

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/8/2016

C O R A M

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal Nos.786 to 789 of 2015

The Commissioner of Income Tax,
Puducherry.

...Appellant in all
the appeals

Vs

NLC Employees Co-operative
Thrift & Credit Society Ltd
12 North Promenade Street
Block 12
Neyveli 607 803.

...Respondent in all
the 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 12/12/2014 in I.T.A.Nos.2148 to 2151/Mds/2014.

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

For Respondent : Mr. N.V.Balaji

C O M M O N J U D G M E N T

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

These Appeals have been filed by the Revenue against the order of Madras 'D' Bench dated 12/12/2014 in I.T.A.Nos.2148 to 2151/MDS/2014 on the file of the Income Tax Appellate Tribunal.

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

The Assessee is a co-operative society engaged in banking and trading activities. It admitted 'Nil' return of income after claiming deduction u/s 80P (2) (a) (i) of the IT Act, 1961. The Assessing Officer disallowed the claims of the assessee on the ground that the assessee had lent monies to the members who were undertaking non-agricultural/ non-farm activities and had received the interest on par with commercial banks. The Assessing Officers found that since interest is received, non-farm sector loans do not qualify for deduction u/s 80P (2) (a) (i) of the IT Act, 1961 and that the assessee's activity is purely in the nature of commercial banking activities. Further, the Assessing Officers held that

as per 80P (4), deduction is available only if primary agricultural credit societies are engaged with a primary object of providing financial assistance to its members for agricultural activities. Therefore the assessee's claim under Section 80P were rejected.

3. Against the assessment orders, the assessee filed appeals to the Commissioner of Income Tax (Appeal). It is submitted that on an 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's 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 thereby confirmed the Assessment orders and had dismissed the appeals.

4. Aggrieved by the orders of the Commissioner of Income Tax (Appeal), the assessee filed appeals in I.T.A.Nos.2148 to 2151/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, the 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 held that the assessee will be entitled for deduction under Section 80P (2) (a) (iv) even though the issue did not arise for consideration. The Tribunal did not 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. The Tribunal following its own order and allowed the appeals.

5. Being not satisfied with the order of the Income Tax Appellate Tribunal, the Revenue has filed the instant 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?

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 and the provisions of Section 80P (4) and 2 (24) (viia)?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee co-operative Credit Society, it is not a co-operative Bank and Section 80 P (4) is not attracted, without considering the explanation to the Section below Section 80 P (4) of the Income Tax Act read with provisions of Section 56 (cci) and 56 (ccv) in part V of Banking Regulation Act?"

6. The contention of the learned counsel for the appellant/ Revenue, that Class B members of the respondent societies cannot be treated as members of the assessee societies, as Class B members were not recognised as per the bye-laws of the assessee society, 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 cooperative Bank other than a primary agricultural credit society. The assessee cannot be treated as a credit society for the loan advanced to non-agricultural purposes and so the assessee societies are 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, Mr.N.V.Balaji for the respondent 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 deduction under Section 80P (2) (a) (i) of the Income Tax Act in respect of the loans, on the ground that the purpose of loan issued was for commercial activities and not for agricultural purposes. Hence, the assessee filed appeals before the Commissioner of Income Tax (Appeal), which were dismissed by the Commissioner. Hence the assessee filed appeals before the ITAT in I.T.A.Nos.2148 to 2151/Mds/2014 and the Tribunal had allowed the appeals.

9. Following the decision of Gujarat High Court in the case of CIT Vs. Jafari Momin Vikas Co-operative Credit Society Ltd (supra) and the decisions of Bangalore Bench in the cases of Bangalore Commercial Transport Credit Co-operative Society Ltd., and Yashwanthpur Credit Co-operative Society Ltd., the Income Tax Appellate Tribunal, has passed the order impugned.

10. Further, in another decision of the Tribunal in the case of the Salem Agricultural Producers Co-operative Marketing Society Ltd. vs. ITO in ITA Nos.730 to 732/Mds/2014 dated 30.06.2014, it has been held as follows :-

"2. The common issue raised in all these appeals is that the Commissioner of Income Tax (Appeals) has erred in confirming the order of the Assessing authority in denying the claim of benefits available under section 80P (2)(a)(i) of the Income Tax Act, 1961. The case of the assessee is that the bye-laws of the society allow the assessee to lend/advance loans to its members on agricultural produce loan and on the pledge of gold jewels and silver articles, earned interest income only as per the objects and submitted before the lower authorities that the claim of the assessee has to be considered under Section 80P(2) (a) (i) of the Act.

3. This issue has been considered by Income Tax Appellate Tribunal, Chennai 'B' Bench in the cases of SL(SLP) 151, Karkudalpatty Primary Agricultural Co-operative Credit Society Ltd and S 1382 Mullukuruchi Primary Agricultural Co-operative Credit Society Ltd in I.T.A. Nos. 292 & 293/Mds/2014 vide 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. After perusing the relevant provisions of State Co-operative Societies Act, 1983, governing similar assessee, the Tribunal found that definition of 'members' includes 'associate members', as well. The Tribunal found 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.

4. Therefore, we find that the issue raised in these appeals stands adjudicated by the Tribunal in favour of the assessee. Accordingly, we set aside the orders of the lower authorities on this point and direct the assessing authority to grant the benefit to the assessee available under Section 80P(2)(a)(i). "

11. As the appeal of the revenue in the case of ITO Vs. M/s. Veerakeralam Primary Agricultural Co-operative Credit Society was dismissed, 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. Vide 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 subsection ---

(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."

12. The appellate authority, namely, the Commissioner of Income Tax (Appeal) and the Income Tax Appellate Tribunal has clearly held that the assessee is not co-operative bank and the provisions of Section 80 P (4) are not attracted. Therefore, the respondent Society is eligible for exemption under Section 80P (2) (a) (i) of the Act. The contention of the appellant that the members of the assessee societies 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.

13. In view of the facts and circumstances of the case and the decision rendered by this Court in T.C.A.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 eligibility of the respondent societies, 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.

14. In view of the above, the TCA Nos. 786 to 789 of 2015 are dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Assistant Registrar,
The Income Tax Appellate Tribunal
Madras D Bench, IIIrd Floor,
Rajaji Bhavan, Chennai- 600 009.

2. The Commissioner of Income Tax
(Appeals)-VI, 121, Mahatma Gandhi Road,
Chennai 600 034.

3. The Income Tax Officer,
Ward 1(2), Cuddalore.

+ 1 cc to MR.J. Narayanasamy, Advocate SR.46348
+ 3 ccs to Mr.N.V.Balaji, Advocate SR.45677

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