

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.08.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal Nos.484 to 487 and 490 of 2016

The Commissioner of Income Tax,
Salem.

.. Appellant
in all the above
appeals/Appellant

Vs

1. Tiruchengode Agricultural
Producers Cooperative
Marketing Society Ltd.,
9, Katchery Street
Velur Road, Tiruchengode
Namakkal District.

.. Respondent in
TCA Nos. 484 to
487/2016/Respondent

2. S-1308 Ammapet Primary Agricultural
Cooperative Bank Ltd.,
Ammapet,
Salem - 636 003.

.. Respondent in
TCA No. 490/2016/Respondent

Prayer in all TCAs: Appeals filed under Section 260A of Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal Madras 'C' Bench dated 17.04.2015 in I.T.A.Nos.27 to 30/ Mds/2015 against the Commissioner (Appeals) Salem in Assessment Year 2006-07, 2007-08, 2008-09, 2010-11 order dated 31/10/2014 respectively and against the Income Tax Officer, Ward II(1) Salem Order dated 27/03/2013 in the Assessment Order Assessment Year 2006-2007, Assessment Year 2007-08, Assessment Year 2008-09 and Assessment Year 2010-11 respectively for the PAN No.AAAT2058C.

TCA 490 of 2016:Appeal filed U/S.260 A of Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 30/10/2015 in ITA No.1845/mds/2015 against the order of the Commissioner of Income Tax(Appeals)dated 28/5/2015 made in ITA No.24/2014-15 and against the order of Income Tax Officer Ward 1(4) Salem in Assessment Year 2011-12 for the PAN NO.AAALS0228A.

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

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 'C' Bench dated 17.04.2015 in I.T.A.Nos.27 to 30/ Mds/2015 and 'A' Bench dated 30.10.2015 in I.T.A. No. 1845/Mds/ 2014.

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

The Assesseees are co-operative societies 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 assesseees 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 held 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 assesseees' claim under Section 80P were rejected.

3. Aggrieved by the assesement orders, the assesseees 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 normal 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 anyone 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 the 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) held that the assesseees cannot claim the benefit of deduction under Section 80P (2) (a) (i) on the interest received from the Class B non-members of the assesseees' society. The deduction was also denied on the ground that the non-members did not undertake any agricultural activity as required under Section 80P (4). Therefore, the Commissioner of Income Tax (Appeal) held that the assesseees had not provided credit facilities to its members to assist agricultural activity and thereby confirmed the Assessment orders. But, in the present cases the Commissioner of Income Tax (Appeal) followed the decision of the Tribunal and had allowed the appeals.

4. Aggrieved by the orders of the Commissioner of Income Tax (Appeal), Revenue filed appeals before the Income Tax Appellate Tribunal. The Tribunal held 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 assesseees 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 assesseees' violation to lend amount on par with commercial banks at higher interest. The Tribunal had followed its own order and had allowed the appeal.

5. Aggrieved by the order of the Income Tax Appellate Tribunal, the appellants have filing 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.
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).

The contention of the learned counsel for the appellant/ Revenue department, is 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 record and 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).

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

7. 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 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 assessee filed appeals before the Commissioner of Income Tax (Appeal), which were allowed by the Commissioner, based on the decisions of the Co-ordinate Bench of the Tribunal 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 and the case of Karkudalpatty

Primary Agricultural Co-operative Credit Society Ltd. vs. ITO in ITA No.292/Mds/2014 dated 17.03.2014. 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 assessees, 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). "

8. 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, the Tribunal dismissed the appeal of the Revenue. Against the order of the Income Tax Appellate Tribunal, the aforesaid Veerakeralam Primary Agricultural Co-operative Credit Society 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."

9. In the instant cases, while allowing the appeals filed by the assessee, the Commissioner of Income Tax (Appeal), had relied upon, the following portion of the decision of the Tribunal arrived in ITA No.292/Chny/2014:-

" 7. We have heard both parties and gone through the case file. As stated in the preceding paragraphs, the CIT (A) has proceeded to enhance the assessment (supra) only on the ground that the assessee's credit and various other loan, facilities have been allowed to be availed by 'B' class 'nominal' members whose liability is limited, at the best; to the extent of loan repayable instead of 'A' class members who have voting rights and dividend claim, and also that the latter members are jointly and severely liable. In this backdrop, when we peruse the relevant provisions of the State Co-operative Societies Act, 1983, governing the assessee-society, it is evident from the definition of 'member' u/s 2(16) that the same includes an 'associate member' recognition as per the Act. The net result is that once the 'nominal' members also enjoy statutory condition imposed by the legislature u/s 80P (2) (a) (i). We make it clear that we are dealing with the deduction provision to be interpreted liberally. In our considered opinion, the objections of the revenue that the 'members' defined in sub clause (i) of Section 80P should only include voting members would amount to a classification within classification which is beyond the purview of tax statute; unless provided specifically by the legislature. Moreover, we find that the case law of Hon'ble Punjab and Haryana High Court (Supra) also supports the assessee's case wherein it has been held under the very provision that for the purpose of impugned deduction, it is irrelevant so far as classification of the members in 'A' or 'B' category is concerned. "

Following the decision of the Punjab and Haryana High Court, the appellate authority as well as the Income Tax Appellate Tribunal, has passed the order impugned.

10. The appellate authority, namely, the Commissioner of Income Tax (Appeal) and the Income Tax Appellate Tribunal has clearly held that the assesseees are not co-operative bank and

that their activities in the nature of accepting deposits, advancing loans etc., carried on by the assesseees are confined to its members only and that too in a particular geographical area. Therefore, the respondent Societies are eligible for deduction under Section 80P (2) (a) (i) of the Act. The contention of the appellants 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 at the rate of 14%, is not a ground to deny the exemption granted under Section 80P (2) (a) (i) of the Act.

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

12. In view of the above, the TCA Nos. 484 to 487 and 490 of 2016 are dismissed, at the admission stage itself. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

- 1.The Income Tax Appellate Tribunal "C" Bench,
Chennai.
- 2.The Income Tax Appellate Tribunal,
"A" Bench, Chennai.
- 3.The Commissioner of Appeals,
Income Tax Department,
Salem-07.

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4.The Income Tax Officer,
Ward II(1), Salem-07.

5.The Income Tax Officer,
Ward 1 (4), Salem-07.

+1cc to Mr.J.Narayanasamy, Advocate Sr.40741
+1cc to Mr.J.Narayanasamy, Advocate Sr.43970

Tax Case Appeal Nos.484 to 487
and 490 of 2016

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srg 24/08/2016



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