

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.3623, 3632, 4442 and 4445 of 2019
and WMP Nos.3966, 3969, 3978, 3979,
5004, 5005, 5009 and 5010 of 2019

K.255 Kandian Kovil Primary Agricultural
Cooperative Credit Society Ltd.,
Rep. by its President
M.R.Varadharajan.

...Petitioner in
W.P.No.3623/2019

K.2040 Manickapurampudur Primary
Agricultural Cooperative Credit Society Ltd.,
Rep. by its Secretary
A.Kumaresan

...Petitioner in
W.P.No.3632/2019

K.863 Elumathur Primary Agricultural
Cooperative Society Limited
Represented by its Secretary
K-863, Elumathur PO
Modakkurichi
Erode - 638 104
PAN: AAAAK4879N

...Petitioner in
W.P.Nos.4442 & 4445/2019

-Vs-

The Income Tax Officer
Ward - 2(3), TPR, Income Tax Office
No.121, 60 Feet Road, Tiruppur - 641 602.

... Respondent in
W.P.Nos.3623 & 3632/2019

Income Tax Officer
Ward 2(1)
No.15, Gandhiji Road
Erode - 638 001.

...Respondent in
W.P.Nos.4442 & 4445/2019

PRAYER IN W.P.Nos.3623 & 3632/2019 : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the respondent in Order Nos.ITBA/AST/S/143(3)/2018-19/1014595448(1) and ITBA/AST/S/143(3)/2018-19/1014594042(1), dated 26.12.2018 and quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

PRAYER IN W.P.Nos.4442 & 4445/2019 : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent herein in PAN No.AAAAK4879N/2010-11 and PAN No.AAAAK4879N/2011-12 and quash Order dated 31.12.2018 passed therein and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner in : Mr.C.Prakasam
W.P.Nos.3623 & 3632/2019

For Petitioner in : Mr.B.Raveendran
W.P.Nos.4442 & 4445/2019

For Respondent
in all W.Ps : Mr.A.P.Srinivas,
Sr. Standing Counsel
for Income Tax
Assisted by
Mr.A.N.R.Jayaprathap,
Jr. Standing Counsel
for Income Tax

COMMON ORDER

Mr.C.Prakasam, learned counsel on record for writ petitioner in two of the aforesaid four writ petitions and Mr.B.Raveendran, learned counsel on record for the two other writ petitions are before this Court. On behalf of Revenue, i.e., respondents in all four writ petitions, Mr.A.P.Srinivas, learned Senior Standing Counsel for Income Tax assisted by Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel for Income Tax are before this Court.

2. All the aforesaid learned counsel make a common submission in unison that these four cases are covered by an earlier common order made by this Court, being order dated 27.06.2019, in W.P.Nos.2552 of 2019 etc., To be noted, 33 writ

petitions were disposed of by the aforesaid common order, for the sake of convenience and ease of reference, entire order dated 27.06.2019, made in the aforesaid batch of 33 writ petitions, is extracted, reproduced infra and the same reads as follows:

'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 assessee 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) (viiia).

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 dispute 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.'

3. In the light of the common submission made in unison by all the learned counsel that the four writ petitions on hand are covered by the aforesaid common order dated 27.06.2019 made in W.P.No.2552 of 2019 batch, it follows as a sequitur that the operative portion of the aforesaid order contained/adumbrated in paragraph 4 will apply to the instant cases also. To be noted, in the aforesaid operative portion extracted and reproduced supra, the term of 'notices' alone will read as 'proceedings' in the instant case. Therefore, in these four writ petitions, the following common order is passed:

a) All the four impugned proceedings 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 assesseees 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 High Court, all the four impugned proceedings 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.

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

vsm

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Officer
Ward - 2(3), TPR, Income Tax Office
No.121, 60 Feet Road, Tiruppur - 641 602.

2.The Income Tax Officer
Ward 2(1)
No.15, Gandhiji Road
Erode - 638 001.

+2cc to Mr.B.Raveendran, Advocate, SR.No.61646 & 61647
+1cc to Mr.A.P.Srinivas, Advocate, SR.No.61748

W.P.Nos.3623, 3632, 4442 and 4445 of 2019
and WMP Nos.3966, 3969, 3978, 3979,
5004, 5005, 5009 and 5010 of 2019

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