IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.6829 & 7155 OF 2021
AND
W.M.P.NOS.7383, 7388, 7676 & 7677 OF 2021

[VIDEO CONFERENCING]

W.P.No.6829 of 2021

AA.226, Modakurichi Primary Agricultural
Cooperative Credit Society,
Rep. by its President,
P.V.Saravanan, M/54,
S/o.Venkatachalam,
Perumapalayam, Modakuruchi Post,
Erode District.

....Petitioner

-Vs-

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
Delhi. .....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the Respondent in DIN No.ITBA/AST/S/143(3)/2020-21/1030898123(1), dated 23.02.2021 and quash the same and pass such further or other orders as this Court may deem fit.

W.P.No.7155 of 2021

K.2065 Kalikkanaickenpalayam Primary
Agricultural Cooperative Credit Society Ltd.,
Rep. by its Secretary,
S.Sivaswamy, M/57,
S/o.S.Subramaniam,
No.1/136, Vinayagar Nagar, Kasthurinaickenpalayam,
Vadavalli Post,
Coimbatore 641 041

....Petitioner

-Vs-

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
Delhi.

.....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the Respondent in DIN No.ITBA/AST/S/143(3)/2020-21/1030727983(1), dated 17.02.2021 and quash the same and pass such further or other orders as this Court may deem fit.

For Petitioner	:	Mr.C.Prakasam (in both Writ Petitions)
For Respondent	:	Mr.A.N.R.Jayaprathap Junior Standing Counsel (in both Writ Petitions)

COMMON ORDER

The petitioner in W.P.No.6829 of 2021 has challenged the impugned assessment order in DIN No.ITBA/AST/S/143(3)/2020-21/1030898123(1), dated 23.02.2021. The petitioner in W.P.No.7155 of 2021 has challenged the impugned assessment order in DIN No.ITBA/AST/S/143(3)/2020-21/1030727983(1), dated 17.02.2021.

2.The petitioners have challenged the impugned assessment orders. The issue before the respondent while passing the aforesaid orders was whether the petitioners were entitled to benefit of deduction under Section 80P falling under Chapter VI-A of the Income Tax Act, 1961. The respondent denied the benefit of deduction under Section 80P of the Income Tax Act, 1961.

3.It is the case of the petitioner that the petitioners are Agricultural Co-operative Credit Societies and that the main business is to lend money to the members of the societies and that the excess income earned by the petitioners are invested in the Fixed Deposit before the Co-operative Banks, which entitled the petitioners to get income on the Fixed Deposits made in the Co-operative banks. It is the specific case of the petitioners that the issue had attained finality before this Court and that there is no basis on which the impugned order could have been passed. The learned counsel for the petitioners further submits that the issue is now covered by the decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., vs. Commissioner of Income Tax, Calicut reported in [2021] 123 taxmann.com 161 (SC). In this connection, reference was made to Paragraph 45 of the order which reads as under:

> "45. To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to

their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.”

4.Opposing the prayer, the learned Junior Standing Counsel for the respondent would submit that though the issue has attained finality before this Court in TCA.No.882 of 2018, dated 16.12.2018 and the Income Tax Department has preferred an Appeal before the Hon'ble Supreme Court in S.L.A.(C).No.17745 of 2019, however later withdrew the same on account of the monetary policy and that the Hon'ble Supreme Court has left the issue open. The learned Junior Standing Counsel would further submit that the issue is still open and the petitioners should work out the remedy before the Appellate Commissioner against the impugned orders, as the appellate remedy is more efficacious.

5.It is further submitted that even as per the decision of the Hon'ble Supreme Court cited by the learned counsel for the petitioner reported in Mavilayi Service Co-operative Bank Ltd., vs. Commissioner of Income Tax, Calicut, the burden of proof is on the petitioners. In this connection, reference was made to Paragraphs 32 and 39 of the order which reads as under:

“32. Fifthly, as has been held in Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT (2009) 8 SCC 393 at paragraph 23, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P. Therefore, the assessing officer under the IT Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6) of the IT Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is engaged in providing cre dit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so.”

“39. The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.”

6.I have considered the arguments advanced by the learned counsel for the petitioners and the learned Junior Standing Counsel appearing on behalf of the respondent.

7.The issue as on date, on merits appears to be covered by the two decisions of the Division Bench of this Court and is binding on this Court. Even though the Hon'ble Supreme Court has left the issue open to be decided at the future point of time, the respondents cannot deviate and pass any orders. Be that as it may, the issue as to whether the petitioner is entitled to benefit of deduction under Section 80P of the Income Tax Act, 1961 is concerned, the decision of the Hon'ble Supreme Court which is relied by both the petitioners as well as the respondent has to be properly adjudicated which has not be considered while passing the impugned orders.

8.Therefore, the cases are remitted back to the respondent to pass appropriate orders on merits and in accordance with law, within a period of 45 days from the date of receipt of a copy of this order. If required the petitioners may be given the benefit of personal hearing through video conferencing, if the petitioners so desires.

9.These Writ Petitions stand disposed of with the above observations. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pgp

To

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
Delhi.

+2ccs to Mr.A.P.Srinivas, Advocate, S.R.No.66546

W.P.Nos.6829 & 7155 of 2021
and
W.M.P.Nos.7383, 7388, 7676 & 7677 of 2021

AK II(CO)
PM/19/01/2022