

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.571 of 2011

The Kodumudi Growers Co-operative
Bank Ltd., 6/64, Bazaar Street,
Kadumudi, 638 151, PAN AAAAK 19314 Appellant

-vs-

The Income Tax Officer,
Ward-II(1), Erode. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 18.07.2011 in ITA No.618/Mds/2011 for the Assessment year 2007-08. against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 8.2.2011 vide PAN.NO.AAAAK19314 for the Assessment year 2007-2008

For Appellant : Mr.Niranranjagopalan
for M/s.G.R.Associates

For Respondent : Mr.T.R.Senthilkumar

J U D G M E N T
सत्यमेव जयते

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

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This appeal is filed by the assessee against the order passed by the Income Tax Appellate Tribunal Madras 'B' Bench, dated 18.07.2011 in ITA No.618/Mds/2011 for the Assessment year 2007-08.

2.Heard Mr.Niranjan Rajagopalan for the appellant and Mr.T.R.Senthilkumar, the learned Counsel for the Revenue.

3.This Appeal has been admitted on 22.11.2011, on the following Substantial Question of Law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the income from the sale of Public Distribution System sales as directed by the Government of Tamil Nadu is not capable of deduction under Section 80-P(2) and 80-P(2)(c)(ii) of the Income Tax Act, 1961?"

4.The above referred Substantial Question of Law was considered by the Division Bench of this Court in the assessee's own case for the Assessment Year 2005-06 in T.C.A.No.1453 of 2008, dated 31.10.2018 (M/s.AA 713 the Kodumudi Growers Cooperative Bank Ltd., Kodumudi vs. The Income Tax Officer, Ward-II(1), Erode), and the Substantial Question of Law was decided in favour of the assessee. The relevant portion of the judgement reads as follows:

"4.The assessee is in the business of banking and providing credit facilities to its members. They filed their return of income for the subject assessment year on 04.10.2005 admitting -NIL- income. The Assessing Officer completed the assessment determining the income of the assessee at Rs.22,16,211/-, of which, a sum of Rs.2,55,118/- represented income on account of sale of goods for the Public Distribution System (PDS) of the Government of Tamil Nadu. The Assessing Officer opined that this activity was not related to the assessee's banking activity and held that the income arising therefrom was not allowable as deduction under Section 80P(2)(a) of the IT Act. But, the Assessing Officer included this income for consideration in the overall deduction allowable under Section 80P(2)(c)(ii) of the IT Act amounting to Rs.50,000/-.

5.Aggrieved by such order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [for short, the CIT (A)] contending that the assessee is a registered society as per Sections 2(22) and 2(13) of the TNCS Act, 1983 and that there was a direction by the Government of Tamil Nadu/Collector to set up fair price shops under the PDS of the

Government of Tamil Nadu. The assessee also contended that they are entitled to deduction under Section 80P(2)(a) of the IT Act in respect of income from the PDS sales in terms of the provisions of Sections 2(22) and 2(13) of the TNCS Act, 1983. However, the CIT (A) rejected the contention of the assessee and confirmed the order of assessment.

6. Aggrieved by the same, the assessee again preferred an appeal to the Tribunal. The Tribunal, by the impugned order, concurred with the view taken by the CIT (A) and pointed out that nothing was placed before it to demonstrate as to how the income earned from the fair price shops could be treated as income from banking activities. Hence, the assessee is before us.

7. Thus, we are called upon to decide as to whether the assessee is entitled for deduction under Section 80P(2) of the IT Act in respect of the income earned from the sale under the PDS.

8. It is not in dispute that the fair price shops were set up pursuant to the direction issued by the Government of Tamil Nadu and communicated through the District Collector. The assessee, while filing the appeal before the CIT (A), specifically contended that the Assessing Officer erred in fixing the income from the sale of fertilizers (PDS) without considering the material fact that the profit in respect of the same is from the supply and purchase of fertilizers to its members. Further, the assessee referred to the communications received from the Government dated 19.2.1995, 06.11.1995 and 15.11.1995 and the copy of the circular of the Registrar of Cooperative Societies dated 21.1.1992 and also the registered By-laws of the assessee - bank and in particular, By-law No.63.

9. In addition to the grounds raised before the CIT (A), written submissions were filed by the assessee wherein the assessee produced copies of sample sales bills to prove that the assessee sold fertilizers only to members and they contended that in view of the same, they are entitled to deduction in terms of Section 80P(2)(iv) of the IT Act.

10. Further, it is relevant to note that the TNCS Act, 1983 defines the expression 'credit society' under Section 2(13) to mean a registered society as defined under Section 2(22), which has its principal object of raising funds to be lent to its members for the purposes of agriculture, animal husbandry, etc., or for such other purposes as the Government may, by notification, specify in this behalf. Thus, a credit society as defined under the provisions of the TNCS Act, 1983 is not only confined to extending loans to its members, but also to such other members as the Government may, by Notification, specify.

11. The assessee placed materials before the CIT (A) to show that the fair price shops for sale of fertilizers to the members were opened based on the directives issued by the Government of Tamil Nadu. Therefore, the activity done by the assessee in the sale of items under the PDS to its members would definitely fall within the ambit of a 'credit society' defined under Section 2(13) of the TNCS Act, 1983. 12. The learned Senior Standing Counsel for the Revenue would contend that there are two categories of sales effected by the assessee, one in favour of its members and the other to non members and that the income earned out of sale to non members cannot be held to be a banking activity of the assessee.

13. To test the correctness of the said submission of the learned Senior Standing Counsel for the Revenue, we have perused the registered By-laws of the society, from which, we find that under By-law No.3, the activities of the society are mentioned. By-law No.3 contains two Sub-Clauses namely (a), which deals with main activities of the appellant society and (b), which deals with ancillary activities of the appellant society. The activity of establishing a fair price shop clearly falls within the scope of By-law No.3 (b)(2). Furthermore, the directives issued by the Government of Tamil Nadu, as communicated by the Registrar of Cooperative Societies, are

binding on the appellant society. Hence, it cannot be said that the appellant carried on an activity, which was not authorized to be conducted by a credit society.

14. One more argument is advanced by the learned Senior Standing Counsel for the Revenue by contending that there were two categories of people, to whom the items under the PDS were sold.

15. We find that this argument is wholly unsubstantiated and factually incorrect. In this regard, we have earlier referred to the grounds of appeal as well as the written submissions given by the appellant/assessee before the CIT (A) wherein the appellant had produced sample sales bills to prove that they had sold fertilizers only to the members. Thus, we are fully convinced that the activity done by the appellant cannot be said to be an activity, which was not authorized to be done by the society.

16. Our view is strengthened by the decision of the Division Bench of the Bombay High Court in the case of CIT, Nasik Vs. Ahmednagar District Central Cooperative Bank Limited [reported in 2004 (1) Mh. LJ 853]. In the said case, the assessee was a cooperative bank carrying business of banking. Whole amount of profit and gains attributable to the business of banking was not included by the assessee in its income under Section 80P(1) read with Section 80P(2)(a)(i) of the IT Act. During the assessment year in question (1982-83), the assessee earned income by way of commission from the Maharashtra State Electricity Board and from Mula Pravara Cooperative Society for collecting electricity bills from the public on their behalf. The assessee contended that the commission earned from the afore-stated two public undertakings was income derived from the business of banking and, as such, the said income was exempt under Section 80P(2)(a)(i) of the IT Act. The assessee's contention was that collection of electricity bills was a facility extended by the assessee bank to its customers and it was part of banking business. This contention was not accepted by the Assessing Officer and his order was confirmed by the CIT (A) on the

ground that the income earned by way of commission was not income from business and held that the assessee was not entitled to exemption under Section 80P(2)(a)(i) of the IT Act. The assessee filed an appeal before the Tribunal and it was allowed. On appeal by the Revenue to the High Court, the question, which was referred to the Court for consideration, was as to whether the income earned by way of commission from the Electricity Board and other organizations is attributable to business of banking and as such, the relief under Section 80P(1) read with Section 80P(2)(a)(i) of the IT Act was allowable to the assessee. The Division Bench of the Bombay High Court pointed out that the word 'banking' was not restricted only to accepting deposits from the customers for the purpose of lending, that the word 'banking' has been interpreted by the Hon'ble Supreme Court to cover even the rent charged by the banks for hiring out safe deposit vaults to its customers and that in the circumstances, income earned by the assessee bank by way of commission/fees from its customers, being public sector undertakings, would be exempt under Section 80P(2)(a)(i) of the IT Act. Further, the Division Bench pointed out that such view was supported by Section 6(1)(b) of the Banking Regulation Act, 1949, which stated that in addition to the business of banking, a banking company may engage itself as agent for Government or Local Authority or any other person for giving receipts and discharges that is to say for collecting electricity bills from the customers for and on behalf of the Electricity Board and other organizations.

17. The case on hand is factually a better case since the By-laws themselves provide for such an activity as an ancillary activity by the cooperative society. Furthermore, the appellant society is bound by the directives issued by the Government as well as the Registrar of Cooperative Societies. In the instant case, the Revenue has not disputed the fact that the fair price shops were opened based on the directions issued by the Government of Tamil Nadu as communicated by the Registrar of Cooperative Societies and the District Collector.

18.The learned Senior Standing Counsel for the Revenue has referred to the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited Vs. ACIT, Circle 9 (1), Hyderabad [reported in (2017) 88 Taxmann.com 279]. By the said order, the review petition filed by the said society to review the judgment reported in (2017) 84 Taxmann.com 114 was rejected.

19.From the facts given in the copy of the judgment handed over to us by the learned Senior Standing Counsel for the Revenue, we find that in the decision in Citizen Cooperative Society Limited, the assessee was engaged in granting loans to general public without any approval from the Registrar of Societies. Therefore, the Court held that the assessee could not be treated as a cooperative society meant only for providing credit facilities to its members and accordingly, would not be entitled to claim the benefit under Section 80P of the IT Act. This decision can, in no manner, advance the case of the Revenue, as factually we found that the assessee herein is entitled to distribute the items under the PDS, as it is one of the allied activities of the society and is bound by the directives of the Government.

20.Apart from that, the definition of 'credit society' is wider in import to include any activity that the Government may, by Notification, specify. Further, we find from By-law No.12(a) that if the society carries on an activity, which is not authorized under the By-laws or with the approval of the Registrar, the society is liable to strike off the Rules and the members engaged in the same are liable to be removed. Furthermore, in terms of By-law No.51, the society is entitled to purchase, in bulk, articles and materials required for its members and distribute the same.

21.Therefore, viewed from any angle, the activity done by the appellant society cannot be truncated from the activity as a credit society and we are of the considered view that the Authorities below as well as the Tribunal committed an error in rejecting the stand taken by the appellant/ assessee.

22.For the above reasons, the above tax case appeal is allowed, the orders passed by the Authorities below are set aside and the substantial question of law framed is answered in favour of the assessee. The Assessing Officer is directed to extend the benefit of deduction under Section 80P(1) read with Section 80P(2)(a)(i) of the IT Act to the appellant/assessee. No costs."

5.The Learned Counsel for the Revenue does not dispute the above legal position.

6.Thus, following the decision in the assessee's own case for the earlier Assessment year, this Appeal is allowed and the above tax case appeal is allowed, the orders passed by the Authorities below are set aside and the substantial question of law framed is answered in favour of the assessee. The Assessing Officer is directed to extend the benefit of deduction under Section 80P(1) read with Section 80P(2)(a)(i) of the IT Act to the appellant/assessee. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

msh/mrm
To

1.The Income Tax Officer,
Ward-II(1), Erode.

2.The Income Tax Appellate Tribunal Madras 'B' Bench.

3. The Commissioner of Income Tax Appeals-1, Coimbatore.

+ 1 cc to M/s. G.R. Associates, Sr.75585

+ 1 cc to M/s. T.R. Senthilkumar, Advocate Sr.76072

T.C.A.Nos.571 of 2008

SPD(CO)
EU(05/12/2018)