IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.2552, 3382, 3389, 3394,3712, 3714, 3718, 3720, 3721, 4100, 4376, 4382, 4389, 4477, 4535, 4537, 4540, 4637, 4641, 4806, 4821, 4827, 4997, 5006, 5052, 5057, 5060, 5062, 5063, 5238, 5243, 5246 and 5249 of 2019

and

W.M.P.Nos.2830, 2832, 3663, 3672, 3673, 3675, 3676, 4091, 4094, 4100, 4103, 4107, 4109, 4112, 4113, 4115, 4119, 4594, 4597, 4916, 4917, 4918, 4919, 4928, 4929, 5058, 5059, 5122, 5123, 5125, 5126, 5128, 5129, 5249, 5250, 5252, 5455, 5456, 5475, 5476, 5482, 5705, 5710, 5713, 5715, 5755, 5758, 5759, 5761, 5763, 5764, 5766, 5767, 5768, 5769, 5947, 5949, 5950, 5951, 5953 and 5955 of 2019

No.3324 Nerinjipettai Primary
Agricultural co operative credit
Society Ltd, Rep by its Secretary
S. MURUGESAN Nerinjipettai Anthiyur taluk.
... Petitioner in WP 2552/2019

The Perundurai Primary
Agricultural Co-operative Bank Ltd. Rep. by
its Secretary No.330 Bhavani Road,
Perundurai Erode -638052. PAN. AABAT2523R.
Erode District.
....Petitioner in WP 3382/2019

AA 520 Veerappampalayam,
Primary Agricultural Co operative Society,
Limited, Rep.by its Secretary AA 520,
Veerappampalayam Arachalur (Via)
Erode - 638101 PAN. AADAA8893M.
....Petitioner in WP 3389/2019

The Pallipalayam Farmers ,
Service Co-Operative Society Limited,
Rep.by its Secretary S.N. 208 Pallipalayam,
Tiruchengode Namakkal - 638006 PAN.
AAEAT1678G ...Petitioner in WP 3394/2019

K.1594 Perumanallur Primary,
Agricultural Cooperative credit society Ltd,
Rep by its secretary A.Balamani
W/o.G.D.Senthil Ganesu No.3/45 Main Road,
Perumanallur, Tiruppur District.
... Petitioner in WP 3712/2019

K.2038 Mangalam Primary Agricultural
Cooperative credit society Ltd,
Rep by its secretary A.Renuka W/o.Gurusamy
No.12/4 Om Sakthi Nagar, Krishnapuram,
Somanur,Sulur Taluk,
Coimbatore.
...Petitioner in WP 3714/2019

K.2043 Andipalayam Primary
Agricultural Cooperative Credit Society Ltd.
Rep by its Secretary N.Visveswaran S/o. M.
Nachimuthu No. 1/ 94 A.Velayudhampalayam,
Alagumalai Post. Tiruppur
...Petitioner in WP 3718/2019

K.2051 Vijayapuram Urban Coo
perative Credit Society, Rep by its
Secretary A.Muthunagai, W/o. M.
Shanmugasundaram, No. 42 Thendral Nagar,
Vijayapuram, Tiruppur - 641606
... Petitioner in WP 3720/2019

K.2092 Chettipalayam Primary
Agricultural Cooperative credit society
Ltd Rep by its secretary S.Sundarraj M/47
S/o.K.Sadayan No.37 Susaiyapuram T.M.C.
Colony, Tiruppur. ... Petitioner in WP 3721/2019

K.758 Ikkarai Boluvampatti
Primary Agricultural cooperative credit
society Ltd, Rep by its secretary, A.Suseela
w/o.Maruthachalam, No.4/4A Boluvampatti
street, Ramanathapuram,
Pooluvapatti,
Coimbatore. ... Petitioner in WP 4100/2019

K.1755 Goundampalayam Primar
y Agricultural Cooperative Credit Society
Ltd. Rep. by its Secretary A.Govindasamy
M/47 S/o.Arunachala Gounder No.7/469-29
ALR Nagar Pongalur & Post,
Tiruppur. ... Petitioner in WP 4376/2019

9481 Karadivavi Primary
Agricultural Cooperative Credit Society Ltd.
Rep. by its Secretary M.Booma F/52 W./o.
Muthukumarasamy No.2/96 North Street
Karadivavi Post Palladam Taluk,
Tiruppur. ... Petitioner in WP 4382/2019

K 1621 PONGALUR PRIMARY AGRI
CULTURAL Cooperative Credit Society Ltd.
Rep. by its Secretary G.Latha devi W/O.
Govindasamy No 7/469-29 ALR Nagar
Pongalur and post Tiru ppur.
... Petitioner in WP 4389/2019

M/s.Uttukuli and Avinasi Uni
on Public Servants Co-op. Thrift and Credit
Society Ltd. Rep. by its Secretary 1 T.M.P.
Jayalakshmi Complex Vijayamangalam
Uthukuli Post,
Thiruppur. ... Petitioner in WP 4477/2019

K.1104 Elayamuthur Primary
Agricultural Cooperative Credit Society Ltd.
Rep. by its Secretary P.Chinnasamy
S/o.Periyasamy No. 1/ 358 P.V.Layout
S.V.Mills Post S.V.Puraram, Udumalpet,
Tiruppur.
... Petitioner in WP 4535/2019

K.680 Dhali Primary Agricultural
Cooperative Credit Society Ltd. Rep.
by its Secretary V.Shanmugavelu S/o.
Venkatachalam No. 20/ 59 Pari Street
Earipalayam Udumalpet Taluk.
... Petitioner in WP 4537/2019

K.1140 Jallipatti Primary Agricultural
Cooperative Credit Society Ltd.
Rep. by its Secretary S.Badrudeen
S/o. S.Sirajudeen No. 18 Saraswathi Layout
Dharapuram Road,
Udumalpet.
... Petitioner in WP 4540/2019

K.365 Palappalayam Primary
Agricultural Cooperative credit societies
Ltd Rep by its secretary S.M.Mesappan S/o.
Muthusamy II/90 M.K.S.Parameswarn Illam
Kandasamyur Vadakkuthayeerpalayam
Chithode, Bhavani Taluk, Erode.
... Petitioner in WP 4637/2019

K.637 Pasur Primary Agricultural
Cooperative credit societies Ltd Rep
by its president S.Ashokkumar
S/o. Sengottaian Mettupudur Pasur post,
Erode District. ... Petitioner in WP 4641/2019

No. 3210 Theethipalayam Primary
Agricultural Cooperative Credit Society
Ltd. Rep. by its Secretary S.Surendiran
No. 10 Kamatchiamman Koil Street
Thondamuthur Coimbatore.
... Petitioner in WP 4806/2019

No.8729 Keelvani Primary Agricultural
Cooperative Credit Society Ltd.
Rep. by its Secretary A.Mohan .
S/oAzhagusamy No.471 Andal Nagar
Kullampalayam Post Gobi Taluk, Erode.
...Petitioner in WP 4821/2019

K.991 Kondaiyampalaya Primary
Agricultural Cooperative Credit Society
Ltd. Rep. by its Secretary P.Sivaguru
S/o.P.K.Palanisamy, Perumapalayam,
Erode Dt. ... Petitioner in WP 4827/2019

A.A.187 Nasiyanur Primary Agricultural
Cooperative credit society Ltd
Rep by its secretary R.Chinnaraju
S/o.Ramasamy Gounder No.59-A
Samigoundampalayam, Nasiyranur
Post, Erode District.
... Petitioner in WP 4997/2019

The Chithode Farmers service
coopertive society Ltd Nadupalayam
chithode Erode District Presently called
as K.11279 chithode primary Agricultural
cooperative credit society Ltd,
Rep.by its Secretary, M.Eswaramoorthy,
Gangapuram,
Chithode, Erode.   ...Petitioner in WP 5006/2019

DR(L)C.13. Kinathukadavu Co-operative
Primary Agriculture and Rural
Development Bank Ltd.   Rep. by its
Secretary S.SenthilKumar Kinathukadavu -
642109. Coimbatore District.
... Petitioner in WP 5052/2019

T.P.Spl. 66 Thenchittur Primary
Agricultural Cooperative Credit Society
Ltd.   Rep. by its Secretary N.SenthilKumar
Thenchittur, Somandurai, Pollachi - 642134
Coimbatore District.
... Petitioner in WP 5057/2019

K.97 Kinathukadavu Primary
Agricultural Cooperative Credit Society Ltd.
Rep. by its Secretary C.Duraisamy,
3rd Street, Anna Nagar,
Kinathukadavu - 642109 Kinathukadavu Taluk.
Coimbatore District.
.... Petitioner in WP 5060/2019

T.P.Spl. 49 Samathur Primary
Agricultural Cooperative Credit Society Ltd.
Rep. by its Secretary N.SenthilKumar
S.Poonapuram Road Samathur - 642123
Pollachi Taluk Coimbatore.
... Petitioner in WP 5062/2019

K 142 Angalakurichi Primary
Agricultural Cooperative Credit Society Ltd.
Rep. by its Secretary A.K.Kalimuthu
Angalakurichi - 642007. Pollachi Taluk,
Coimbatore District.
...Petitioner in WP 5063/2019

C.C.2341 Perur Chettipalaym
Primary Agricultural Cooperative Credit
Society Ltd. Rep. by its Secretary R.
Ananthan Arumuga Goundanur Perur
Chettipalayam Post Coimbatore.

... Petitioner in WP 5238/2019

A.A.284, Mylambadi Primary Agircultural,
Cooperative Credit Society Ltd.
Rep. by its President, K.R.Muthusamy,
S/o. Ravutha Gounder, No.250, Kannadipalayam
Post, Mylambadi, Bhavani Taluk, Erode.

...Petitioner in WP 5243/2019

K.4442 Pethampalayam Primary
Agricultural Cooperative Credit Society Ltd.
Rep. by its President R.Shanmugasundarm,
Elayampalayam, Kovilpalayam Post, Kanjikoil
Perundurai, Erode.

... Petitioner in WP 5246/2019

A.A.511 Kandappagoundenvalasu
Primary Agricultural Cooperative Credit
Society Ltd. Rep. by its Secretary
D.Mohanasundaram No. 11 Kandappa Gounden
Valasu and Post Chennimalai, Erode.

...Petitioner in WP 5249/2019

-Vs-

The Income Tax Officer/The Assistant Commissioner of Income Tax,
Ward 2 (1) /Ward 2 (2)/Ward 2(3), Range-2/Ward2(5) Erode, Income tax Office,
No.15, Gandhiji road, Erode District

...Respondent in WP Nos.2552, 3382, 3389, 4637, 4641, 4821, 4827, 4997, 5006, 5243, 5246, and 5249 of 2019.

The Assistant Commissioner of Income Tax
Circle - 1, Namakkal - 637 001.

... Respondent in WP No.3394 of 2019

The Income Tax Officer
Ward 2/Ward 1(4)/Ward2(3)/Ward1(2),
/Ward2(2)/Ward2(4) TPR, Income tax Office,
No.121, 60 Feet Road,
Tiruppur, 641 602.

... Respondent in WP Nos.3712, 3714,3718, 3720, 3721, 4376, 4382,4389, 4477, 4535 4537 and 4540 of 2019.

The Income Tax Officer,
Non Corp.Ward 4(2) ,CBE,
No.63, Race Course Road,
Coimbatore - 641 101.

... Respondent in WP Nos.4100, 4806, and 5238 of 2019

The Income Tax Officer,
Ward 1,
Pollachi, No.112, Alagappa Layout,
Venkatesa Colony,
Pollachi-642 001.

...Respondent in WP No.5052, 5057, 5060, 5062, 5063

Prayer in WP No.2552 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned assessment order passed in order No ITBA/AST/S/143(3)/2018-19/1014509003(1) and the Demand Notice in No.ITBA/ AST/S/156/2018-19/1014509033(1) both on the file of the respondent dated 22-12-2018

Prayer in WP No.3382 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Respondent herein in order No. ITBA/AST/S/143(3) 2018-19/1014556606(1) passed by the respondent for the Assessment year 2016-2017 and quash the order dated 24/12/2018 passed therein.

Prayer in WP No.3389 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Respondent herein in order No. ITBA/AST/ S/ 143 (3)/ 2018-19/ 1014657509(1) passed by the respondent for the Assessment year 2016-2017 and quash the order dated 29.12.2018 passed therein

Prayer in WP No.3394 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari call for the records of the Respondent herein in order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014587992(1) passed by the respondent for the Assessment year 2016-2017 and quash the order dated 29.12.2018 passed therein

Prayer in WP No.3712 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Call for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19 / 1014429866 (1) dated 20.12.2018 and quash the same

Prayer in WP No.3714 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Call for the records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19 / 1014593051 (1) dated 26.12.2018

Prayer in WP No.3718 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143 (3)/ 2018-19/ 1014594606 (1) dated 26.12.2018

Prayer in WP No.3720 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143 (3)/ 2018-19/ 1014594884 (1) dated 26.12.2018

Prayer in WP No.3721 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) /2018-19 / 1014606291 (1) dated 27.12.2018

Prayer in WP No.4100 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19/ 1014279348 (1) dated 14.12.2018

Prayer in WP No.4376 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records Calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA/AST/S/143(3)/2018-19/1014403170(1) dated 19.12.2018

Prayer in WP No.4382 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA/AST/S/143(3)/2018-19/1014403486(1) dated 19.12.2018

Prayer in WP No.4389 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA/AST/S/143(3)/2018-19/1014595977(1) dated 26.12.2018

Prayer in WP No.4477 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Call for the records of the respondent herein order No.ITBA/AST/S/143(3) 2018-19/1014608013 (1) passed by the respondent for the Assessment Year 2016-17 and quash the order dated 27/12/2018

Prayer in WP No.4535 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014568833(1) dated 25.12.2018

Prayer in WP No.4537 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014572342(1) dated 25.12.2018

Prayer in WP No.4540 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014601316(1) dated 25.12.2018

Prayer in WP No.4637 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in ORder No.ITBA / AST / S / 143 (3) /2018-19 / 1014556626(1) dated 24.12.2018

Prayer in WP No.4641 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in ORder No.Nil dated 31.12.2018

Prayer in WP No.4806 of 2019:

Writ Petition Filed under Article 226 of the Constitution of Indiapraying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014272900(1) dated 14.12.2018

Prayer in WP No.4821 of 2019:

Writ Petition Filed under Article 226 of the Constitution of Indiapraying to issue a Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018- 19/ 1014551677(1) dated 24.12.2018

Prayer in WP No.4827 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. Nil dated 31.12.2018

Prayer in WP No.4997 of 2019:

Writ Petition Filed under Article 226 of the Constitution of Indiapraying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA / AST /S / 143(3) / 2018-19/ 1014656913(1) dated 29.12.2018

Prayer in WP No.5006 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA / AST /S / 143(3) / 2018-19/ 1014657015(1) dated 29.12.2018

Prayer in WP No.5052 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014636080(1) dated 28.12.2018

Prayer in WP No.5057 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014632154(1) dated 28.12.2018

Prayer in WP No.5060 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014624998(1) dated 28.12.2018

Prayer in WP No.5062 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014624731(1) dated 28.12.2018

Prayer in WP No.5063 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014632014(1) dated 28.12.2018

Prayer in WP No.5238 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014180907(1) dated 11.12.2018

Prayer in WP No.5243 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records Calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014574623(1) dated 26.12.2018

Prayer in WP No.5246 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire records Calling for the entire records relating to the impugned order passed by the respondent in Order No. Nil dated 30.12.2018

Prayer in WP No. 5249 of 2019:

Writ Petition Filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the entire relating to the impugned order passed by the respondent in Order No. Nil dated 31.12.2018

For Petitioner:Mr.V.Elangovan(W.P.2552/19)
Mr.C.Prakasam(W.P. Nos.3712,3714,3718,4537, 4535,3718,4540,3720,3721, 5006,4997,4827,5249,5246, 5243,4821,5238,4806,5063, 5062,5060,5057 and 4641 of 2019

M/s.R.Hemalatha
W.P.Nos.4637, 5052,4100,4376/19

Mr.B.Raveendran
W.P.Nos.3382, 3389, 3394 & 4477/19

Mr.N.Pavithran
W.P Nos.4382 and 4389 of 2019

For Respondents:M/s.A.P.Srinivas Standing Counsel (in all Wps)
M/s.A.N.R.Jayaprathap S.C for Respondent in W.P.4806 of 2019

C O M M O N O R D E R

This common order will dispose of all these 33 writ petitions. There is no disputation or disagreement before this Court and between the parties that all these 33 writ petitions are covered by an earlier order dated 18.06.2019 made by this Court in W.P.Nos.16868, 16877, 16882 and 16893 of 2019, which in turn was made by following an earlier common order dated 11.06.2019 made by this Court in W.P.Nos.15651/2019 etc., (five writ petitions).

2. To be noted, all these writ petitions turn on Section 80P of 'Income Tax Act, 1961' ('IT Act' for brevity).

3. For the sake of convenience, clarity and ease of reference, most relevant paragraphs in the aforesaid earlier order dated 11.06.2019 in W.P.Nos.15651 of 2019 etc., (five writ petitions) are extracted and reproduced infra. Most relevant paragraphs in the said order are paragraphs Nos.6 to 19 which read as follows:

> '6. Short facts imperative for disposal of these five writ petitions by this common order are as

follows:

a) Writ petitioners in each of the five writ petitions are Cooperative Societies.

b) Writ petitioners claim that they are entitled to the benefit of Section 80P of the 'Income Tax Act, 1961' ['IT Act' for the sake of brevity]

c) Respondent has issued notices under Section 148 of IT Act.

d) These notices under Section 148 of IT Act issued to each of the writ petitioners have been assailed in each writ petitions and these notices shall be referred to as 'impugned notice' in singular and 'impugned notices' in plural.

e) Impugned notices have been issued on the basis that there has been income that has escaped assessment within the meaning of Section 147 of IT Act for various previous Assessment years as set out in the respective notices.

f) Predicated on Section 147, the impugned notices which are under Section 148, call upon the writ petitioner assessees to file returns for the Assessment years mentioned therein.

g) Contending that a Hon'ble Division Bench of this Court, has held that Cooperative Societies akin to the writ petitioners are entitled to the benefit of Section 80P, instant writ petitions have been filed, assailing the impugned notices.

7. The sheetanchor submission of learned counsel for writ petitioner in each of these five writ petitions is that a Division Bench of this Hon'ble Court, in an order dated 02.08.2016 made in Tax Case Appeal Numbers.484 to 487 and 490 of 2016, has held that Cooperative Societies akin to those of writ petitioners are entitled to the benefit of Section 80P of IT Act.

8. Adverting to the aforesaid order of Hon'ble Division Bench, learned counsel submitted that questions of law, which were entertained by the Hon'ble Division Bench are adumbrated in paragraph 5 of the said order, which reads as follows:

> '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).'

9. To be noted, all three aforesaid substantial questions of law pertain to Section 80P of IT Act qua Cooperative Societies. Also to be noted, the aforesaid judgment has been rendered by Hon'ble Division Bench, in tax case appeals, which are essentially under Section 260A of IT Act.

10. The aforesaid three substantial questions of law on which the statutory appeals i.e., tax case appeals were heard out, were answered in favour of the assessee and the answer is articulated by the Hon'ble Division Bench in Paragraph 8, which reads as follows:

> '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 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.'

11. There is no disputation or disagreement before this Court that the aforesaid order of Hon'ble Division Bench and the ratio therein would apply to the writ petitioner in each of these cases.

12. Therefore, it would follow as a natural sequitur that it would serve no useful purpose in allowing the impugned notices to proceed further as ultimately the authorities will stand bound by the

ratio / rationale laid by the Hon'ble Division Bench.

13. However, learned counsel for Revenue, raises two submissions in this regard.

14. First submission is on limitation. This first submission is that the aforesaid order of the Hon'ble Division Bench as well as other orders passed by Hon'ble Division Benches of this Court on the same aspect i.e., benefit of Section 80P of Income Tax Act to Cooperative Societies is being carried further to Hon'ble Supreme Court by way of Special Leave Petitions. In other words, it is the specific case and stated position of the learned Revenue counsel that the IT department, has not given legal quietus to the order, but is agitating the matter further by filing Special Leave Petitions in Hon'ble Supreme Court.

15. Be that as it may, as of today, there is no disputation that the aforesaid order of Hon'ble Division Bench has neither been stayed nor reversed. Therefore, it holds the field.

16. Though this could be the end of the matter and this Court would have been inclined to set aside the impugned notices, this Court takes a slightly different view owing to the second submission made by learned counsel, which is a crucial aspect of the trajectory of the hearing today.

17. The second submission made by learned Revenue counsel is that with regard to notices under Section 148 of IT Act particularly with regard to notices predicated on escaped assessment under 147 of IT Act, different periods of limitation have been prescribed for different circumstances. It may not be necessary to advert to those aspects in a great detail. Suffice to say that three different periods of limitation have been prescribed for notices akin to the instant notices i.e., notices under Section 148 of IT Act and those three periods of limitations are contained in first proviso to Section 147, Section 149(1)(b) and Section 149(1)(c) of IT Act.

18 Learned Revenue counsel adverting to the aforesaid provisions submitted that it may be too late in the day for the Revenue to issue notices under Section 148 afresh, if they are set aside now and ultimately if the Revenue succeeds in the

Special Leave Petitions, which are said to have been filed.

19. To be noted, learned counsel for writ petitioner responding to the aforesaid submission submitted that some of the impugned notices in the instant writ petitions are in any event barred by limitation. This Court expresses no opinion on this plea at this point of time in this order owing to the nature of the order that is being passed.

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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Officer/The Assistant Commissioner of Income Tax,
Ward 2 (1) /Ward 2 (2)/Ward 2(3), Range-2/Ward2(5)
Erode, Income tax Office,
No.15, Gandhiji road, Erode District.

2. The Income Tax Officer
Ward 2/Ward 1(4)/Ward2(3)/Ward1(2),
/Ward2(2)/Ward2(4) TPR, Income tax Office,
No.121, 60 Feet Road, Tiruppur, 641 602.

3. The Income Tax Officer,
Non Corp.Ward 4(2) ,CBE,
No.63, Race Course Road,
Coimbatore - 641 101.

4. The Assistant Commissioner of Income Tax Office
Circle - 1, Namakkal - 637 001.

5. The Income Tax Officer,
Ward 1,Pollachi, No.112, Alagappa Layout,
Venkatesa Colony, Pollachi-642 001.

+32 ccs to M/s.A.P.Srinivas, Advocate Sr.53935
+1cc to M/s.S.Doraisamy, Advocate Sr.53745
+1cc to M/s.B.Raveendran, Advocate Sr.53764
+2cc to M/s.N.Pavithran, Advocate Sr.54402, 54403
+2cc to M/s.B.Raveendran, Advocate Sr.53766, 53765
+1cc to M/s.R.Hemalatha, Advocate Sr.54400

W.P.Nos.2552, 3382, 3389, 3394,3712, 3714, 3718, 3720, 3721, 4100, 4376, 4382, 4389, 4477, 4535, 4537, 4540, 4637, 4641, 4806, 4821, 4827, 4997, 5006, 5052, 5057, 5060, 5062, 5063, 5238, 5243, 5246 and 5249 of 2019

rp[co]
srg 21/10/2019