

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2016

CORAM :

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

Tax Case Appeal Nos.3 and 4 of 2015

The Commissioner of Income Tax,
Salem. ... Appellant
in both the appeals

Vs

The Salem Agricultural Producers
Co-operative Marketing Society Ltd.
305, Suramangalam Main Road
Salem - 636 009 .. Respondent
in both the Appeals

Prayer in both TCAs: Appeals filed under Section 260A of Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal Madras 'D' Bench dated 30.06.2014 in I.T.A.Nos.730 and 731/Mds/2014 against the order dated 28/02/2014 made in ITA.NO.110/2009-10 and ITA No.2011-2012 respectively passed by the Commissioner of Income-Tax(Appeals) Salem-7 and against the order dated 27.11.2009 and 30/11/2011 respectively passed by the Income Tax Officer, Ward III (1) Salem for the Assessment years 2007-08 and 2009-10

For Appellant : Mr.J. Narayanasamy
Senior Standing Counsel for I.T

For Respondent : No Appearance

COMMON JUDGMENT

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

These Appeals have been filed by the Revenue against the orders of the Income Tax Appellate Tribunal Madras 'D' Bench dated 30.06.2014 in I.T.A.Nos.730 and 731/Mds/2014.

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

The Assessee is a co-operative society engaged in marketing the agricultural produces grown by its members and for the assessment years 2007-08 and 2009-10, admitted 'Nil' returns of income after claiming deduction u/s 80P (2) (a) (iii) of the IT Act, 1961. Although the assessee stated that bye-laws of the society allows the assessee to lend monies on

agricultural produce loan and on pledge of gold and silver articles, the Assessing Officer disallowed the claims of the assessee, challenged in both the appeals, on the ground that the sum of Rs.17,61,080/- and Rs.62,78,650/- respectively, represents interest income and not an income derived by marketing the agricultural produce to its members. The Assessing Officer found that the interest income would be entitled for deduction only in respect of Societies, which are engaged in the business of banking or providing credit facilities to its members and so the assessee is not entitled for deduction in respect of the "interest income" earned, since the assessee is engaged in marketing agricultural produces and not in banking activity. Therefore the assessee's claim under Section 80P were rejected, with respect to the interest income.

3. Challenging the assessment orders, the assessee filed appeals to the Commissioner of Income Tax (Appeal). It is submitted that on identical issue in other cases, the Commissioner of Income Tax (Appeal) has found that as per the bye-laws, there were two types of members viz., Class A and Class B members. Class A members are regular members who have voting rights and were involved in the running of the assessee's business and can become the members of Administrative committee, etc. Class B members are those, other than Class A member, who had availed loans from the assessee and is necessarily enrolled as Class B member. The Class B member is not recognized by the assessee for the purpose of records in statute. Further, the majority of jewel loan and other non-farming loan at a higher interest were given to Class B members. Therefore, the Commissioner of Income Tax (Appeal) observed that the assessee cannot claim the benefit of deduction, under Section 80P (2)(a)(i), on the interest received from Class B non-members of the assessee society. The deduction was denied, on a further ground that the non-members did not undertake any agricultural activity as required under Section 80P (4). Therefore, the Commissioner of Income Tax (Appeal) found that the assessee had not provided credit facilities to its members to assist agricultural activity and thus confirmed the Assessment orders challenged on two appeals, to the extent of "interest income" of Rs.17,61,080/- and Rs.62,78,650/-, respectively, earned on jewel loan extended to class B members.

4. Aggrieved by the orders of the Commissioner of Income Tax (Appeal), the assessee filed appeals in I.T.A. Nos.730 and 731/Mds/2014 before the Income Tax Appellate Tribunal. The Tribunal perceived that as per the definition of a member under Section 2(16), the associate member under Section 2(6) is also included as per the State Cooperative Societies Act, 1983. Therefore, Class B members cannot be treated as non-member and consequently held that the assessee is entitled for deduction under Section 80P (2)(a)(i). The Tribunal allowed the appeal and held that the assessee will be entitled for deduction under Section 80P (2)(a)(iv) even though

the issue did not arise for consideration. It is submitted by the appellant/ Revenue that the Tribunal had failed to consider the issue as to whether the interest on the loan lent for non-agricultural activity, could be entitled for deduction as per Section 80P (2) (a) (i) read with 80P (4) and the assessee's violation to lend amount on par with commercial banks at higher interest.

5. Being not satisfied with the common order dated 30.06.2014 of the Income Tax Appellate Tribunal in I.T.A. Nos.730, 731 and 732/Mds/2014, the Revenue has filed these appeals, on raising the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee is to be treated as primary agricultural society and is carrying on the business of banking or providing credit facilities to its members and is entitled for deduction under Section 80P (2) (a) (i) of the Income Tax Act, 1961 with respect to the interest received from Class B members who were involved in non-agricultural activity.
2. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the Class B members of the assessee society can be treated as a member of the society for the purpose of Section 80P (2) (a) (i) when Class B members do not have the right to participate in the voting and meetings of the board of the society and were not recognised by the assessee itself for audit purposes.
3. Whether on the facts and in the circumstances of the case the Tribunal was right in not considering the fact that the assessee was lending monies for non-agricultural purpose without considering the provisions of Section 80P (4) and 2(24) (viia).

6. The learned counsel for the appellant/ Revenue, submitted that Class B members of the assessee society, cannot be treated as their members, as they were not recognised members as per the bye-laws, for the purpose of voting, attending the board meeting etc. Therefore, as per Section 80P (4), the benefit under Section 80P cannot be extended to any co-operative Bank other than a primary agricultural credit society. The assessee cannot be treated as a credit society, to the extent of the loan advanced to non-agricultural purposes and therefore the assessee is not entitled for the benefit under Section 80P (2) (a) (i) read with 80P (4).

7. Heard Mr.J. Narayanasamy, learned Senior Standing Counsel for the appellant and perused the material available on record.

8. On perusal of the order passed by the Tribunal, it is found that the Assessing Officer, while completing the assessments had denied exemption under Section 80P (2) (a) (i) of the Income Tax Act, in respect of "interest income" towards jewel loan and other loans, on the ground that the purpose of loan issued was for commercial activities and not for agricultural purposes. Hence, the appeals filed by the assessee before the Commissioner of Income Tax (Appeal), were partly allowed. However, the Income Tax Appellate Tribunal, Chennai 'D' Bench considered the issue raised by the assessee, based on the decisions of the Co-ordinate Bench of the Tribunal in the case of Karkudalpatty Primary Agricultural Co-operative Credit Society Ltd. vs. ITO in ITA No.292 & 293/Mds/2014 by a common order dated 17.03.2014 and also the decision of 'C' Bench in the cases of M/s. 1915 Vellalapatty Primary Agricultural Co-operative Credit Society Ltd. in I.T.A. Nos. 385 & 386/Mds/2014, M/s.6648 Attur Mulluvadi Primary Agricultural Co-operative Credit Society Ltd. in I.T.A. No. 387/Mds/2014 vide common order dated 01.05.2014. Based on the relevant provisions of State Co-operative Societies Act, 1983, governing similar assessees, the Tribunal observed that definition of 'members' includes 'associate members', as well. The Tribunal observed that such nominal members also enjoy statutory recognition as per the State Co-operative Societies Act. The Tribunal further observed that the objections of the Revenue that 'members' defined in sub-clause (i) of Section 80P(2) should only include voting members, would amount to a classification within classification, which is beyond the purview of taxing statute, unless provided specifically by the legislature. Therefore, the Tribunal gave a finding that the issues raised in those appeals, stand adjudicated in favour of the assessee and set aside the orders of the lower authorities on this point and directed the assessing authority to grant the benefit of exemption, to the assessee available under Section 80P(2)(a) (i). Following the decisions cited supra, the Income Tax Appellate Tribunal, has passed the order impugned.

9. As the appeal of the Revenue, in the case of ITO Vs. M/s. Veerakeralam Primary Agricultural Co-operative Credit Society in ITA No.197/Mds/2013 dated 11.02.2014, was dismissed by the Tribunal, the Revenue filed an appeal under Section 260A of the Income Tax Act, 1961, in T.C.A. Nos. 735, 755 of 2014 and 460 of 2015 before this Court. By judgment dated 05.07.2016, the appeals were dismissed, on the following reasoning:

"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.

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."

10. The Income Tax Appellate Tribunal has clearly perceived that the assessee is not a co-operative bank and that the activities in the nature of accepting deposits, advancing loans etc., carried on by the assessee, but is confined to its members only and that too in a particular geographical area. Therefore, the respondent Society is eligible for deduction under Section 80P (2) (a) (i) of the Act. The contention of the appellant that the members of the assessee society are not entitled to receive any dividend or having any voting right or no right to participate in the general administration or to attend any meeting etc., because they are admitted as associate members for availing loan only and was also charging a higher rate of interest, is not a ground to deny the exemption granted under Section 80P (2) (a) (i) of the Act.

11. In view of the facts and circumstances of the case and the decision rendered by this Court in TCA Nos.735, 755 of 2014 and 460 of 2015 dated 05.07.2016, which covers the present facts of the case, so far as it relates to the ineligibility of the respondent society, under Section 80P (2) (a) (i), we are of the view that the substantial questions of law raised by the Revenue, in the instant appeals, are answered against the Revenue.

12. In view of the above, the TCA Nos. 3 and 4 of 2015 are dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Salem Agricultural Producers
Co-operative Marketing Society Ltd.
305, Suramangalam Main Road
Salem - 636 009.

2. The Commissioner of Income Tax (Appeals) Salem.-7.

3. The Income Tax Officer, Ward III (1) Salem.

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and 4 of 2015

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