconsideration by the Assessing Officer to the effect whether the respondent assessee comes within the realm of Co-operative Society to get entitlement of deduction under Section 80P(2)(a)(i) of the IT Act. Paragraphs 3 to 8 of the said judgment read thus;

> "**3.** Learned counsel Sri Y.V.Raviraj appearing for the revenue placing reliance on the judgment of the Hon'ble Apex Court in the case of **Citizen Co-operative Society Limited v. Assistant Commissioner of Income Tax, Circle-9(1), Hyderabad** in Civil Appeal No.10245/2017 disposed of on 08.08.2017 would contend that the definition of co-operative bank has to be construed in the light of Section 80P(4) of the Act, it is contended that the activities of the respondent- assessee are in the nature of commercial transactions with a motive to earn maximum returns. Considering the activities of the respondent-assessee, it can be held to be a finance business and not to be construed as the activities of a co-operative society. Thus, the learned counsel submits that Assessing Officer has given a clear finding to this effect, which has been totally lost sight of, by the Commissioner of Income Tax as well as the Income Tax Tribunal to the full extent. Thus, the learned counsel submits that the benefit of Section 80P(4) of the Act cannot be extended to the respondent- assessee.

4. Learned counsel Sri Sangram S.Kulkarni appearing for the respondent-assessee would contend that the Division Bench of this Court in the case of **Shri Basaveshwar Urban Co-operative Credit Society Limited v. The Income Tax Officer** in I.T.A.No.100066/2014 disposed of on 21.09.2015, has categorically held that whether the co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the Banking Regulation Act, is carrying on the activities of the co-operative society or a co-operative bank requires to be determined by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purpose of Section 80P of the Act. In view of the same, without there being any determination to the said effect by the authorities, the stand taken by the department in this appeal proceedings based on the judgment of the Hon'ble Apex Court in the case of **Citizen Co-operative Society Limited, supra**, is wholly arbitrary and unjustifiable. Thus, the learned counsel seeks for rejection of the appeal as there is no substantial question of law arising for consideration before this Court.

5. We have heard the learned counsel appearing for the parties. Perused the material on record.

6. The sole substantial question of law raised by the appellants requires to be answered on the determination of the crucial question whether the respondent-assessee is a co-operative society or a co-operative bank. In the judgment referred to by the learned counsel for the revenue in the **Citizen Co-operative Society Limited, supra,** a categorical finding was given by the Assessing Officer that the Reserve Bank of India has itself clarified that business of the appellant does not amount to that of a co-operative bank, the appellants therefore would not come within the mischief of sub-section (4) of Section 80P. It was held that the activities of the appellants therein was to cater two distinct categories of people namely, nominal members and the ordinary members. The activities

of the assessee therein was construed to be financial business contrary to the provisions of the Co-operative Societies Act. As such, it was held that, the said assessee was not entitled to deduction under Section 80P(2)(a)(i) of the Act.

7. A cursory view of the order impugned herein would indicate that no finding is forthcoming regarding the aspect of the activities carried out by the respondent-assessee, whether as a co-operative society or not. In the absence of such factual finding, the legal propositions rendered by the Hon'ble Apex Court cannot be applied. As such, we are of the considered opinion that the matter requires reconsideration by the Assessing Officer to the effect whether the respondent-assessee comes within the realm of co-operative society to get entitlement of deduction under Section 80P(2)(a)(i) of the Act.

8. Hence, we remand the matter to the Assessing Officer to answer this question and then decide the matter in the light of the judgment of the Hon'ble Apex Court in the case of **Citizen Co-operative Society Limited, supra**, as expeditiously as possible. Thus, without rendering any finding on the substantial question of law raised, order of the Income Tax Appellate Tribunal impugned herein, is set aside. We direct the Assessing Officer to reconsider the matter in the light of the observations aforesaid."

(underline supplied)

23. The learned Senior Counsel/learned counsel for the assessees contended that Civil Appeal No.11288 of 2016 filed by the Revenue arising out of ITA No.516 of 2014 in the case of Karakulam Service Co-operative Bank Ltd., which was included in the common judgment in **Chirakkal [384 ITR 490]**, has already been dismissed by the Apex Court by order dated 04.10.2018 in Civil Appeal No.7526 of

2011 and connected cases, since the tax effect was less than Rs.1 Crore and covered by Circular No.3/2018 dated 11.07.2018 of the Central Board of Direct Taxes. On the dismissal of Civil Appeal, the judgment of this Court in **Chirakkal [384 ITR 490]** has merged with the order of the Apex Court in that Civil Appeal. They would also contend that the Revenue did not challenge the judgment in the connected ITAs in **Chirakkal [384 ITR 490]** by filing SLPs before the Apex Court.

23.1. Section 268A of the IT Act deals with filing of appeal or application for reference by Income Tax Authority. As per sub-section (1) of Section 268A, the Board may, from time to time, issue orders, instructions or directions to other Income Tax Authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any Income Tax Authority under the provisions of Chapter XX. As per sub-section (2), where, in pursuance of the orders, instructions or directions issued under sub-section (1), an Income Tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any Assessment Year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of.- (a) the same assessee for any other assessment year; or (b) any other assessee for the same or any other assessment year.

23.2. As per sub-section (3) of Section 268A of the IT Act,

notwithstanding that no appeal or application for reference has been filed by the Income Tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for the assessee, being a party in any appeal or reference, to contend that the Income Tax Authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case. As per sub-section (4), the Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case. As per sub-section (5), every order, instruction or direction, which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

23.3. In **Gangadharan C.K. And another v. Commissioner of Income Tax, Cochin [2008 (304) ITR 61]**, the Apex Court held that, merely because in some cases the Revenue has not preferred appeal that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher Court when divergent views are expressed by the Tribunals or the High Courts.

23.4. Therefore, the contention of the learned Senior Counsel/ learned counsel for the assessees that on the dismissal of Civil Appeal No.11288 of 2016, the judgment of this Court in **Chirakkal [384 ITR 490]** has merged with the order of the Apex Court in that Civil Appeal; and the contention regarding absence of challenge against the judgment in the connected ITAs in that common judgment, can only be repelled.

24. In **Kerala State Co-operative Marketing Federation Ltd. and others v. Commissioner of Income Tax [(1998) 231 ITR 814]**, the question that came up for consideration before the Apex Court was as to whether the assessees, which are Co-operative Societies, are entitled to deduction under Section 80P(2)(a)(3) of the IT Act, in respect of the purchases made from members societies. In that context, the Apex Court held that the provisions under Section 80P are introduced with a view to encouraging and promoting growth of Co-operative sector in the economic life of the country and in pursuance of declared policies of the Government. The correct way of reading the different heads of exemption enumerated in that Section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a Co-operative Society is exempted from tax, what has to be seen is to whether the income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax, notwithstanding

that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption.

25. In **Aditanar Educational Institution v. Additional Commissioner of Income Tax [(1997) 224 ITR 310 (SC)]**, a decision relied on by the learned Senior Counsel for the Revenue, in the context of sub-section (22) of Section 10 of the IT Act, the Apex Court held that, the language of sub-section (22) of Section 10 of the IT Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit.

26. In **Deputy Commissioner of Income Tax v. Ace Multi Axes Systems Ltd. [(2018) 2 SCC 158]**, the Apex Court, in the context of Section 80IB of the IT Act, which deals with incentives meant for Small Scale Industrial Undertakings, held that, each assessment year being a different assessment year, the incentive meant for Small Scale Industrial Undertakings cannot be availed by Industrial Undertakings which do not continue as Small Scale Industrial Undertakings during the relevant period. In the said decision, the Apex Court held further that an exception or an exempting provision in a taxing Statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notification. In both situations, i.e., where the assessee, is not initially eligible or where the

asssesse though initially eligible loses the qualification of the eligibility in subsequent assessment years, principle of interpretation remains the same. The assessee having not retained the character of Small Scale Industrial Undertaking is not eligible to the incentive meant for that category. Permitting incentives in such cases will be against the object of the law. Paragraphs 10 to 14 of the said decision read thus;

> "**10.** Section 80IB is in Chapter VIA of the Act which provides for deductions to be allowed from total income which is to be computed under the relevant provisions. The scheme is to provide incentives for purposes mentioned in different provisions of the said Chapter. Section 80IB provides for deductions of specified percentage from the profits and gains of the specified industrial undertakings other than infrastructure development undertakings (which are separately dealt with under Section 80IA). The clause relevant for purposes of this appeal is Clause 2 which makes the deductions permissible in respect of industrial undertakings fulfilling the conditions specified therein. The scheme applies to small scale industrial undertakings as defined in Clause 14(g) which in terms refers to Section 11B of the Industries (Development and Regulation) Act, 1951. The extent of deduction permissible is mentioned in Clause 3 which is 25% (30% in the case of a company) of the profits and gains derived from such industrial undertakings for 10 consecutive assessment years beginning with the initial assessment. The 'initial assessment year' is defined in Clause 14(c) as the year in which manufacturing/ production commences.
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> **11.** As already noted, the question for consideration is whether deduction under Clause 3 for 10 consecutive assessment years remains permissible irrespective of compliance of conditions subject to which the said deduction is permitted in the relevant assessment

years. For purposes of deduction, the industrial undertakings covered by Section 80IB are of different categories. Under the second proviso to Clause 2, disqualification applicable to industrial undertaking, other than small scale industrial undertakings, i.e., not being in 8th Schedule is not applicable. The small scale industrial undertakings eligible are only those which begin manufacture or produce, articles or things during the beginning of 1st day of April, 1995 and ending on 31st day of March, 2002 [Clause 3(ii)]. For other categories of industrial undertakings, different periods are prescribed, e.g. under sub-clause (i) of Clause (3).

12. The scheme of the statute does not in any manner indicate that the incentive provided has to continue for 10 consecutive years irrespective of continuation of eligibility conditions. Applicability of incentive is directly related to the eligibility and not de hors the same. If an industrial undertaking does not remain small scale undertaking or if it does not earn profits, it cannot claim the incentive. No doubt, certain qualifications are required only in the initial assessment year, e.g. requirements of initial constitution of the undertaking. Clause 2 limits eligibility only to those undertakings as are not formed by splitting up of existing business, transfer to a new business of machinery or plant previously used. Certain other qualifications have to continue to exist for claiming the incentive such as employment of particular number of workers as per sub-clause 4(i) of Clause 2 in an assessment year. For industrial undertakings other than small scale industrial undertakings, not manufacturing or producing an article or things specified in 8th Schedule is a requirement of continuing nature.

13. On examination of the scheme of the provision, there is no manner of doubt that incentive meant for small scale industrial undertakings cannot be availed by industrial undertakings which do not continue as small scale industrial undertakings during the relevant period. Needless to say, each assessment year is a

different assessment year, except for block assessment.

14. The observations in the impugned order are that the object of legislature is to encourage industrial expansion which implies that incentive should remain applicable even where on account of industrial expansion small scale industrial undertakings ceases to be small scale industrial undertakings. We are unable to appreciate the logic for these observations. Incentive is given to a particular category of industry for a specified purpose. An incentive meant for small scale industrial undertaking cannot be availed by an assessee which is not such an undertaking. It does not, in any manner, mean that the object of permitting industrial expansion is defeated, if benefit is not allowed to other undertakings. On this logic, incentive must be given irrespective of any condition as the incentive certainly helps further expansion by reducing the tax burden. The concept of vertical equity is well known under which all the assessees need not be uniformally taxed. Progressive taxation is a well known element of tax policy. Higher slabs of tax or higher tax burden on an assessee having higher income or higher capacity cannot in any manner, be considered unreasonable."

(underline supplied)

26.1. In **Ace Multi Axes Systems' case (supra)** the Apex Court noticed that the scheme of the statute is clear that the incentive is applicable to a Small Scale Industrial Undertaking. The intention of legislature is in no manner defeated by not allowing the said incentive if the assessee ceases to be the class of industrial undertaking for which the incentive is provided even if it was eligible in the initial year, and that each assessment year is a separate unit. In the said decision, the Apex Court has also noticed that in **Citizen Co-operative Society [391 ITR**

1], it has considered the incentive under Section 80P meant for a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. The assessee was held not to be entitled to the said incentive as the business of the assessee was held to be finance business to which the incentive was not admissible even though the principle of liberal interpretation in terms of **Bajaj Tempo Ltd. v. CIT [(1992) 196 ITR 188 (SC)]** was applied. Paragraphs 15 to 22 of the said decision read thus;

> "**15.** We may now refer to some of the decisions which have been cited at the bar. It is submitted on behalf of the assessee that a provision relating to incentive should be construed liberally to advance the objective of the provision. Reliance has been placed on **Bajaj Tempo Ltd. v. CIT [(1992) 196 ITR 188 (SC) : 1992 (3) SCC 78]**. Therein the assessee claimed exemption meant for a new industrial undertaking which had not been formed by transfer of earlier business in terms of Section 15C of the Income Tax Act, 1922. After recording a finding of fact that the assessee was a genuine new industrial undertaking, it was observed that a provision of a taxing statute granting incentive for promoting growth and development should be construed liberally. The judgment is distinguishable. Construing liberally does not mean ignoring conditions for exemption. The main issue considered in the said judgment was that though the undertaking was a genuine 'new industrial undertaking' which was the qualification for the exemption, a nominal part of the undertaking was out of the existing undertaking and building of an existing undertaking was taken on lease. The relevant observations are:
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> "9. Initial exercise, therefore, should be to find out if the

undertaking was new. Once this test is satisfied then clause (i) should be applied reasonably and liberally in keeping with spirit of Section 15 - C(1) of the Act. While doing so various situations may arise for instance the formation may be without anything to do with any earlier business. That is the undertaking may be formed without splitting up or reconstructing any existing business or without transfer of any building material or plant of any previous business. Such an undertaking undoubtedly would be eligible to benefit without any difficulty. On the other extreme may be an undertaking new in its form but not in substance. It may be new in name only. Such an undertaking would obviously not be entitled to the benefit. In between the two there may be various other situations. The difficulty arises in such cases. For instance a new company may be formed, as was in this case a fact which could not be disputed, even by the Income Tax Officer. But tools and implements worth Rs.3,500 were transferred to it of previous firm. Technically speaking it was transfer of material used in previous business. One could say as was vehemently urged by the learned counsel for the department that where the language of statute was clear there was no scope for interpretation. If the submission of the learned counsel is accepted then once it is found that the material used in the undertaking was of a previous business there was an end of inquiry and the assessee was precluded from claiming any benefit. Words of a statute are undoubtedly the best guide. But if their meaning gets clouded then courts are required to clear the haze. Sub-section (2) advances the objective of sub-section (1) by including in it every undertaking except if

it is covered by clause (i) for which it is necessary that it should not be formed by transfer of building or machinery. The restriction or denial of benefit arises not by transfer of building or material to the new company but that it should not be formed by such transfer. This is the key to the interpretation. The formation should not be by such transfer. The emphasis is on formation not on use. Therefore it is not transfer of building or material but the one which can be held to have resulted in formation of the undertaking. In **Textile Machinery Corporation Ltd. v. CIT [1977 (2) SCC 368]** this Court while interpreting Section 15 - C observed: (SCC p. 375, para 18)

"The true test, is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under S.15 - C or not. In order that the new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit. An undertaking is formed out of the existing business if the physical identity with the old unit is preserved."

Even though this decision was concerned with the clause dealing with reconstruction of existing business but the expression 'not formed' was construed to mean that the undertaking should not be a continuation of the old but emergence of a new unit. Therefore even if the undertaking is established by transfer of building, plant or machinery but it is not formed as a result of such transfer the

assessee could not be denied the benefit."

16. The principle of law considered in **Bajaj Tempo (supra)** is certainly a valid principle of interpretation where there is ambiguity or absurdity or where conditions of eligibility are substantially complied. In the present case, the scheme of the statute is clear that the incentive is applicable to a small scale industrial undertaking. The intention of legislature is in no manner defeated by not allowing the said incentive if the assessee ceases to be the class of industrial undertaking for which the incentive is provided even if it was eligible in the initial year. Each assessment year is a separate unit.

17. In **Citizen Co-operative Society Limited v. Assistant Commissioner of Income Tax, Circle - 9(1), Hyderabad, [391 ITR 1 : 2017 (9) SCC 364]**, this Court considered the incentive under Section 80P meant for a primary agricultural credit society or a primary cooperative agricultural and rural development bank. The assessee was held not to be entitled to the said incentive as business of the assessee was held to be finance business to which the incentive was not admissible even though the principle of liberal interpretation in terms of **Bajaj Tempo (supra)** was applied.

18. In **State of Haryana v. Bharti Teletech Ltd., [2014 (3) SCC 556]**, eligibility of an assessee to get benefit of exemption from tax was an issue. It was observed that while the exemption notification should be liberally construed, the beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise. The principle of interpretation in the judgment in **Bajaj Tempo (supra)** and other judgments was dealt with as follows:

> "22. We will be failing in our duty if we do not address a submission, albeit the last straw, of Mr. Jain that any provision relating to grant of exemption, be it under a

rule or notification, should be considered liberally. In this regard, we may profitably refer to the decision in **Hansraj Gordhandas v. CCE and Customs, [AIR 1970 SC 755]** wherein it has been held as follows: (AIR p. 759, para 5)

"5. ... It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax - payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different."

23. In **CST v. Industrial Coal Enterprises, [1999 (2) SCC 605]**, after referring to **CIT v. Straw Board Mfg. Co. Ltd., [1989 (Supp.) 2 SCC 529]** and **Bajaj Tempo Ltd. v. CIT**, the Court ruled that an exemption notification, as is well known, should be construed liberally once it is found that the entrepreneur fulfils all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an entrepreneur is entitled to the benefit thereof, the same should not be denied.

24. In this context, reference to **T.N. Electricity Board v. Status Spg. Mills Ltd., [2008 (7) SCC 353]** would be fruitful. It has been held therein: (SCC p. 367, para 32)

"32. It may be true that the exemption notification should receive a strict

construction as has been held by this Court in **Novopan India Ltd. v. CCE and Customs, [1994 (Supp) 3 SCC 606]**, but it is also true that once it is found that the industry is entitled to the benefit of exemption notification, it would received a broad construction. (See **TISCO Ltd. v. State of Jharkhand, [2005 (4) SCC 272]** and **A.P Steel Re-Rolling Mill Ltd. v. State of Kerala, [2007 (2) SCC 725]**. A notification granting exemption can be withdrawn in public interest. What would be the public interest would, however, depend upon the facts of each case."

25. From the aforesaid authorities, it is clear as crystal that a statutory rule or an exemption notification which confers benefit on the assessee on certain conditions should be liberally construed but the beneficiary should fall within the ambit of the rule or notification and further if there are conditions and violation thereof are provided, then the concept of liberal construction would not arise. Exemption being an exception has to be respected regard being had to its nature and purpose. There can be cases where liberal interpretation or understanding would be permissible, but in the present case, the rule position being clear, the same does not arise."

19. Same view was taken in **Commissioner of Customs v. M. Ambalal & Co., [2011 (2) SCC 74]**, as follows:

"16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the

benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."

20. In **State of Jharkhand v. Ambay Cements, [2005 (1) SCC 368]**, the question was whether exemption for newly set up industrial units was applicable to the assessee therein. The High Court having allowed the benefit even though the assessee did not qualify for the same, this Court reversed the view of the High Court and held that the conditions for grant of exemption from tax are mandatory and in absence thereof exemption could not be granted. Distinguishing the judgments of this Court in **Bajaj Tempo (supra)**, it was observed:

"23. Mr. Bharuka further submitted that in taxing statutes, provision of concessional rate of tax should be liberally construed and in respect of the above submission, he cited the judgment of this Court in **CST v.**

Industrial Coal Enterprises, [1992 (3) SCC 78] and in the case of **Bajaj Tempo Ltd. v. CIT.** We are unable to countenance the above submission. In our view, the provisions of exemption clause should be strictly construed and if the condition under which the exemption was granted stood changed on account of any subsequent event the exemption would not operate.

24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.

25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non - compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."

21. In view of the above judgments, we do not see any difference in the situation where the assessee, is not initially eligible, or where

the assessee though initially eligible loses the qualification of eligibililty in subsequent assessment years. In both such situations, principle of interpretation remains the same.

22. Thus, while there is no conflict with the principle that interpretation has to be given to advance the object of law, in the present case, the assessee having not retained the character of 'small scale industrial undertaking', is not eligible to the incentive meant for that category. Permitting incentive in such case will be against the object of law." (underline supplied)

27. In **Commissioner of Central Excise, Chandigarh v. Doaba Steel Rolling Mills [2011 (269) ELT 298]**, in the context of the provisions under Section 3A of the Central Excise Act, 1944, the Apex Court held that, the principle that a taxing statute should be strictly construed is well settled. It is equally trite that the intention of the Legislature is primarily to be gathered from the words used in the statute. Once it is shown that an assessee falls within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be. Paragraphs 18 and 19 of the said decision reads thus;

"**18.** As noted above, Section 3A was inserted in the Act to enable the Central Government to levy Excise duty on manufacture or production of certain notified goods on the basis of annual capacity of production to be determined by the Commissioner of Central Excise in terms of the Rules to be framed by the Central Government. Section 3A of the Act is an exception to Section 3 of the Act - the charging Section and being in nature of a non obstante provision, the provisions contained in the said Section override those

of Section 3 of the Act. Rule 3 of 1997 Rules framed in terms of Section 3A(2) of the Act lays down the procedure for determining the annual capacity of production of the factory. Sub-rule (3) of that Rule contains a specific formula for determination of annual capacity of production of hot rolled products. This is the only formula whereunder the annual capacity of production of the factory, for the purpose of charging duty in terms of Section 3A of the Act, is to be determined. Second proviso to sub-section (2) of Section 3A of the Act contemplates re-determination of annual production in a case when there is alteration or modification in any factor relevant to the production of the specified goods but such re-determination has again to be as per the formula prescribed in Rule 3(3) of the 1997 Rules. It is clear that sub-rule (2) of Rule 4, which, in effect, permits a manufacturer to make a change in the installed machinery or part thereof which tends to change the value of either of the parameters, referred to in sub-rule (3) of Rule 3, on the basis whereof the annual capacity of production had already been determined, would obviously require re-determination of annual capacity of production of the factory/mill, for the purpose of levy of duty. It is plain that in the absence of any other Rule, providing for any alternative formula or mechanism for re-determination of production capacity of a factory, on furnishing of information to the Commissioner as contemplated in Rule 4(2) of the 1997 Rules, such determination has to be in terms of sub-rule (3) of Rule 3. That being so, it must logically follow that Rule 5 cannot be ignored in relation to a situation arising on account of an intimation under Rule 4(2) of the 1997 Rules. Moreover, the language of Rule 5 being clear and unambiguous, in the sense that in a case where annual capacity is determined/re-determined by applying the formula prescribed in sub-rule (3) of Rule 3, Rule 5 springs into action and has to be given full effect to.

19. The principle that a taxing statute should be strictly construed is

well settled. It is equally trite that the intention of the Legislature is primarily to be gathered from the words used in the statute. Once it is shown that an assessee falls within the letter of the law, he must be taxed, however, great the hardship may appear to the judicial mind to be." (underline supplied)

28. In **Doaba Steel Rolling Mills' case (supra)**, the Apex Court held further that, merely because in some cases, the Revenue has not questioned the correctness of an order on the same issue, it would not operate as a bar for the Revenue to challenge the order in another case. Paragraph 24 of the said decision reads thus;

"24. As regards the argument of learned counsel for the respondents that having not assailed the correctness of some of the orders passed by the Tribunal and a decision of the High Court of Karnataka, the revenue cannot be permitted to adopt the policy of pick and choose and challenge the orders passed in the cases before us, it would suffice to observe that such a proposition cannot be accepted as an absolute principle of law, although we find some substance in the stated grievance of the assessees before us, because such situations tend to give rise to allegations of mala fides etc. Having said so, we are unable to hold that merely because in some cases revenue has not questioned the correctness of an order on the same issue, it would operate as a bar for the revenue to challenge the order in another case. There can be host of factors, like the amount of revenue involved, divergent views of the Tribunals/High Courts on the issue, public interest etc. which may be a just cause, impelling the revenue to prefer an appeal on the same viewpoint of the Tribunal which had been accepted in the past. We, may however, hasten to add that it is high time when the Central Board of Direct and Indirect Taxes comes out with a uniform policy, laying down strict parameters for

the guidance of the field staff for deciding whether or not an appeal in a particular case is to be filed. We are constrained to observe that the existing guidelines are followed more in breach, resulting in avoidable allegations of mala fides etc.; on the part of the officers concerned." (underline supplied)

29. In **Krishena Kumar v. Union of India [(1990) 4 SCC 207]**, the Apex Court held that the doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. The enunciation of the reason or principal upon which a question before a court has been decided is alone as a precedent. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre existing rule of law, either statutory or judge made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it.

29.1. Relying on the judgment of the Apex Court in **Krishena Kumar's case (supra)** the learned counsel for the assessee in ITA No. 22 of 2017 would contend that, as there is no ratio decidendi in **Perinthalmanna [363 ITR 268]** the Division Bench went wrong in referring the matter to a Larger Bench on the ground that there is divergence of opinion expressed by the two Division Benches in **Perinthalmanna [363 ITR 268]** and **Chirakkal [384 ITR 490]**.

29.2. The Latin phrase 'ratio decidendi' literally means 'reason for deciding'. In **Perinthalmanna [363 ITR 268]**, as per records, it was apparent that the assessee is not a PACS, since the principal business carried out was for non-agricultural purposes. However, the Assessing Officer, without conducting any enquiry on such aspects, allowed the claim of deduction under Section 80P of the IT Act, without proper verification of the status of the assessee as a PACS. The Revisional Authority arrived at a conclusion that in order to be eligible for deduction under Section 80P of the IT Act, with effect from the Assessment Year 2007-08 onwards, a Co-operative Society, irrespective of carrying on the business of banking or providing credit facility to its members, should either be a PACS or a Primary Co-operative Agricultural or Rural Development Bank, which satisfy the condition prescribed under the BR Act. The Revisional Authority noticed that the bye-laws of the assessee authorises disbursement of loan for non-agricultural purposes also. Therefore, to verify the primary object of the Society, its action, plan and activity should be analysed. By Annexure-B order the Revisional Authority set aside Annexure-A assessment order, for making assessment afresh on the issues discussed in Annexure-B order, after considering the aspects referred to therein and the Assessing Officer was directed to pass appropriate orders as per law, after giving sufficient opportunity to the assessee. Annexure-B order was under challenge

before the Appellate Tribunal in an appeal filed under Section 263 of the IT Act, which ended in dismissal by Annexure-C order, declining interference.

29.3. In **Perinthalmanna [363 ITR 268]**, after perusing Annexure-A order of the Assessing Officer, Annexure-B order of the Revisional Authority and Annexure-C order of the Appellate Tribunal, the Division Bench noticed that, the entire controversy involved is with regard to the exact status of the assessee, whether it is Co-operative Bank or a Primary Co-operative Credit Society and that, this question arises in the light of the assessee claiming benefits under Section 80P of the IT Act. The Division Bench observed that, once a claim is made under Section 80P, necessarily the Assessing Officer has to consider the implication of sub-section (4) of Section 80P with reference to such claim depending upon the nature of transactions conducted by the assessee, irrespective of the nomenclature of the assessee. Before the Division Bench, the assessee contended that, its case has to be considered only by looking into the provisions of the KCS Act and nothing else, as the certificate of registration would indicate their claim and also decide what exactly the nature of business. The Division Bench held that the Revisional Authority was justified in saying that, with the introduction of sub-section (4) of Section 80P that, necessarily an enquiry has to be conducted into the factual situation whether a Co-operative Bank is

conducting the business as a PACS or a Primary Co-operative Agricultural and Rural Development Bank, and depending upon the transactions, the Assessing Officer has to extent the benefits available, and not merely looking at the registration certificate under the KCS Act or the nomenclature. Therefore, we find no merit in the contention of the learned counsel for the assessee that as there is no ratio decidendi in **Perinthalmanna [363 ITR 268]** the Division Bench went wrong In referring the matter to a Larger Bench on the ground that there is divergence of opinion expressed by the two Division Benches in **Perinthalmanna [363 ITR 268]** and **Chirakkal [384 ITR 490]**.

30. In **Antony Pattukulangara [2012 (3) KHC 726]** in the context of clause (oa) of Section 2 of the KCS Act [which was later renumbered as clause (oaa) by the Kerala Co-operative Societies (Amendment) Act, 2013 with effect from 14.02.2013], a Division Bench of this Court held that, going by the definition clause of 'Primary Agricultural Credit Society' in order to constitute the Society in that category, the principal activity should be to undertake agricultural credit activities and provide loans and advances for agricultural purposes. It is further stated in the second proviso to the said definition clause that if the society does not achieve its objective i.e., to function like an Agricultural Credit Society, it will lose its identity by virtue of the operation of the said proviso. What can be noticed from second proviso

to clause (oa) of Section 2 of the KCS Act is that, as and when the Society ceases to be a Primary Agricultural Credit Society, it shall loose that identity irrespective of whether the Registrar has made changes or not.

31. In **Thathamangalam Service Co-operative Bank's case (supra)** this Court held that Section 80P of the IT Act provides exemption only in respect of a Primary Agricultural Credit Society as mentioned in sub-section (4) and as such, the status of the Society becomes more relevant, as defined under the Banking Regulation Act. Such objective has already been brought about by amending the Kerala Statute as well, incorporating the 'second proviso' to the definition of the term Primary Agricultural Credit Society, as given under Section 2(oa) of the Kerala Co-operative Societies Act, as per Act 7 of 2010. But, by virtue of the amendment to Section 2(oa) of the Kerala Co-operative Societies Act, if the Society does not continue to fulfill the obligation, it will lose the colour and characteristics of a Primary Agricultural Credit Society, except for the purpose of staff strength. Thus, it is very much obligatory for the petitioner societies, who claim the status and the benefits of Primary Agricultural Credit Societies, to substantiate that their main object of incorporation is being continued to be fulfilled as well. As such, they have to obtain a certificate from the competent authority by producing the relevant facts and figures including the balance sheet,

profit and loss accounts etc., that they satisfy the requirements of the 'second proviso' to Section 2(oa) of the Act, to claim the status of Primary Agricultural Credit Societies.

33. In view of the law laid down by the Apex Court in **Citizen Co-operative Society [397 ITR 1]** it cannot be contended that, while considering the claim made by an assessee society for deduction under Section 80P of the IT Act, after the introduction of sub-section (4) thereof, the Assessing Officer has to extend the benefits available, merely looking at the class of the society as per the certificate of registration issued under the Central or State Co-operative Societies Act and the Rules made thereunder. On such a claim for deduction under Section 80P of the IT Act, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of Section 80P.

33. In **Chirakkal [384 ITR 490]** the Division Bench held that the appellant societies 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 to be 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 and as such, they are entitled for the benefit of sub-section (4) of Section 80P of the IT Act to ease themselves out from the coverage of Section 80P and that, the authorities under the IT Act cannot probe into any issues or such matters relating to such societies and that, 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.

34. In **Chirakkal [384 ITR 490]** the Division Bench expressed a divergent opinion, without noticing the law laid down in **Antony Pattukulangara [2012 (3) KHC 726]** and **Perinthalmanna [363 ITR 268]**. Moreover, the law laid down by the Division Bench in **Chirakkal [384 ITR 490]** is not good law, since, in view of the law laid down by the Apex Court in **Citizen Co-operative Society [397 ITR 1]**, on a claim for deduction under Section 80P of the Income Tax Act, by reason of sub-section (4) thereof, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of Section 80P of the IT Act. In view of the law laid down by the Apex Court in **Citizen Co-operative Society [397 ITR 1]** the law laid down by the Division Bench **Perinthalmanna [363 ITR 268]** has to be affirmed and we do

so.

35. In view of the law laid down by the Apex Court in **Ace Multi Axes Systems' case (supra)**, since each assessment year is a separate unit, the intention of the legislature is in no manner defeated by not allowing deduction under Section 80P of the IT Act, by reason of sub-section (4) thereof, if the assessee society ceases to be the specified class of societies for which the deduction is provided, even if it was eligible in the initial years.

The question referred to the Full Bench is answered as above. Registry shall list the appeals before appropriate Bench as per roster.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

yd

DEVAN RAMACHANDRAN, JUDGE

25/2/19

(True copy)

28/2/19

ASSISTANT REGISTRAR

25/2/19