IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.4467, 4469, 4642, 4796, 4799, 4803, 4818, 4981, 4989, 5010, 5065, 5693, 5696, 5687 and 7350 of 2019
and
W.M.P.Nos.5043, 5050, 5255, 5256, 5433, 5434, 5439, 5441, 5449, 5450, 5473, 5474, 5680, 5681,5695, 5696, 5717, 5718, 5771, 5772, 6473, 6475, 6486, 6487, 6480, 6481 and 8029 of 2019

W.P.No.4467 of 2019

M/s.AA539 Avaipoondurai Primary Agricultural
Co-operative Bank Limited
146, East Street
Avaipoondurai
Erode – 638 115
PAN AAALA0804C ..Petitioner

vs

Asst. Commissioner of Income Tax
Ward 2(3)
Range – 2 Erode ..Respondent

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 PAN/GIR No.AAALA0804C/2011-12 and quash the order dated 31.12.2018 passed therein.

For Petitioners : Mr.B.Raveendran
in W.P.Nos.4467 and 4469 of 2019

Ms.R.Hemalatha
in W.P.No.4642, 4981 & 5687 / 2019

Mr.C.Prakasam
in W.P.No.4796, 4818, 4803, 4799, 4989, 5010, 5065,5693, 5696 & 7350 of 2019

For Respondents : Mr.A.P.Srinivas
Standing Counsel
Asst. by Mr.A.N.R.Jayaprathap
Standing Counsel (IT)

COMMON ORDER

This common order will dispose of these 15 writ petitions.

2.Mr.C.Prakasam, learned counsel on record for writ petitioners in W.P.No.4796, 4818, 4803, 4799, 4989, 5010, 5065, 5693, 5696 & 7350 of 2019, Ms.R.Hemalatha, learned counsel for writ petitioners in W.P.No.4642, 4981 & 5687 of 2019, Mr.B.Raveendran, learned counsel on record for writ petitioner in W.P.Nos.4467 and 4469 of 2019 and Mr.A.P.Srinivas, learned senior standing counsel (Income Tax) assisted by Mr.A.N.R.Jayapratap, learned junior standing counsel (Income Tax) on behalf of the respondents in all the writ petitions are before this Court.

3.To be noted, respondent has filed counter affidavits in some of the writ petitions and pleadings have been completed. Be that as it may with consent of learned counsel on both sides, main writ petitions are taken up, heard out and is being disposed of.

4. There is no disputation or disagreement before this Court that the writ petitioners are Co-operative Societies and that they are Co-operative Societies which are registered under 'Tamil Nadu Cooperative Societies Act, 1983' (hereinafter 'TNCS Act' for brevity).

5. What has been called in question in these writ petitions by the writ petitioners are Assessment Orders made by the respondent under Section 143(3) of 'Income Tax Act, 1961' ('IT Act' for brevity). The impugned orders shall collectively be referred to as 'impugned orders' in plural and wherever necessary 'impugned order' in singular.

6. Entire matter turns on Section 80P of IT Act captioned 'Deduction in respect of Income of Cooperative Societies'.

7. From the pleadings and the rival submissions made before this Court, it also comes to light that the judgment on which reliance was placed by the writ petitioners is a judgment made by a Hon'ble Division Bench of this Court being judgment dated 06.12.2018 made in Tax Case Appeal Nos.882 and 891 of 2019. 'Tax Case Appeals' shall be referred to as 'TCAs' for the sake of brevity. To be noted, TCAs in this context are statutory appeals under Section 260A of IT Act.

8.The three substantial questions of law on which the TCAs were admitted by Hon'ble Division Bench are as follows:

'i.Whether the Appellate Tribunal was right and justified in following the jurisdictional High Court decision when there is an Apex Court decision of latter date available?

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 Coopertive 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

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 any one can become an associate member of the society on payment of a nominal token fee?'*

9. To be noted, aforesaid TCAs were decided in favour of the Assessee.

10. Learned Revenue counsel submits that Department is proposing to file a 'Special Leave petitions'('SLPs' for brevity) against the aforesaid judgments in the TCAs, but this Court is informed that it is only at the proposal stage. In other words, SLPs have not even been filed in Hon'ble Supreme Court.

11. Be that as it may, a careful perusal of Ammapet Primary Agricultural Cooperative Bank Ltd., case (referred to supra) brings to light that the following principles have been laid down by the Hon'ble Division Bench:

a) A Cooperative Society registered under TNCS Act is entitled to the benefits / deductions adumbrated in Section 80P of IT Act;

b) As a sequitur to the above principle, writ petitioners herein are entitled to deductions under various heads adumbrated in Section 80P of IT Act.

c) Owing to insertion of sub-section (4) in Section 80P of IT Act with effect from 01.04.2017 by Finance Act, 2006, a distinction between a Cooperative Bank and a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank operates. In other words, while Section 80P will not apply to a Cooperative bank, the deductions will be available to Primary Agricultural Credit Societies and Primary Cooperative Agricultural and Rural Development Banks. Also to be noted, this principle has been laid down by Hon'ble Division Bench by placing reliance on a judgment of Hon'ble Supreme Court in ***Citizen Cooperative Society Limited Vs. ACIT (reported in (2017) 84 Taxmann.com 114).***

12. Before this Court proceeds further, it is also to be noticed that some other writ petitions pertaining to 80P deductions filed by the some other Cooperative Societies were disposed of by this Court by a common order dated 27.06.2019 made in W.P.No.2552 of 2019 etc., It is submitted by both sides in unison that instant writ petitions on hand are not directly covered by the aforesaid common order dated 27.06.2019 made in 33 writ petitions owing to slight factual variations.

13. As far as these writ petitions on hand are concerned, it comes to light that the impugned assessment orders turn on deductions claimed by the respective cooperative societies/writ petitioners under Section 80P(2)(d) which pertains to income by way of interest derived by the writ petitioners from investments. With regard to sub-section (4) which was inserted into Section 80P of IT Act, it is submitted that distinction between a Cooperative Bank and a Primary Agricultural Credit Society on one side and a Primary Cooperative Agricultural and Rural Development Bank on the other side is only for the purpose of claiming deductions under 80P and whether this distinction can be made applicable in 80P(2)(d) scenario is *res integra*.

14. A perusal of aforesaid Section 80P(2)(d) reveals that interest from investments would be eligible for deduction only when such investments are made in other cooperative societies. In other words, if it is made in other entities or banks other than co-operative societies, it may not be entitled to exemption under Section 80P (2)(d). It is fairly submitted by both sides that with regard to this aspect of the matter it is res integra and it is not covered by the aforesaid ***Ammapet Primary Agricultural Cooperative Bank Ltd.*** case (judgment in TCAs) or any other order or judgment for that matter. To be noted, a perusal of the impugned orders reveals that the writ petitioners have

made investments in Coimbatore District Central Cooperative Bank, Coimbatore.

15. However, what is of greater significance is vide the impugned Assessment Orders, deductions claimed by the writ petitioners/ assessees under Section 80P (2)(d) have been negatived primarily on the ground that what has been invested is surplus money available with the writ petitioners/ assessees at a given point of time or in other words, surplus money available with the writ petitioners at that given point of time, which is not necessary for its operations (obviously at that point of time) and therefore, interest derived from such investments cannot be classified as operational income. On this basis, interest so derived has been assessed under Section 56 of IT Act by treating the same as 'other sources'. The impugned orders have also drawn inspiration from a judgment of Hon'ble Supreme Court in **The Totgars' Cooperative Sale Society Limited Vs. Income Tax Officer, Karnataka** reported in **(2010) 188 Taxmann 282 (SC)** and in the considered view of this Court paragraphs 10 and 11 of **Cooperative Sale Society Limited** case is of relevance and the same read as follows:

> *'**10**. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible*

for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the Assessing Officer. In this connection, we may analyze Section 80P of the Act. This section coms in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain Incomes". The Headnote to Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies. Section 80P(1), inter alia, states that where the gross total income of a cooperative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the *assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains. This Sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80P(2) of the Act. In the present case, as stated above, assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to* *its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.*

***11**. An alternative submission was advanced by the assessee(s) stating that, if interest income in question is held to be covered by Section 56 of the Act, even then, the assessee-Society is entitled to the benefit of Section 80P(2)(a)(i) of the Act in respect of such interest income. We find no merit in this submission. Section 80P(2) (a)(i) of the Act cannot be placed at par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section 80HHE(5) of the Act. Each of the said sections has to be interpreted in the context of its subject-matter. For example, Section 80HHC of the Act, at the relevant time, dealt with deduction in respect of profits retained for export business. The scope of Section 80HHC is, therefore, different from the scope of Section 80P of the Act, which deals with deduction in respect of income of cooperative Societies. Even Explanation (baa) to*

Section 80HHC was added to restrict the deduction in respect of profits retained for export business. The words used in Explanation (baa) to Section 80HHC, therefore, cannot be compared with the words used in Section 80P of the Act which grants deduction in respect of "the whole of the amount of profits and gains of business". A number of judgements were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80P of the Act. We find no merit because all the judgements cited were cases relating to Cooperative Banks and assessee- Society is not carrying on Banking business. We are confining this judgement to the facts of the present case. To say that the source of income is not relevant for deciding the applicability of Section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other

Income" which has been rightly taxed by the Department under Section 56 of the Act.'

16. In the aforesaid backdrop, it was contended that such income on facts is operational income and that writ petitioners are entitled to deduction under Section 80P (2)(d) of IT Act. This turns heavily on facts. As already alluded to supra, both sides submit that this aspect of the matter is not covered either by Ammapet Primary Agricultural Cooperative Bank Ltd., case or for that matter by any other case and is res integra. Therefore, this Court is of the considered view that this is a fit case to relegate the writ petitioners to the alternate remedy by way of a statutory appeal. This Court is informed that remedy of filing statutory appeal to the Commissioner (Appeals) is available for the writ petitioners under Section 246A of IT Act. This Court is informed that in some of these writ petitions, writ petitioners have already preferred statutory appeals. If that be the case, it is open to the writ petitioners to pursue their appeals and obviously this order can be pressed into service before the Appellate Authority.

17. With regard to exercise of writ jurisdiction on the teeth of alternate remedy, this Court reminds itself that alternate remedy is a rule of discretion. In other words, alternate remedy is not a absolute rule and is therefore not a

rule of compulsion, but it is a rule of discretion. This Court also reminds itself that alternate remedy rule is a self-imposed restraint as far as this Court exercising writ jurisdiction is concerned. Notwithstanding the obtaining position that alternate remedy rule is a rule of discretion and that it is a self-imposed restraint, Hon'ble Supreme Court in ***Satyawati Tandon*** principle [***United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110]*** has held that when it comes to cases pertaining to taxes, cess etc., i.e., fiscal laws in general, rule of alternate remedy has to be applied with utmost rigour. ***Satyawati Tandon*** principle was reiterated by Hon'ble Supreme Court in ***K.C.Mathew*** *case* ***[Authorized Officer***, ***State Bank of Travancore Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85]***. Relevant paragraph in **K.C.Mathew** case is paragraph 10 and the same reads as follows:

> *'10. In* ***Satyawati Tondon*** *the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)*
>
> > *"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a*

petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(Underlining made by Court to supply emphasis and highlight)

18. Therefore, this Court disposes of these writ petitions leaving open all questions including the questions/grounds raised in the instant writ petitions to be canvassed in statutory appeals before Commissioner (Appeals) under Section 246-A. At his juncture, learned counsel for writ petitioners submit that writ petitioner would opt for the alternate remedy (obviously in cases where appeals have not already been filed) and this Court may consider condonation of delay.

19. As far as condonation of delay is concerned, the relevant provision is Section 249(3) of IT Act and power vests with the Appellate Authority, namely Commissioner (Appeals) to condone the delay. Therefore, this Court considers it appropriate to exclude the time spent in the instant writ petitions i.e, the time from the date of presentation of instant writ petitions to the date on which instant order copy is made available in computing the time within which statutory appeals under Section 246A of IT Act have to be preferred. This course is adopted by placing reliance on Section 14 of Limitation Act. However, it is made clear that notwithstanding such exclusion, if there is delay, it is open to the writ petitioners to seek condonation of such delay inter alia under Section 249(3) of IT Act and the Appellate Authority shall deal with such prayers for condonation of delay on their own merits and in accordance

with law.

These writ petitions are disposed of with above observations. No costs. Consequently, connected miscellaneous petitions are closed.

18.07.2019

Index:Yes/No
Speaking order/Non-Speaking order

To

The Asst. Commissioner of Income Tax
Ward 2(3)
Range – 2 Erode

M.SUNDAR, J.

gpa

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