IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal Nos. 2396, 2759, 2847, 2851, 2868 and 2884 of 2021
and 138, 165, 243, 252, 281, 314 and 491 of 2022
and
CMP Nos. 15277, 15280, 18116, 18947, 18974, 19346 & 19694 of 2021
and 1028, 1105, 1774, 1836, 1997, 2390 & 3545 of 2022

1.THE INCOME TAX OFFICER
WARD - 2 (1) ERODE, INCOME TAX OFFICE
NO.15 GANDHIJI ROAD, ERODE,
ERODE DT.
...APPELLANT/RESPONDENT in WA No.2396 of 2021

2.THE INCOME TAX OFFICER
WARD 1(2) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641602.
...APPELLANT/RESPONDENT in WA No.2759 of 2021

3.THE INCOME TAX OFFICER
WARD 2(3) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641602.
...APPELLANT/RESPONDENT in WA No.2847 of 2021

4.THE INCOME TAX OFFICER
WARD-I(4) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641 602.
...APPELLANT/RESPONDENT in WA No.2851 of 2021

5.THE INCOME TAX OFFICER
WARD 2(3) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641 602.
...APPELLANT/RESPONDENT in WA No.2868 of 2021

6.THE INCOME TAX OFFICER
WARD - 2 (3) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR - 641 602.
...APPELLANT/RESPONDENT in WA No.2884 of 2021

7.THE INCOME TAX OFFICER
NO.121 ADAM BUILDING SIXTY FEET ROAD
TIRUPUR-641602
...APPELLANT/RESPONDENT in WA No.138 of 2022

8.THE INCOME TAX OFFICER
WARD 2(4) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641 602.
...APPELLANT/RESPONDENT in WA No.165 of 2022

9.THE INCOME TAX OFFICER
WARD-2(3) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR-641602
...APPELLANT/RESPONDENT in WA No.243 of 2022

10.THE INCOME TAX OFFICER
WARD-2 (4) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641 302.
...APPELLANT/RESPONDENT in WA No.252 of 2022

11.THE INCOME TAX OFFICER
NON CORP WARD 4(2) CBE NO.63
RACE COURSE ROAD COIMBATORE 641 018.
...APPELLANT/RESPONDENT in WA No.281, 314 of 2022

12.THE INCOME TAX OFFICER
WARD -2 (1) ERODE INCOME TAX OFFICE
NO.15 GANDHIJI ROAD ERODE ERODE DISTRICT
...APPELLANT/RESPONDENT in WA No.491 of 2022

Vs

1.AA.226 MODAKURICHI PRIMARY AGRICULTRUAL
COOPERATIVE CREDIT SOCIETY
REP.BY ITS PRESIDENT P.V. SARAVANAN M/52
S/O. VENKATACHALAM PERUMAPALAYAM
MODAKURUCHI POST ERODE DT.
...RESPONDENT/PETITIONER in WA No.2396 of 2021

2.K 2092 CHETTIPALAYAM PRIMARY
AGRICULTURAL CO OPERATIVE CREDIT SOCIETY LTD
REP BY ITS SECRETARY S.SUNDARRAJ M/47
S/O.K.SADAYAN NO.37 SUSAIYAPURAM
T M C COLONY TIRUPPUR
...RESPONDENT/PETITIONER in WA No.2759 of 2021

3.K-2043 ANDIPALAYAM PRIMARY AGRICULTURAL
CO OPERATIVE CREDIT SOCIETY LTD
REP BY ITS SECRETARY N.VISVESWARAN S/O.M.
NACHIMUTHU NO.1/94 A.VELAYUDHAMPALAYAM
ALAGUMALAI POST TIRUPPUR DISTRICT.
...RESPONDENT/PETITIONER in WA No.2847 of 2021

4.K 1594 PERUMANALLUR PRIMARY
AGRICULTURAL COOPERATIVE CREDIT SOCIETY LTD
REP BY ITS SECRETARY A.BALAMANI W/O.G.D.
SENTHIL GANESU NO.3/45 MAIN ROAD
PERUMANALLUR TIRUPPUR DISTRICT.
...RESPONDENT/PETITIONER in WA No.2851 of 2021

5.K-2051 VIJAYAPURAM URBAN COOP CREDIT SOC
CO-OPERATIVE CREDIT SOCIETY
REP. BY ITS SECRETARY REP. BY ITS SECRETARY
N.MUTHUNAGAI F/47 W/O.M.SHANMUGASUNDARAM
NO.42 THENDRAL NAGAR, VIJAYAPURAM, TIRUPPUR - 641606
...RESPONDENT/PETITIONER in WA No.2868 of 2021

6.K-2038 MANGALAM PRIMARY AGRICULTURAL
CO-OPERATIVE CREDIT SOCIETY LTD.
REP BY ITS SECRETARY A.RENUKA W/O. GURUSAMY
NO. 12/4 OM SAKTHI NAGAR KRISHNAPURAM
SOMANUR SALUR TALUK, COIMBATORE DISTRICT.
...RESPONDENT/PETITIONER in WA No.2884 of 2021

7.M/S.UTTUKULI AND AVINASI UNION PUBLIC SERVANTS
CO-OP THRIFT AND CREDIT SOCIETY LTD.
REP. BY ITS SECRETARY
1 T.M.P JAYALAKSHMI COMPLEX
VIJAYAMANGALAM UTHUKULI POST THIRUPUR DISTRICT - 638751
...RESPONDENT/PETITIONER in WA No.138 of 2022

8.K.1140 JALLIPATTI PRIMARY AGRICULTURAL
CO-OPERATIVE CREDIT SOCIETY LTD.
REP. BY ITS SECRETARY S.BADRUDEEN M/51
S/O.S.SIRAJUDEEN NO.18 SARASWATHI LAYOUT
DHARAPURAM ROAD, UDUMALPET, TIRUPPUR DISTRICT.
...RESPONDENT/PETITIONER in WA No.165 of 2022

9.K 1621 PONGALUR PRIMARY AGRICULTURAL
CO OPERATIVE CREDIT SOCIETY LTD.
REP BY ITS SECRETARY G.LATHADEVI F/43
W/O. GOVINDASAMY NO.7/469-29 ALR NAGAR
PONGALUR AND POST TIRUPPUR
...RESPONDENT/PETITIONER in WA No.243 of 2022

10.K.1104 ELAYAMUTHUR PRIMARY AGRICULTURAL
CO OPERATIVE CREDIT SOCIETY LTD
REP BY ITS SECRETARY P.CHINNASAMY M/55
S/O.PERIYASAMY NO.1/358 P.V.LAYOUOT
S.V.MILLS POST S.V.PURAM, UDUMALPET & TALUK,
TIRUPPUR DISTRICT.
...RESPONDENT/PETITIONER in WA No.252 of 2022

11.K.758 IKKARAI BOLUVAMPATTI PRIMARY AGRICULTURAL
COOPERATIVE CREDIT SOCIETY LTD.
REP. BY ITS SECRETARY S.SUSEELA F/49
W/O.MARUTHACHALAM NO.4/4A BOLUVAMPATTI STREET
RAMANATHAPURAM, POOLUVAPATTI, COIMBATORE - 641101.
...RESPONDENT/PETITIONER in WA No.281 of 2022

12.C.C.2341 PERUR CHETTIPALAYAM PRIMARY AGRICULTURAL
CO-OPERATIVE CREDIT SOCIETY LTD.
REP. BY ITS SECRETARY R.ANANTHAN M/51
S/O.K.RANGASAMY ARUMUGA GOUNDANUR PERUR
CHETTIPALAYAM POST, COIMBATORE - 641010.
...RESPONDENT/PETITIONER in WA No.314 of 2022

13.THE CHITHODE FARMERS SERVICE COOPERATIVE SOCIETY LTD
NADUPALAYAM CHITHODE ERODE DISTRICT
PRESENTLY CALLED AS K.11279 CHITHODE PRIMARY AGRICULTURAL COOPERATIVE CREDIT SOCIETY LTD
REP.BY ITS SECRETARY M.ESWARAMOORTHY, RANGAPURAM
CHITHODE-638102, ERODE TALUK AND DISTRICT.
...RESPONDENT/PETITIONER in WA No.491 of 2022

Prayer in WA No.2396 of 2021:
Appeal filed under Clause 15 of the Letters Patent against the order dated 06.09.2019 and made in WP No. 769 of 2019 on the file of this court.

Common Prayer in WA Nos.2759, 2847, 2851, 2868 and 2884 of 2021, 138, 165, 243, 252, 281, 314 and 491/2022

Appeal are filed under Clause 15 of the Letters Patent against the order dated 27.06.2019 and made in WP.Nos.3721, 3718, 3712, 3720, 3714, 4477, 4540, 4389, 4535, 4100, 5238 and 5006 of 2019 respectively on the file of this court.

Prayer in WP No.769 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA / AST / S / 143 (3) / 2018 - 19 / 1014648589 (1) dated 28.12.2018 and quash the same.

Prater in WP No.3721 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19 / 1014606291 (1) dated 27.12.2018 and quash the same.

Prayer in WP No.3718 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143 (3)/ 2018-19/ 1014594606 (1) dated 26.12.2018 and quash the same

Prayer in WP No.3712 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19 / 1014429866 (1) dated 20.12.2018 and quash the same.

Prayer in WP No.3720 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143 (3)/ 2018-19/ 1014594884 (1) dated 26.12.2018 and quash the same.

Prayer in WP No.3714 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19 / 1014593051 (1) dated 26.12.2018 and quash the same.

Prayer in WP No.4477 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA/AST/S/143(3)/2018-19/1014608013 (1) passed by the respondent for the Assessment Year 2016-17 and quash the order dated 27/12/2018.

Prayer in WP No.4540 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143 (3)/ 2018-19/ 1014601316(1), dated 25.12.2018 and quash the same.

Prayer in WP No.4389 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA/AST/S/143(3)/2018-19/1014595977(1), dated 26.12.2018 and quash the same.

Prayer in WP No.4535 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143 (3)/ 2018-19/ 1014568833(1), dated 25.12.2018 and quash the same.

Prayer in WP No.4100 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No.ITBA / AST / S / 143 (3) / 2018-19/ 1014279348 (1) dated 14.12.2018 and quash the same.

Prayer in WP No.5238 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in Order No. ITBA/ AST/ S/ 143(3)/ 2018-19/ 1014180907(1), dated 11.12.2018.

Prayer in WP No.5006 of 2019: Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari to calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA / AST / S / 143(3) / 2018-19/ 1014657015(1) dated 29.12.2018 and quash the same.

For Appellant : Mr.A.P.Srinivas
Senior Standing counsel for Income Tax
in all the Writ Appeals

For Respondent : Mr. C. Prakasam
in all the Writ Appeals

COMMON JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

These writ appeals are filed by the Revenue, questioning the validity of the orders passed by the learned Judge in the writ petitions filed by the respondents / co-operative societies.

2. The writ petitions have been filed by the respondents /co-operative societies questioning the orders of assessment passed by the Assessing Officer and demanding payment of tax.

3. For the purpose of appreciating the factual matrix of the case, the averments made in WP No. 769 of 2019, corresponding to W.A. No. 2396 of 2021, are taken as the lead case.

4. According to the respondent/writ petitioner in WP No. 769 of 2019, they are the Agricultural Cooperative Credit Society registered under the Tamil Nadu Cooperative Societies Act, 1983. They filed its return of income for the assessment year 2016-2017 on 12.10.2016 declaring 'nil' income and claimed deduction under Section 80-P of the Income-tax Act (in short, 'the Act'). Such return filed by the respondent/writ petitioner was processed under Section 143 (1) of the Act and the assessment was completed under section 143(3) of the Act on 28.12.2018, determining a total income of Rs.26,66,374/- and demanded Rs.10,71,103/- towards tax, while disallowing the claim made under Section 80P of the Act. Aggrieved by the order of assessment dated 28.12.2018, the respondent / writ petitioner has filed WP No. 769 of 2019.

5. The learned Judge, on consideration of the submissions made by both sides, disposed of the said writ petition No. 769 of 2019 on 06.09.2019 along with other writ petition, after having found that the issue involved in the writ petitions is covered by the judgment dated 02.08.2016 passed by the Division Bench of this Court in Tax Case Appeal Numbers 484 to 487 and 490 of 2016 wherein it was held that the exemption spelt out in section 80P(4) of the Income Tax Act, 1961, is applicable to the credit society. However, it was brought to the notice of the learned Judge by the counsel for the revenue that as against the said order passed by the Division Bench of this Court, an appeal in SLP(C) No.11745 of 2019 has been filed before the Honourable Supreme Court and it is pending. Having regard to the same, the learned Judge

directed the appellant herein not to give effect to the orders of assessment, which are impugned in the writ petitions and to keep them in abeyance and further proceedings shall be taken up subject to the outcome of the Special Leave Petition pending before the Honourable Supreme Court.

6. Challenging the orders so passed by the learned Judge in the writ petitions, the Revenue has come up with these writ appeals.

7. When these appeals are taken up for hearing today, the learned Senior Standing Counsel appearing for the appellant contended that once the orders of assessment are passed, the assessees ought to have filed statutory appeals before the appellate authority, whereas in this case, the respondents/ co-operative societies filed both the writ petitions under Article 226 of the Constitution of India and the statutory appeals before the CIT (Appeals) simultaneously and hence, the learned Judge ought not to have entertained the writ petitions. However, he fairly submitted that the Division Bench of this Court, in the Judgment dated 02.08.2016 passed in Tax Case Appeal Numbers 484 to 487 and 490 of 2016 has held that in terms of Section 80P of the Act, which was inserted under the Finance Act, 2006 with effect from 01.04.2007, the assessees, which are the cooperative credit societies, would be entitled to the benefit of Section 80P of the Act. It is further stated that assailing the said order passed by the Division Bench of this Court, the Revenue has carried the matter on appeal before the Honourable Supreme Court in Special Leave to Appeal (c) No (s).17745/2019 [Prl. Commissioner of Income Tax Vs. M/s.S.1308 Ammapet Primary Agricultural Cooperative Bank Ltd] and the Honourable Supreme Court, by judgment dated 17.01.2020 permitted the Department to withdraw the appeal while keeping the question of law open for consideration. The order dated 17.01.2020 passed by the Honourable Supreme Court reads as follows:

> “Permission granted, subject to just exceptions.”
>
> The special leave petition and pending applications are dismissed as withdrawn, leaving questions(s) of law open.”

The learned Senior Standing Counsel therefore submitted that the appeals filed by the respondents / co-operative societies before the appellate authority have to be examined in the light of the decision of the Division Bench of this Court mentioned supra.

8. On the other hand, the learned counsel appearing for the respondents/co-operative societies fairly submitted that as against the orders of assessment, the respondents herein have also filed statutory appeals and they are pending before the Appellate Authority. The learned counsel also brought to the notice of this Court the judgment of the Honourable Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax, Calicut (2021) 123 taxmann.com 161 (SC), wherein, in paragraph 45, it was observed as follows:

> " 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."

Relying upon the above decision of the Honourable Supreme Court, the learned counsel for the respondents / co-operative societies submitted that appropriate direction may be issued to the Appellate Authority to take note of the aforesaid decision of the Honourable Supreme Court as well, at the time of disposal of the statutory appeals filed by the respondents herein.

9. Heard the learned Senior Standing Counsel appearing for the appellant and the learned counsel for the respondents.

10. Admittedly, in all these cases, the Assessing Officer has passed orders of assessment determining the income of the respective respondent/ Cooperative Society and demanded tax. Challenging the said orders of assessment, the respondents have already filed appeals before the appellate authority and they are pending. Therefore, it would be appropriate to direct the respondents herein to raise all the contentions including the eligibility of their claim under section 80P of the Act, in the appeals pending before the appellate authority. The appellate authority is also directed to consider the claim of the respondents/co-operative societies and pass orders, on merits and in accordance with law and also in the light of the decision rendered by the Honourable Supreme Court, mentioned supra. Accordingly, the orders impugned herein, shall stand modified.

11. All the writ appeals stand disposed of in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

msr/rsh

To

1.THE INCOME TAX OFFICER,
WARD -2 (1), ERODE, INCOME TAX OFFICE
NO.15, GANDHIJI ROAD, ERODE
ERODE DISTRICT.

2.THE INCOME TAX OFFICER,
WARD 1(2) TPR INCOME TAX OFFICE,
NO.121, 60 FEET ROAD, TIRUPPUR 641602.

3.THE INCOME TAX OFFICER,
WARD 2(3) TPR INCOME TAX OFFICE,
NO.121, 60 FEET ROAD, TIRUPPUR 641602.

4.THE INCOME TAX OFFICER,
WARD-I(4) TPR INCOME TAX OFFICE,
NO.121, 60 FEET ROAD, TIRUPPUR 641 602.

5.THE INCOME TAX OFFICER,
NO.121, ADAM BUILDING, SIXTY FEET ROAD,
TIRUPUR-641602.

6.THE INCOME TAX OFFICER
WARD 2(4) TPR INCOME TAX OFFICE
NO.121 60 FEET ROAD TIRUPPUR 641 602.

7.THE INCOME TAX OFFICER
NON CORP WARD 4(2) CBE NO.63
RACE COURSE ROAD COIMBATORE 641 018.

+13ccs to Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax, SR. No. 16739

+5ccs to Mr.C.Prakasam, Advocate SR. Nos.16634 to 16638

WA No. 2396 of 2021

NRJK (CO)
PR (05/04/2022)