

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.5600 of 2020
and
WMP. Nos.6557 & 6558 of 2020

Kombanaipudur Womens Milk
Producers Cooperative Society Ltd.,
Rep. by its Secretary,
T.Thirunavukkarasu.Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Income Tax Department,
Circle -2, Erode. Respondent

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the entire records relating to the impugned order passed by the respondent in No.Nil, dated 29.11.2019 and quash the same.

For Petitioner : Mr.C.Prakasam
for Mr.S.Karthikeyan
For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

O R D E R

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice and is armed with instructions in the matter. By consent expressed by both learned counsel, this matter is disposed finally even at the stage of admission.

2. The challenge is to an order of assessment for the Assessment Year 2012-13, passed in terms of the Income Tax Act, 1961 (in short 'Act'). Two issues arise: (i) in relation to disallowance under Section 69A of the Act (ii) in relation to the claim of deduction under Section 80P of the Act.

3. The Petitioner is a Primary Agricultural Cooperative Society Limited. As regards the first issue, admittedly, no case has been made out to warrant interference under Article 226 of the Constitution of India. The petitioner is thus relegated to appeal remedy in relation to the same.

4. As regards the second issue, I have had occasion to consider an identical issue in a batch of writ petitions filed by several Primary Agricultural Co-operative Societies, and in the case of K.2058, Saravanmpatti Primary Agricultural Co-operative Credit Society Ltd., Vs. The Income Tax Officer (W.P.Nos.17 of 2020 etc. batch dated 31.01.2020), while dealing with a claim of deduction under Section 80P of the Income Tax Act by the Co-operative Societies, I have stated as follows:

'23. The issue that arises in W.P.Nos.1124, 1123, 1127, 1131, 1133, 1136, 1138, 1141, 1143, 1145, 1149, 1293, 1299 and 1420 of 2020 also involves the entitlement of the petitioners that claim to be Primary Agricultural Co-operative Credit Societies, to deduction under Section 80P. The petitioners were called upon to produce various details in support of their claims and a specific question raised for their response was as follows:

'4. Is the society having associate/nominal member. If yes, whether the society is carrying on business with them? If so, please show cause why the deduction u/s.80P cannot be denied in view of the decision of the Jurisdictional ITAT in the case of M/s S1234 Udyapatti PACCS Ltd., Udyapatti P.O, Salem - 636 140 in ITA No.2332/Chny/2017. Wherein the ITAT followed the decision of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd Vs. Assistant Commissioner of Income-tax, Circle - 9(1), Hyderabad reported in [2017] 84 taxmann.com 114 (SC) and denied deduction u/s.80P.'

24. We are concerned in these Writ Petitions only to the claim of the petitioners for exemption by application of the principle of mutuality and the rejection of the same. According to the petitioner, credit facilities are offered by it to members in A as well as B classes. The petitioners argued before the Assessing Authority that their income would be exempt on the ground of application of mutuality, since the inflows as well as outflows related to one common group

of members with which the Society is in complete identity.

25. However, the officer draws a distinction between the two classes of members - B class members are non-shareholding members admitted only for the purpose of availing loans against specified securities. Non-refundable admission fee is remitted by them and the duration of their membership is restricted to a maximum of three years. B class members are not allotted shares and their membership does not carry with it the right to vote and participate in elections, become office bearers or participate in General Body Meetings. They also do not hold any right to the profits or gains of the Society, while shareholding members, i.e., A class members enjoy all the aforesaid rights denied to the B class members.

26. The Assessing Authority was thus of the view that the claim of the petitioners is liable to be rejected in the light of the judgment of the Supreme Court in the case of Citizen (supra). Reliance was specifically placed on paragraph 24 of the judgement, where a distinction is made between Nominal Members and Ordinary Members. Paragraph 24 reads as follows:

'Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank', the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.'

27. Thus, though categorised as A and B, there are vital distinctions that were drawn between the members of the two classes and hence the principle of mutuality that was relied upon by the petitioners was rejected as being inapplicable to its case.

28. A Division Bench of this Court has, on identical facts as in the present case, in the case of The Principal Commissioner of Income Tax, Salem V. M/s.S-1303 Ammapet Primary Agricultural Cooperative Bank Ltd., Ammapet, Salem (T.C.(A)Nos.882 and 891 of 2018 dated 06.12.2018) held that the assessee would be

entitled to deduction under Section 80P. The reasoning was that under the TNCS Act, a member and an associate member are one and the same and an associate member has also been held to be holding the character of a member. The Division Bench has taken the view that as far as the State of Tamil Nadu is concerned, the TNCS Act equates both members and associate members and places them on par. Thus, the distinction carved out by the Supreme Court would not be applicable in these cases.

29. In several of the orders of assessment impugned before me (W.P.Nos.1131, 1136, 1141, 1145 AND 1420 of 2020) the Assessing Officer, making reference to the order of the Division Bench of the Madras High Court, has stated that the orders have not been accepted and have been challenged by way of Special Leave Petitions.

30. No counter has been filed in these writ petitions. Mr. Jayapratap however, fairly produces a copy of the order in SLP filed challenging the order of the Division Bench in Ammapet (supra) (Special Leave to Appeal (c) No.17745 of 2019 dated 17.01.2020), wherein the Department has withdrawn the Special Leave Petition on account of low tax effect. The question of law has been kept open. In such circumstances, the order of the Division Bench of this Court would hold the field till such time it is modified or reversed. The relevant portion of the order is as follows:

'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. '

31. Learned counsel for the Revenue states that there are cases of other identically placed Agricultural Cooperative Marketing Societies that the Revenue has carried/intends to carry to the Supreme Court where the stakes involved are significantly higher, such as, Tiruchengode Agricultural Producers Cooperative Marketing Society Ltd. and Veerakeralam Primary

Agricultural Cooperative Credit Society, Coimbatore. In such a case, the questions of law would be decided in those cases.

32. In the light of the fact that the questions of law in this regard are still at large, the petitioners are directed to file a statutory appeal before the Commissioner of Income Tax (Appeals) within a period of three(3) weeks from today. However, let no recovery of the demand relating to this issue be enforced till the disposal of the appeals.

5. In view of the identity of facts and legal position, the aforesaid order is equally applicable to the present case as well, vis-a-vis, this issue. The petitioner is thus permitted to file a statutory appeal challenging the order of assessment before the Commissioner of Income Tax (Appeals) within a period of three (3) weeks from today. No recovery of the demand in relation to issue (ii), that is, in relation to deduction claimed under Section 80P be enforced till such time the appeal is disposed by the first appellate authority.

6. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

rkp

To

The Assistant Commissioner of Income Tax,
Income Tax Department,
Circle -2, Erode.

+1 CC to Mr.A.P.Srinivas, Advocate sr 19955.

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VBA (CO)
SP(12/03/2020)