

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal Nos.735, 755 of 2014 and 460 of 2015

The Commissioner of Income Tax,
63, Race Course Road
Coimbatore.Appellant in all the above appeals

Vs

M/s. Veerakeralam Primary Agricultural
Co-operative Credit Society
No.17, Peria Thottam Colony
Veerakeralam
Coimbatore - 641 007.Respondent in all the above appeals

Prayer: Appeals filed under Section 260A of Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal Madras 'D' Bench dated 11.02.2014 in I.T.A.No.197/Mds/2013, 'C' Bench dated 21.03.2014 in I.T.A.No.2287/Mds/2013 and 'A' Bench dated 30.01.2015 in I.T.A. No. 2102/Mds/2014, and against the Order of the Commissioner of Income Tax(Appeals)-I, Coimbatore, dated 01.11.2012 made in P.A.No./GIR.No. AAAAV3131G and against the Income Tax Officer, Ward II(3), Coimbatore, dated 27.12.2011 made in PAN.No.AAAAV3131G, Assessment Year 2009-10. (In TCA.735 of 2014), and against the Order of the Commissioner of Income Tax(Appeals)-I, Coimbatore dated 30.10.2013 made in P.A.No./GIR.No.AAAAV3131G, and against the Order of the Income Tax Officer, Ward II(3), Coimbatore, dated 06.03.2013 made in PAN.No.AAAAV3131G, Assessment Year 2008-09. (In TCA.755 of 2014), and against the Order of the commissioner of Income Tax(Appeals)-I, Coimbatore dated 01.05.2014 made in P.A.No./GIR.No.AAAAV3131G, and against the Order of the Income Tax Officer, Ward II(3), Coimbatore dated 08.03.2013 made in PAN.No.AAAAV3131G, Assessment Year 2010-11. (In TCA.460 of 2015).

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel for I.T

For Respondent : Mr. A.S. Sri Raman
for Mr. S. Sridhar

COMMON JUDGMENT

(Judgment of the Court was made by D. KRISHNAKUMAR, J)

These Appeals have been filed by the Revenue against the orders of Madras 'D' Bench dated 11.02.2014 in I.T.A.No.197/ Mds/2013, 'C' Bench dated 21.03.2014 in I.T.A.No.2287/Mds/2013 and 'A' Bench dated 30.01.2015 in I.T.A. No. 2102/Mds/2014 on the file of the Income Tax Appellate Tribunal.

2. The facts of the case are as follows :-

The Assessee society, namely, Veerakeralam Primary Agricultural Co-operative Credit Society, filed return of income for the Assessment years 2008-09, 2009-10 and 2010-11 on 30.03.2010, admitting 'Nil' income. The cases were selected for scrutiny and notice under Section 143(2) of the Income Tax Act, was issued and served on the assessee. The Assessee, stating they are a Primary Agricultural Credit Society, carrying on the business of banking and providing credit facilities to its members, claimed deduction under Section 80P (2) of the Income Tax Act. The assessee society is registered under Tamil Nadu Co-operative Societies Act, primarily engaged in the principle business of providing financial assistance to its members, besides deriving income from its Tractor division and Public Distribution Division. The aforesaid assessee invested its funds in CDCC Bank etc., to comply with the statutory obligations and received interest from such investments, which has been headed under "Income from other sources". Therefore, the interest income and dividend income have come under the taxable income under Section 80P (2) (a) (i) & (d) of the Income Tax Act, 1961. The Assessing Officer has observed that the assessee by nomenclature is a "Primary Agricultural Co-operative Credit Society" and with the insertion of Section 80P (4), all the co-operative banks other than primary agricultural credit society or a primary co-operative agricultural and rural development bank, become ineligible for exemption under Section 80P.

3. It is further stated that the meaning of "Primary Agricultural Credit Society" as defined in Section 5 (cciv) of the Banking Regulation Act, 1949, reads as follows :-

" (cciv) Primary Agricultural Credit Society means 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 ; "

Therefore, the Assessing Officer decided that though the assessee society is a Primary Co-operative Society, since carrying on the business of banking, it falls within the ambit of Primary Co-operative Society. As the assessee society is a "co-operative bank" within the meaning of explanation of Section 80P (4), the benefit under Section 80P is denied. Aggrieved by the said orders, the assessee society, went before the Commissioner of Income Tax (Appeals)-I, Coimbatore, on appeal, raising the following grounds :-

1. The assessee "The Veerakeralam Primary Agricultural Cooperative Credit Society" is engaged with the prime objective of providing agricultural credit facilities to its members and also doing banking business. The status of the assessee, as a primary agricultural cooperative credit society, has been affirmed by the audit reports of the Co-operative Auditor of the Tamil Nadu Government.

At the outset of the assessment order in question, the Assessing Officer treated as well, the status of the assessee as Primary Agricultural Cooperative Credit Society, for the reason of the facts of the case of the assessee. However, the Assessing Officer erred in disallowing the deduction claimed under Section 80P by the assessee for the reason that the assessee being primary cooperative society carrying on the business of banking. Such a disallowance is not based on the facts and circumstances of the case.

2. The Assessing Officer erred in treating its interest etc., on investments made, as taxable under the head "Income from other sources" and not under banking business. The judicial decision cited i.e., M/s.Totgar's Cooperative Sale Society Limited Vs ITO 229 CTR 209 (SC) 2010 is not relevant to the assessee's case where the facts are entirely different. Also for the assessee the entire interest and dividend income are deductible under Section 80P(2)(d) also.
3. The Assessing Officer erred in ignoring the facts and circumstances of the case i.e., Primary Agricultural Cooperative Credit Society doing banking as its principal business complying with section 5(cciv) of the Banking Regulation Act, 1949, but based her assessment on the statements made by the Authorised Representative at the time of assessment proceedings.
4. In the aforesaid circumstances, it is earnestly prayed that the deduction u/s 80P may be restored in toto in the assessment and the tax demand raised may be nullified.

4. The appellant has submitted before the Commissioner of Income Tax that Section 80P was amended vide Finance Act, 2006, with effect from 01.04.2007 i.e., from the Assessment year 2008-09 onwards. Sub section (4) was introduced under Section 80P. This subsection denied the deduction to a cooperative bank. Till the amendment of introducing subsection (4) under Section 80P, there was no requirement to analyse and understand the various terms, namely, banking business, agricultural credit society, primary cooperative society, the nature of head of income under which the income should be categorized etc.. The assessee is a primary agricultural credit society within the meaning of Bank Regulation Act, 1949. Subsection (cciv) which has been modified by Section 56 of the said Act, defines 'the Primary Agricultural Credit Society'. In view of the above definition, the assessee society provides financial assistance only to its members for agricultural and related purposes. Its byelaw does not permit admission of any other cooperative society as a member. All the deposits it receive from the members, are deposited into the Coimbatore District Central Cooperative Bank and the credit facilities are withdrawn from these accounts, for its members. Therefore, the assessee society is not a cooperative bank as defined under Section 5 (b) of the Banking Regulation Act, 1949, which is extracted below :-

" 5 (b)- Banking means 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, order or otherwise."

5. It is further submitted that without license from Reserve Bank of India, no person, other than the Primary Credit Society can carry on the business of banking. The assessee society is not a primary credit society and has not obtained any license from RBI and the business it carries is not banking as per the Banking Regulation Act. Further, the interest income is derived from Investment in a cooperative society and so claimed deduction under Section 80P (2)(d). Considering the above submissions, the appellate authority, in its order has clearly defined the difference between the Cooperative Bank and the Cooperative Society and decided the appeal in favour of the assessee and granted relief under Section 80P(2)(a)(i) of the Income Tax Act. Thus, the appeal was allowed by the Appellate Authority.

6. Against the aforesaid order, the Revenue filed an appeal before the Income Tax Appellate Tribunal and the said appeal was also dismissed, based on the provisions of the Banking Regulation Act and the Cooperative Societies Act. The Tribunal also considered the decision rendered by the

Bangalore Bench of the Tribunal in the case of ACIT vs. Bangalore Commercial Transport Credit Co-operative Society Limited, in ITA No.1069/Bang/2010 relevant to the AY 2007-08 decided on 08.04.2011, which was subsequently followed by the co-ordinate Benches of the Tribunal and held that the activities are not regulated by the Reserve Bank of India or by the provisions of the Banking Regulation Act. Therefore, the appeal filed by the Revenue was dismissed by the Tribunal.

7. Aggrieved with the abovesaid orders rendered by the Commissioner of Income Tax as well as the Appellate Tribunal, the revenue has filed the instant Appeals.

8. Learned counsel for the appellant would submit that revenue has filed the instant appeals mainly on the ground that allowing a claim for deduction, on the income arisen through banking business by the assessee society, is contrary to the provisions of law, when the deduction is allowable only for 'Primary Agricultural Credit Society' and 'Primary Co-operative Agricultural and Rural Development Bank'. And that the deduction is not allowable to a Primary Agricultural Credit Society, carrying on the business of banking. The appellant Revenue has raised such substantial questions of law, in the above appeals.

9. Learned counsel for the respondent submitted that they are a Primary Agricultural Co-operative Credit Society, within the meaning of Section 5 of Banking Regulation Act, 1949. Subsection (cciv) of the said Section, defines the Primary Agricultural Credit Society. The society provides funds only to its members and its bye-laws do not admit any other co-operative society as a member. The sub section (4) of Section 80P, provides that deduction under the said section shall not be extended to any Co-operative Bank other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. 'Co-operative Bank' shall have its meaning under part V of the Banking Regulation Act, 1949. It is clear from the above said provisions of sub section 4 of Section 80P, that the benefit shall not be available to Co-operative banks. There is a difference between Co-operative Bank and Co-operative Society, which are registered under different Acts. 'Co-operative banks' are governed by the Co-operative Societies Act, 1959 and the aforesaid regulation is binding on the Co-operative banks. Whereas, the 'Co-operative societies' are governed by the Co-operative Societies Act, 1959. Therefore, the introduction of subsection (4) to Section 80P is brought into the statute only to bring the cooperative banks on par with the commercial banks. Therefore, the assessee society is not a co-operative bank but a co-operative society

extending credit facilities to its members. It is submitted that in view of the above, the Appellate Authority as well as the Appellate Tribunal, have rightly rejected the contention of the Revenue and passed orders in favour of the assessee society.

10. Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant and Mr. A.R. Sri Raman for Mr. S. Sridhar, learned counsel for the respondent.

11. At the time of admission, this Court admitted the instant appeals, framing the following substantial questions of law :-

1. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in directing the assessing officer to allow the deduction under Section 80P(2) of the Income Tax Act to the assessee who is primarily engaged in lending loans for non agricultural purposes ?
2. Whether on the facts and circumstances of the case the Appellate Tribunal was right in holding that the assessee's claim for deduction is not restricted by Section 80P (4) of the Income Tax Act ?

12. The assessee society, primarily registered as "Veerakeralam Primary Agricultural Co-operative Bank Ltd.," under the Tamilnadu Co-operative Societies Act, 1964, subsequently in 1968, has changed its name as "Veerakeralam Primary Agricultural Co-operative Credit Society". The assessee claims to be a "primary agricultural credit society", engaged primarily in the principle business of providing financial assistance to its members, during the assessment years 2008-2009, 2009-2010 and 2010-2011. The members of the society are agriculturists and are governed by the Tamil Nadu Co-operative Societies Act, 1964. A Co-operative Bank, as defined in Section 5(cci) of the Banking Regulation Act 1949 means a primary co-operative bank. A primary co-operative Bank is a co-operative society other than a primary agricultural credit society. Therefore, a primary agricultural credit society need not be treated as a Primary Co-operative Bank. The terms 'co-operative bank' and 'primary agricultural credit society' for the purpose of subsection (4) of Section 80P Act, shall have the meanings, as assigned to them in part V of the Banking Regulation Act, 1949; going by Explanation (a) occurring after section 80P(4). For the purpose of that sub-section, 'primary co-operative agricultural and rural development bank' is defined to mean what is stated in Explanation (b) to Section 80P (4) of the

Income Tax Act. Therefore, 'primary agricultural credit society' means a 'co-operative society'.

13. Sub-section (4) of Section 80P of the Income Tax Act, 1961 is extracted below :

"(4) 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."

Explanation - For the purposes 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 (10 of 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."

It is seen that the primary object of the society is to provide financial accommodation to its members to meet all the agricultural requirements and to provide credit facilities to the members, as per the bye-laws and as laid down in Section 5 (cciv) of the Banking Regulation Act, 1949. Further, from the CPT Circular dated 12.03.2008, it is evident that a credit co-operative society is not a co-operative bank, as defined in Part V of the Banking Regulation Act, 1949. The object of a 'Co-operative bank' is to accept deposits from the public, for lending or investment of money. On perusal of the findings of the Appellate Authority as well as the Appellate Tribunal, it is categorically made clear that the assessee society will not come under the object of the principal business of a co-operative bank, which is a banking business. The benefit of Section 80P is excluded for deductions by co-operative banks, whereas the primary agricultural credit societies are entitled for the said deduction.

14. The assessee society does not satisfy the object, as defined under Section 5(cciv) of the Banking Regulation Act, 1949, for becoming a co-operative bank. The decisions, ACIT vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010 (AY 2007-08) decided on 08.04.2011, ITO vs. M/s. Yeswanthpur Credit Co-operative Society Ltd. in ITA No.737/Bang/2011 (AY 2007-08) decided on 11.04.2012, ITO vs. The Kasipalayam Primary Agricultural Co-operative Bank Ltd. in ITA No.174/Mds/2013 decided on 23.08.2013, and also the recent judgment of the

Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. decided on 15.01.2014 reported as 2014 (2) TMI 28, were relied upon by the assessee society before the Tribunal. By considering the aforesaid decisions, the appeal was rejected by the Tribunal and held that the subsection 4 of Section 80P of the Income Tax Act, will not be applicable to the assessee society, since it is not a Co-operative bank. Therefore, it is made clear that the assessee society is admittedly not a co-operative bank but a credit co-operative society.

15. In the recent decision of the Kerala High Court, in the case of Chirakkal Service Co-operative Bank Ltd., Kannur vs. the Commissioner of Income Tax, reported in (2016) 68 taxmann.com.298 (Kerala), the High Court considered similar substantial questions of law (Issue No.A) raised by the assessee, regarding the entitlement for exemption under sub section (4) of Section 80P. By considering the fact that the assessee is a primary agricultural society, the Kerala High Court has answered the substantial question of law in favour of the assessee and held that the primary agricultural credit societies, registered as such under the KCS Act and classified so under that Act, including the appellants, are entitled to such exemption. Therefore, the aforesaid decisions is applicable to the instant case.

16. In the light of the aforesaid facts and circumstances of the case, we are of the view, that the substantial question of law framed in the instant appeals, is answered against the Revenue. The exception barred out in Section 80P (4) of the Income Tax Act, 1961, is applicable to the assessee credit society. Hence, the appeals are accordingly dismissed.

17. In view of the above, the TCA Nos. 735, 755 of 2014 and 460 of 2015 are dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal
Chennai.

2.The Commissioner of Income Tax,
63, Race Course Road,
Coimbatore.

3.The Income Tax Appellate Tribunal,
Madras A Bench, Chennai.

4.The Income Tax Appellate Tribunal,
Madras B Bench, Chennai.

5.The Income Tax Appellate Tribunal,
Madras C Bench, Chennai.

6.The Commissioner of Income Tax (Appeals) - I,
Coimbatore.

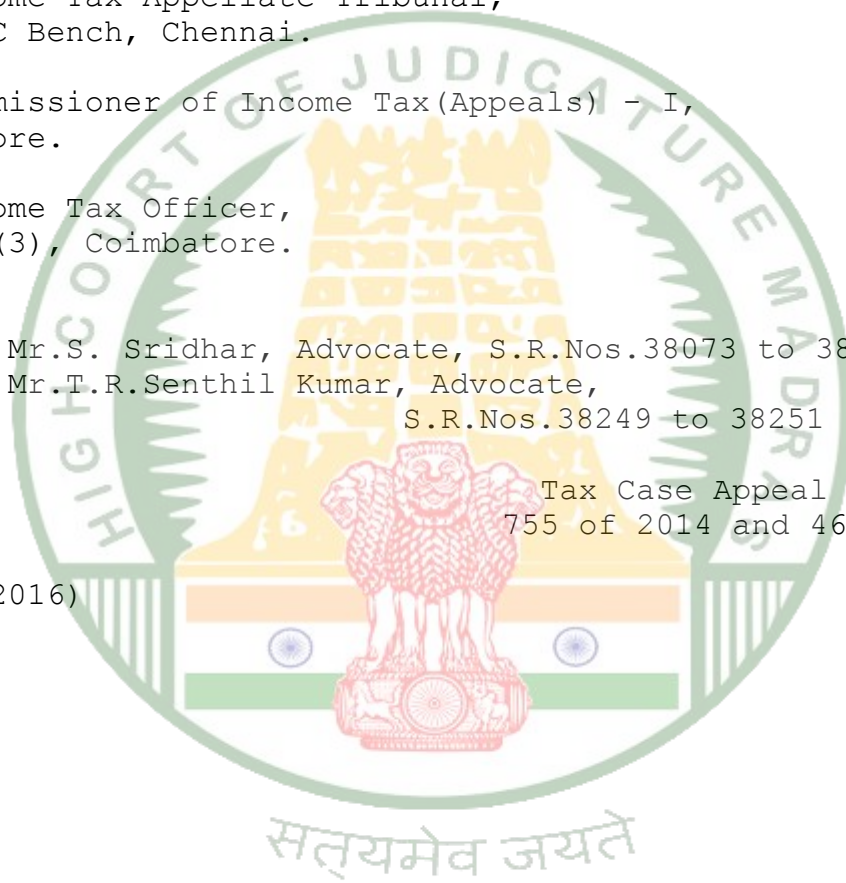
7.The Income Tax Officer,
Ward II(3), Coimbatore.

+3cc's to Mr.S. Sridhar, Advocate, S.R.Nos.38073 to 38075

+3cc's to Mr.T.R.Senthil Kumar, Advocate,
S.R.Nos.38249 to 38251

Tax Case Appeal Nos.735,
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