

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1608 and 769 of 2019

and

W.M.P.Nos.1785, 1786, 842 & 843 of 2019

K.4442 Pethampalayam Primary agricultural
Cooperative Credit society Ltd.,
Rep. by its President
R.Shanmugasundaram,M/47
S/o Rasa Gounder,
Elayampalayam, Kovilpalayam Post,
Kanjikoil,
Perundurai - 638 116
Erode District. ..Petitioner in W.P.No.1608 of 2019

AA.226, Modakurichi Primary Agricultural
Cooperative Credit Society,
rep. by its President,
P.V.Saravanan, M/52
S/o venkatachalam,
Perumapalayam, Modakurichi Post,
Erode District. ..Petitioner in W.P.No.769 of 2019

Vs.

The Income Tax Officer,
Ward-2(2), Erode,
Income Office,
No.15, Gandhiji Road,
Erode, Erode District. .. Respondent in W.P.No.1608 of 2019

The Income Tax Officer,
Ward-2(1), Erode,
Income Office,
No.15, Gandhiji Road,
Erode, Erode District. .. Respondent in W.P.No.769 of 2019

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the impugned order passed by the respondent in Order No.ITBA/AST/S/143(3)/2018-19/ 1014552487(1) dated 24.12.2018 and Order No.ITBA/AST/S/143(3)/2018-19/1014648589(1) dated 28.12.2018 and quash the same.

For Petitioner : Mrs.R.Hemalatha
for Mr.C.Prakasam

For Respondents: Mr.ANR.Jayaprathap,
Standing Counsel

COMMON ORDER

In both these writ petitions, the order of assessment is put to challenge by the respective writ petitioners.

2. Heard both sides.

3. The petitioners are Primary Agricultural Co-operative Societies. In respect of the assessment year 2016-17, the assessing officer passed the orders of assessment thereby assessing the tax payable by the petitioners' society and making consequential demand notice as well.

4. The main contention of the writ petitioners is that the Co-operative Society is entitled to deduction under Section 80 (P) of the Income Tax Act and therefore, the order of assessment cannot be sustained. In support of their contentions, the petitioners sought to rely upon the common judgment made by the Division Bench of this Court in Tax Case Appeal Nos. 484 to 487 & 490 of 2016 dated 02.08.2016, wherein the Division Bench observed that the exemption spelt out in Section 80P(4) of the Income Tax Act, 1961, is applicable to the Credit Society.

5. However, the learned Standing Counsel for the respondents submitted that the said order of the Division Bench is put to challenge before the Apex Court by way of Special Leave Petition and the same is still pending consideration in SLP(C) No.11745/2019. He also invited this Court's attention to the order passed in W.P.Nos.2552 of 2019 etc. dated 27.06.2019 arising out of similar issue, wherein this Court disposed of those writ petitions by issuing a direction to the Revenue to keep the impugned proceedings therein in abeyance until disposal of the SLP filed by the Revenue before the Apex Court against the order of the Division Bench dated 02.08.2016, also with further directions. Therefore, it is submitted that the same order can be passed in these matters also.

6. Learned counsel for the respondents is not having any objection in passing the same order, since the similar writ petitions are disposed of on 27.06.2019 as stated supra.

7. The issue involved in this case is as to whether the petitioners' Society is entitled to deduction under Section 80

(P) of the Income tax Act. There is no dispute to the fact that the Division Bench of this Court has answered on such question in favour of the Society. However, it is stated that the said order of the Division Bench is put to challenge before the Apex Court where the matter is pending in SLP(C) No.11745/2019. In a batch of cases arising out of a same issue, the learned Judge of this Court passed an order on 27.06.2018 as follows:

4. In the light of the aforesaid undisputed position, the following order is passed:

a) All the 33 impugned notices will be kept in abeyance and there will be no further proceedings pursuant to the same until disposal of the Special Leave Petitions said to have been filed by respondent / Revenue in Hon'ble Supreme Court against the aforementioned orders of Hon'ble Division Bench of this Court particularly orders dated 02.08.2016 in Tax Case Appeal Nos.484-487 and 490 of 2016.

b) Subject to the outcome of the aforesaid Special Leave Petitions, i.e., if the Special Leave Petitions are in favour of the Revenue, the impugned orders will stand revived and law will take its course. If this scenario unfolds, it is open to the writ petitioner assessee to take all objections and defences available to section 148 notice including calling for reasons and limitation.

c) If the Special Leave Petitions end in favour of assessees and if the aforesaid Hon'ble Division Bench orders are confirmed or if the Hon'ble Supreme Court refuses to interfere with the orders of the High Court, all the 33 impugned notices will stand set aside without further reference to this Court.

d) Though obvious it is made clear that this order pertains to benefit under Section 80P of IT Act qua writ petitioners covered by Hon'ble Division Bench orders against which Revenue submits that SLPs have been filed before Hon'ble Supreme Court and therefore, this order will not preclude Revenue from proceeding against writ petitioners in a manner known to law with regard to other issues, if any.

5. With the aforesaid directions, all the 33 writ petitions are disposed of and there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

8. Considering the above stated facts and circumstances, these Writ Petitions are disposed of as follows:

(a) The respondents shall keep the impugned assessment orders in abeyance till the disposal of the above S.L.P. by the Apex Court.

(b) It is open to either party to work out their remedy/action, subject to the outcome of the aforesaid S.L.P. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Income Tax Officer,
Ward-2(2), Erode,
Income Office,
No.15, Gandhiji Road,
Erode, Erode District.
2. The Income Tax Officer,
Ward-2(1), Erode,
Income Office,
No.15, Gandhiji Road,
Erode, Erode District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No. 77476
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 77925

W.P.Nos.1608 and 769 of 2019

VG II(CO)
GN(09/10/2019)