

In the High Court of Judicature at Madras

Dated : 22.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.485 & 486 of 2019 & CMP.No.15232 of 2019

M/s.S.1234 Udayaptti PACCS Ltd.,
Salem ...Appellant

Vs

The Income Tax Officer, Ward 1(4),
Salem-7. ...Respondent in T.C.A. 485/2019.

The Income Tax officer, Ward 2(1)
Salem 7. ...Respondent in T.C.A. 486/2019.

APPEALS under Section 260A of the Income Tax Act, 1961 against the orders (i) dated 31.8.2018 made in MP.No.90/Chny/2018 in ITA.No.2332/ Chny/2017 and (ii) dated 27.3.2018 made in ITA.No.2332/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2014-15 against the order of the Commissioner of Income Tax (Appeals) No.3, Gandhi Road, Salem 7 I.T.A.No. 207/2016-2017 dated 22.06.2017 PAN/GIR No. AAFAS8771G for the Assessment year 2014-2015 and against the order of the Income Tax officer, Ward 2(1), Salem 7 PAN/GIR/No. AAFAS8771G, Ward 2 (1) AOP(CO-OP) Society for the Assessment year 2014-2015.

For Appellant :Mr.T.Ramesh

For Respondent:Mr.M.Swaminathan, SSC & Mrs.V.Pushpa, JSC
& Mrs.S.Premalatha, JSC

COMMON JUGMENT

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

We have heard Mr.T.Ramesh, learned counsel for the appellant and Mr.M.Swaminathan, learned Senior Standing Counsel, Mrs.V.Pushpa, learned Junior Standing Counsel and

Mrs.S.Premalatha, Junior Standing Counsel accepting notice for the respondent.

2. These appeals, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the orders (i) dated 31.8.2018 made in MP.No.90/Chny/2018 in ITA.No.2332/ Chny/2017 and (ii) dated 27.3.2018 made in ITA.No.2332/Chny/2017 respectively, on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2014-15.

3. The assessee has filed these appeals by raising the following substantial questions of law :

"i. In the facts and circumstances of the case, where the appellant is admittedly a primary agricultural cooperative credit society registered under the Tamil Nadu Cooperative Societies Act, whether the Appellate Tribunal is correct in rejecting the deduction claimed by the appellant under Section 80P(2)(a)(i) of the Income Tax Act ?

ii. Whether the Tribunal is correct in differentiating between the Class A members and the Class B members for the purpose of claiming deduction under Section 80P(2)(a)(i) of the Income Tax Act in the absence of any such discrimination under the said Section namely Section 80P(2)(a)(i) of the Income Tax Act?

iii. In the facts and circumstances, where Section 80P(2)(a)(i) refers to the 'members' and there is no reference to different kinds of members, whether the Tribunal is correct in holding that deduction under Section 80P(2)(a)(i) is applicable only when there is a transaction between the appellant society and the Class A members ?

iv. Whether the Tribunal is correct in traversing beyond the scope of the proceedings and allowing the appeal of the Department on entirely a new ground?

v. In the facts and circumstances, whether the reassessment under Section 143(3) of the Income Tax Act initiated on change of opinion is permissible under the Act?

vi. Whether the Tribunal is correct in rejecting the application for rectification of mistake filed under Section 254(2) of the

Income Tax Act?"

4. The learned counsel for the appellant submits that TCA.No.485 of 2019 filed against the order dated 31.8.2018 in MP.No.90/Chny/2018 in ITA. No.2332/Chny/2017 has become infructuous.

5. Recording the said submission, TCA.No.485 of 2019 is dismissed. No costs.

6. TCA.No.486 of 2019 is directed against the substantive order passed by the Tribunal dated 27.3.2018 and this appeal is entertained only on the first substantial question of law, which reads as hereunder :

"In the facts and circumstances of the case, where the appellant is admittedly a primary agricultural cooperative credit society registered under the Tamil Nadu Cooperative Societies Act, whether the Appellate Tribunal is correct in rejecting the deduction claimed by the appellant under Section 80P(2) (a) (i) of the Income Tax Act?"

7. It is not disputed by the learned counsel on either side that the substantial question of law entertained in this appeal was considered by us in the decision in the case of AA 713 the Kodumudi Growers Cooperative Bank Ltd. Kodumudi Vs. ITO, Ward-II (1), Erode [TCA.No.1453 of 2008 dated 31.10.2018] wherein the assessee was a cooperative society and a similar view was taken by the Tribunal as in the impugned order. We allowed the appeal filed by the assessee in the said judgment wherein the relevant portions read thus :

".....
7. Thus, we are called upon to decide as to whether the assessee is entitled for deduction under Section 80P(2) of the IT Act in respect of the income earned from the sale under the PDS.

8. It is not in dispute that the fair price shops were set up pursuant to the direction issued by the Government of Tamil Nadu and communicated through the District Collector. The assessee, while filing the appeal before the CIT (A), specifically contended that the Assessing Officer erred in fixing the income from the sale of fertilizers (PDS) without considering the material fact that the profit in respect of the same is from the supply and purchase of fertilizers to its members. Further, the

assessee referred to the communications received from the Government dated 19.2.1995, 06.11.1995 and 15.11.1995 and the copy of the circular of the Registrar of Cooperative Societies dated 21.1.1992 and also the registered By-laws of the assessee - bank and in particular, By-law No.63.

9. In addition to the grounds raised before the CIT (A), written submissions were filed by the assessee wherein the assessee produced copies of sample sales bills to prove that the assessee sold fertilizers only to members and they contended that in view of the same, they are entitled to deduction in terms of Section 80P(2)(iv) of the IT Act.

10. Further, it is relevant to note that the TNCS Act, 1983 defines the expression 'credit society' under Section 2(13) to mean a registered society as defined under Section 2(22), which has its principal object of raising funds to be lent to its members for the purposes of agriculture, animal husbandry, etc., or for such other purposes as the Government may, by notification, specify in this behalf. Thus, a credit society as defined under the provisions of the TNCS Act, 1983 is not only confined to extending loans to its members, but also to such other members as the Government may, by Notification, specify.

11. The assessee placed materials before the CIT (A) to show that the fair price shops for sale of fertilizers to the members were opened based on the directives issued by the Government of Tamil Nadu. Therefore, the activity done by the assessee in the sale of items under the PDS to its members would definitely fall within the ambit of a 'credit society' defined under Section 2(13) of the TNCS Act, 1983.

12. The learned Senior Standing Counsel for the Revenue would contend that there are two categories of sales effected by the assessee, one in favour of its members and the other to non members and that the income earned out of sale to non members cannot be held to be a banking activity of the assessee.

13. To test the correctness of the said submission of the learned Senior Standing

Counsel for the Revenue, we have perused the registered By-laws of the society, from which, we find that under By-law No.3, the activities of the society are mentioned. By-law No.3 contains two Sub-Clauses namely (a), which deals with main activities of the appellant society and (b), which deals with ancillary activities of the appellant society. The activity of establishing a fair price shop clearly falls within the scope of By-law No.3(b)(2). Furthermore, the directives issued by the Government of Tamil Nadu, as communicated by the Registrar of Cooperative Societies, are binding on the appellant society. Hence, it cannot be said that the appellant carried on an activity, which was not authorized to be conducted by a credit society.

14. One more argument is advanced by the learned Senior Standing Counsel for the Revenue by contending that there were two categories of people, to whom the items under the PDS were sold.

15. We find that this argument is wholly unsubstantiated and factually incorrect. In this regard, we have earlier referred to the grounds of appeal as well as the written submissions given by the appellant/assessee before the CIT (A) wherein the appellant had produced sample sales bills to prove that they had sold fertilizers only to the members. Thus, we are fully convinced that the activity done by the appellant cannot be said to be an activity, which was not authorized to be done by the society.

16. Our view is strengthened by the decision of the Division Bench of the Bombay High Court in the case of CIT, Nasik Vs. Ahmednagar District Central Cooperative Bank Limited [reported in 2004 (1) Mh. LJ 853]. In the said case, the assessee was a cooperative bank carrying business of banking. Whole amount of profit and gains attributable to the business of banking was not included by the assessee in its income under Section 80P (1) read with Section 80P(2)(a)(i) of the IT Act. During the assessment year in question (1982-83), the assessee earned income by way of commission from the Maharashtra State Electricity Board and from Mula Pravara

Cooperative Society for collecting electricity bills from the public on their behalf. The assessee contended that the commission earned from the afore-stated two public undertakings was income derived from the business of banking and, as such, the said income was exempt under Section 80P(2)(a)(i) of the IT Act. The assessee's contention was that collection of electricity bills was a facility extended by the assessee bank to its customers and it was part of banking business. This contention was not accepted by the Assessing Officer and his order was confirmed by the CIT (A) on the ground that the income earned by way of commission was not income from business and held that the assessee was not entitled to exemption under Section 80P(2)(a)(i) of the IT Act. The assessee filed an appeal before the Tribunal and it was allowed. On appeal by the Revenue to the High Court, the question, which was referred to the Court for consideration, was as to whether the income earned by way of commission from the Electricity Board and other organizations is attributable to business of banking and as such, the relief under Section 80P(1) read with Section 80P(2)(a)(i) of the IT Act was allowable to the assessee. The Division Bench of the Bombay High Court pointed out that the word 'banking' was not restricted only to accepting deposits from the customers for the purpose of lending, that the word 'banking' has been interpreted by the Hon'ble Supreme Court to cover even the rent charged by the banks for hiring out safe deposit vaults to its customers and that in the circumstances, income earned by the assessee bank by way of commission/fees from its customers, being public sector undertakings, would be exempt under Section 80P(2)(a)(i) of the IT Act. Further, the Division Bench pointed out that such view was supported by Section 6(1)(b) of the Banking Regulation Act, 1949, which stated that in addition to the business of banking, a banking company may engage itself as agent for Government or Local Authority or any other person for giving receipts and discharges that is to say for collecting electricity bills from the customers for and

on behalf of the Electricity Board and other organizations.

17. The case on hand is factually a better case since the By-laws themselves provide for such an activity as an ancillary activity by the cooperative society. Furthermore, the appellant society is bound by the directives issued by the Government as well as the Registrar of Cooperative Societies. In the instant case, the Revenue has not disputed the fact that the fair price shops were opened based on the directions issued by the Government of Tamil Nadu as communicated by the Registrar of Cooperative Societies and the District Collector.

18. The learned Senior Standing Counsel for the Revenue has referred to the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited Vs. ACIT, Circle 9(1), Hyderabad [reported in (2017) 88 Taxmann.com 279]. By the said order, the review petition filed by the said society to review the judgment reported in (2017) 84 Taxmann.com 114 was rejected.

19. From the facts given in the copy of the judgment handed over to us by the learned Senior Standing Counsel for the Revenue, we find that in the decision in Citizen Cooperative Society Limited, the assessee was engaged in granting loans to general public without any approval from the Registrar of Societies. Therefore, the Court held that the assessee could not be treated as a cooperative society meant only for providing credit facilities to its members and accordingly, would not be entitled to claim the benefit under Section 80P of the IT Act. This decision can, in no manner, advance the case of the Revenue, as factually we found that the assessee herein is entitled to distribute the items under the PDS, as it is one of the allied activities of the society and is bound by the directives of the Government.

20. Apart from that, the definition of 'credit society' is wider in import to include any activity that the Government may, by Notification, specify. Further, we find from By-law No.12(a) that if the society carries on an activity, which is not

authorized under the By-laws or with the approval of the Registrar, the society is liable to strike off the Rules and the members engaged in the same are liable to be removed. Furthermore, in terms of By-law No.51, the society is entitled to purchase, in bulk, articles and materials required for its members and distribute the same.

21. Therefore, viewed from any angle, the activity done by the appellant society cannot be truncated from the activity as a credit society and we are of the considered view that the Authorities below as well as the Tribunal committed an error in rejecting the stand taken by the appellant/ assessee.

22. For the above reasons, the above tax case appeal is allowed, the orders passed by the Authorities below are set aside and the substantial question of law framed is answered in favour of the assessee. The Assessing Officer is directed to extend the benefit of deduction under Section 80P(1) read with Section 80P(2) (a) (i) of the IT Act to the appellant/assessee."

8. As there is no dispute raised by the Revenue with regard to the applicability of the said decision rendered by us, TCA.No.486 of 2019 needs to be allowed in favour of the assessee.

9. In the result, TCA.No.486 of 2019 is allowed and the substantial question of law entertained by us in this appeal is answered in favour of the assessee. Consequently, the connected CMP is closed. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai 'C' Bench.

2.The Income Tax Officer, Ward 1(4), Salem-7.

+1 CC to Mr.M.Swaminathan, Advocate sr 62675.

TCA.Nos.485 & 486 of 2019
and CMP.No.15232 of 2019

AD(CO)

SP(28/08/2019)