In the High Court of Judicature at Madras

Dated : 06.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.882 and 891 of 2018

The Principal Commissioner of
Income Tax, Salem-636 007 ...Appellant

Vs

M/s.S-1308 Ammapet Primary
Agricultural Cooperative Bank Ltd.,
Ammapet, Salem-636 003 ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the orders respectively

(i) dated 28.2.2018 made in ITA No.2338/Mds/2017 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment year 2014-15 (TCA.No.882 of 2018); and against the order of the commissioner of Income Tax (Appeals), Salem dated 31.07.2017 and made in ITA No.220/2016-2017 for the Assessment year 2014-2015

against the order of the Commisioner of Income Tax (Appeals),Salem dated 29.12.2016 and made in PAN /GIR NO.AAFAS9796K for the Assessment Year 2014-2015.

(ii) dated 28.2.2017 made in ITA No.3221/Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'A' Bench for the assessment year 2013-14 (TCA.No.891 of 2018).

against the order of the commissioner of Income Tax (Appeals), Salem dated 30.08.2016 and made in ITA No.309/2015-2016 for the Assessment year 2013-2014

against the order of the Income Tax officer/Ward 1(1), Salem dated 12.02.2016 and made in PAN /GIR NO.AAFAS9796K for the Assessment Year 2013-2014.

For Appellant : Mr.T.R.Senthilkumar, SSC

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter called the Act) are directed against the orders passed by the Income Tax Appellate Tribunal, Chennai in ITA.No.2338/Mds/2017 dated 28.2.2018 for the assessment year 2014-15 and ITA.3221/Mds/2016 dated 28.2.2017 for the assessment year 2013-14 respectively.

2. The following substantial questions of law are framed for consideration in these appeals :

> "i. Whether the Appellate Tribunal was right and justified in following the jurisdictional High Court's decision when there is an Apex Court decision of latter date available?
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> ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right and justified in allowing the deduction under Section 80P(2)(a)(i) to the assessee society when the Apex Court, in its decision in the case of Citizen Cooperative Society Ltd. Vs. ACIT [reported in (2017) 84 Taxmann. 114] held in paragraph 25 that such activity of the appellant is that of finance business and cannot be termed as cooperative society ? And
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> iii. Whether, on the facts and circumstances of the case, the Tribunal was right to conclude that the activities carried on by the assessee are confined to its members only and that too, in a particular geographical area, when the Assessing Officer clearly stated in paragraph 3.1 of the assessment order that anyone can become an associate member of the society on payment of a nominal token fee?"

3. The undisputed fact is that the assessee is a primary agricultural cooperative credit society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983 (for brevity, the TNCS Act).

4. For the assessment year 2013-14, the assessee filed their returns on 30.9.2013 admitting -NIL- income and claimed deductions under Section 80P(2)(a)(i) of the Act to the tune of Rs.2,54,91,711/- and under Section 80P(2)d) of the Act to the tune of Rs.93,26,965/-.

5. For the assessment year 2014-15, the assessee filed their return of income on 27.11.2014 admitting 'NIL' income and claimed deductions under Section 80P(2)(a)(i) of the Act to the tune of Rs.3,64,73,662/- and under Section 80P(2)(d) of the Act to the tune of Rs.30,97,475/- and restricted both deductions to Rs.3,83,82,362/- from the 'income chargeable under the head business and profession'.

6. The returns for the relevant assessment years were processed under Section 143(1) of the Act. Subsequently, the cases were selected for scrutiny and notices under Section 143(2) of the Act were issued.

7. For the assessment year 2013-14, before the Assessing Officer, among other things, for deduction under Section 80P(2)(a)(i) of the Act, the assessee relied upon the decision of the Hon'ble Supreme Court in the case of U.P. Cooperative Cane Union Federation Ltd. Vs. CIT [reported in (1999) 237 ITR 574] for the proposition that in the absence of definition of the word 'member' in the Act, it must, therefore, be concluded in the context of the provisions of the State Act. For deduction under Section 80P(2)(d) of the Act, the assessee relied upon the decision of the Delhi High Court in the case of CIT Vs. M/s.Kribhco [reported in (2012) 349 ITR 618]. Ultimately, the Assessing Officer concluded that the facts and circumstances of those cases were entirely different from the case of the assessee herein and rejected the contention of the authorized representative, arrived at tax by disallowing excess deduction claim under Section 80P(2)(d) of the Act and by disallowing the entire claim of deduction under Section 80P(2)(a)(i) of the Act, levied interest and initiated penalty proceedings under Section 271(1)(c) of the Act.

8. Before the Assessing Officer, for the assessment year 2014-15, the assessee relied upon two decisions of this Court namely

(i) in the case of CIT, Coimbatore Vs. M/s.Veerakeralam Primary Agricultural Cooperative Credit Society [TCA.Nos.735 and 755 of 2014 & 460 of 2015 dated 05.7.2016]; and

(ii) in the assessee's own case in TCA.No.490 of 2016 dated 02.8.2016 for the assessment year 2011-12.

The Assessing Officer was of the view that the assessee has got two categories of members namely shareholding members called as A Class members and associate members called as B Class members. The Assessing Officer was also of the view that the associate members are not entitled to receive dividends or exercise their voting rights and cannot participate in the general administration and meetings of the society and that these privileges are given to A Class members. The Assessing Officer further observed that B Class members are admitted for the limited purpose of availing loans and those members, after discharging their loans, relinquished their membership and did not have any role to play in the society whereas A Class members enjoy all rights in addition to other rights and liabilities in the society as specified in the By-laws. The Assessing Officer concluded that the associate members cannot be regarded as members of the cooperative society. The Assessing Officer allowed the deduction under Section 80P (2)(d) of the Act. The Assessing Officer also concluded that the assessee was not entitled to claim deduction under Section 80P(2)(a)(i) of the Act and that the Department decided to file special leave petitions before the Hon'ble Supreme Court against the said two decisions. The Assessing Officer, further observing that the collection of demand would not be enforced till the outcome of the special leave petitions in the Hon'ble Supreme Court, arrived at tax and initiated penalty proceedings under Sections 271(1)(c) and 271B of the Act.

9. The assessee carried the matters on appeal to the Commissioner of Income Tax (Appeals) [hereinafter called the CIT(A)], who, by separate orders respectively dated 30.8.2016 and 31.7.2017 respectively for the assessment years 2013-14 and 2014-15, allowed the appeals filed by the assessee. As against the same, the Revenue carried the matters on appeal to the Tribunal. However, the Tribunal, by the impugned orders, dismissed the appeals filed by the Revenue. Therefore, the Revenue is before us.

10. The learned Senior Standing Counsel for the Revenue submits that the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited Vs. ACIT [reported in (2017) 84 Taxmann.com 114] is in favour of the Revenue and that the review petition filed against that decision was dismissed by the Hon'ble Supreme Court in the decision reported in (2017) 88 Taxmann.com 279. He further submits that in the case of CIT, Panaji, Goa Vs. Goa Staff Cooperative Housing Finance & Federation Ltd. [reported in (2016) 73 Taxmann.com 400], the Revenue filed a special leave petition and leave has been granted by the Hon'ble Supreme Court by order dated 12.8.2016.

11. We have elaborately heard the learned Senior Standing Counsel for the Revenue.

12. Admittedly, the assessee - society is registered under the provisions of the TNCS Act. It defines the word 'members' under Section 2(16) to mean a person joining in the application for the registration of society and a person admitted to the membership after registration in accordance with the provisions of the Act, the Rules framed thereunder and the By-laws and includes an associate member. The expression 'associate member' is defined under Section 2(6) of the TNCS Act to mean a member, who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in this Act, the Rules and the By-law.

13. Thus, the definition of the word 'members' includes an associate member and therefore, the Assessing Officer fell into an error in drawing a distinction between A Class members and B Class members. For the purpose of being entitled to a relief under Section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-Section (2) of Section 80P of the Act.

14. Further, it is to be pointed out that in terms of Sub-Section (4) of Section 80P of the Act, which was inserted vide the Finance Act, 2006 with effect from 01.4.2007 i.e from the assessment year 2007-08, the 'primary cooperative agricultural and rural development bank' means 'a society having its area of operation confined to a taluk, the principal object of which is to provide for long term credit for agricultural and rural development activities'. What was excluded was the 'cooperative banks' and admittedly, the assessee society is a primary agricultural cooperative credit society and therefore, would be entitled to the benefit of Section 80P of the Act.

15. Further, for the assessment year 2014-15, the decision in the case of Citizen Cooperative Society Limited was relied upon by the Revenue before the Tribunal, which, in paragraph 6.1 of its order dated 28.2.2018 for the assessment year 2014-15, extracted the operative portion of that judgment. In that case, the Hon'ble Supreme Court found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third parties, who were not members in the real sense and were using those deposits to

advance gold loans. Therefore, the Hon'ble Supreme Court pointed out that such an activity of the said society was that of a finance business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The Hon'ble Supreme Court found that the said society was not entitled to deduction under Section 80P of the Act.

16. It is noteworthy to point out that the Hon'ble Supreme Court in the decision in the case of Citizen Cooperative Society Limited also observed that in the light of insertion of Sub-Section (4) to Section 80P of the Act by the Finance Act, 2006, such deduction should not be admissible to a cooperative bank and that if it is a primary agricultural credit society or a primary cooperative agriculture and rural development bank, the deduction would still be provided.

17. In the preceding paragraphs, we have pointed out the definitions of the expressions 'members' and 'associate member' under the TNCS Act and held that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. Furthermore, the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Clause (b) to Sub-Section (4) of Section 80P of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the assessee as confirmed by the Tribunal. We do not find any good ground to entertain these appeals.

18. Accordingly, the above tax case appeals are dismissed. The substantial questions of law framed are answered against the Revenue.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

RS

To
1.The Income Tax Appellate Tribunal, Chennai 'A' Bench.

2.The Income Tax Appellate Tribunal, Chennai 'D' Bench.

3.The commissioner of Income Tax (Appeals), Salem

4.The Income Tax officer/Ward 1(1),Salem

+2cc to Mr.T.R.Senthilkumar , Advocate SR.No. 84135,84136

TCA.Nos.882 & 891 of 2018

A.SK(23/01/2019)