IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.300 of 2017

Principal Commissioner of Income Tax 2,
No.63, Race Course Road,
Coimbatore. .. Appellant/Respondent

-vs-

M/s.Thudiyalur Co-operative Agricultural Services Ltd.,
No.K-1550, Thudiyalur Post,
Coimbatore-641 034.
PAN: AAA AT 3838 L .. Respondent/Appellant

Appeal under Section 260A of the Income-tax Act, 1961, against the order dated 26.10.2016 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No.475/Mds/2012 for the assessment year 2008-09 against the order of the Commissioner of Income Tax (Appeals)-I Coimbatore dated 19.12.2011 in Appeal NO.249/10-11 /2008-09 and against the order of Income Tax Officer, Company Ward-I,Coimbatore dated 22.12.10/2008-09.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
: assisted by Ms.K.G.Usharani,
Junior Standing Counsel

For Respondent : Mr.A.S.Sriraman,
for Mr.S.Sridhar

******

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the appellant/Revenue under Section 260A of the Income-tax Act, 1961, is directed against the order dated 26.10.2016, passed by the Income

Tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No.475/Mds/2012 for the assessment year 2008-09.

2.The above appeal has been filed raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal is right in law in holding that the assessee is eligible for deduction under Section 80P(4) of the Income Tax Act, when there is violation of Explanation (a) below Section 80P(4) read with the provisions of Section 5(cciv) and (ccv) of the Banking Regulation Act?"

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, assisted by Ms.K.G.Usharani, learned Junior Standing Counsel for the appellant/Revenue; and Mr.A.S.Sriraman, learned counsel for Mr.S.Sridhar, learned counsel for the respondent/assessee.

4.The substantial question of law framed for consideration was considered by a Division Bench of this Court in the case of The Principal Commissioner of Income Tax, Salem vs. M/s.S-1308 Ammapet Primary Agricultural Cooperative Bank Ltd., [T.C.A.Nos.882 to 891 of 2018, dated 06.12.2018] to which, one of us (TSSJ) was a party.

5.The appeals filed by the Revenue were dismissed and the substantial questions of law were answered against the Revenue. The operative portion of the judgment read as follows:-

> "11. We have elaborately heard the learned Senior Standing Counsel for the Revenue.
>
> 12. Admittedly, the assessee - society is registered under the provisions of the TNCS Act. It defines the word 'members' under Section 2(16) to mean a person joining in the application for the registration of society and a person admitted to the membership after registration in accordance with the provisions of the Act, the Rules framed thereunder and the By-laws and includes an associate member. The expression 'associate member' is defined under Section 2(6) of the TNCS Act to mean a member, who possesses only such privileges and rights of a member and

who is subject only to such liabilities of a member as may be specified in this Act, the Rules and the By-law.

13. Thus, the definition of the word 'members' includes an associate member and therefore, the Assessing Officer fell into an error in drawing a distinction between A Class members and B Class members. For the purpose of being entitled to a relief under Section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-Section (2) of Section 80P of the Act.

14. Further, it is to be pointed out that in terms of Sub-Section (4) of Section 80P of the Act, which was inserted vide the Finance Act, 2006 with effect from 01.4.2007 i.e from the assessment year 2007-08, the 'primary cooperative agricultural and rural development bank' means 'a society having its area of operation confined to a taluk, the principal object of which is to provide for long term credit for agricultural and rural development activities'. What was excluded was the 'cooperative banks' and admittedly, the assessee society is a primary agricultural cooperative credit society and therefore, would be entitled to the benefit of Section 80P of the Act.

15. Further, for the assessment year 2014-15, the decision in the case of Citizen Cooperative Society Limited was relied upon by the Revenue before the Tribunal, which, in paragraph 6.1 of its order dated 28.2.2018 for the assessment year 2014-15, extracted the operative portion of that judgment. In that case, the Hon'ble Supreme Court found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third

parties, who were not members in the real sense and were using those deposits to advance gold loans. Therefore, the Hon'ble Supreme Court pointed out that such an activity of the said society was that of a finance business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The Hon'ble Supreme Court found that the said society was not entitled to deduction under Section 80P of the Act.

16. It is noteworthy to point out that the Hon'ble Supreme Court in the decision in the case of Citizen Cooperative Society Limited also observed that in the light of insertion of Sub-Section (4) to Section 80P of the Act by the Finance Act, 2006, such deduction should not be admissible to a cooperative bank and that if it is a primary agricultural credit society or a primary cooperative agriculture and rural development bank, the deduction would still be provided.

17. In the preceding paragraphs, we have pointed out the definitions of the expressions 'members' and 'associate member' under the TNCS Act and held that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. Furthermore, the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Clause (b) to Sub-Section (4) of Section 80P of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the assessee as confirmed by the Tribunal. We do

not find any good ground to entertain these appeals.

18. Accordingly, the above tax case appeals are dismissed. The substantial questions of law framed are answered against the Revenue."

6.Following the same, this appeal is dismissed and the substantial question of law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income Tax Officer, Company Ward-I,
O/o. The Additional Commissioner of Income Tax, Range-I,
63, Race Course Road, Coimbatore-18.

2.The Commissioner of Income Tax (Appeals),I
Coimbatore.

3.The Income Tax Appellate Tribunal 'D' Bench, Chennai.

+1cc to Mr.T.R.Senthil kumar , Advocate SR.No. 75704

Tax Case Appeal No.300 of 2017

sj
A.SK(15/10/2019)