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.2395 of 2021 and 73 of 2022
and
CMP.Nos. 15275 of 2021 & 665 of 2022

WA.No.2395 of 2021

The Income Tax Officer,
Ward-2(2), Erode,
Income Office,
No.15, Gandhiji Road,
Erode, Erode District .. Appellant

Versus

K.4442 Pethampalayam Primary
Agriculture Cooperative Credit Society Ltd.,
represented by its President
R.Shanmugasundaram,
S/o.Rasa Gounder,
Elayampalayam,
Kovilapalayam Post,
Kanjikoil, Perundurai 638 116.
Erode District. .. Respondent

WA.No.73 of 2022
The Income Tax Officer,
Ward-2(1),
Income Office,
No.15, Gandhiji Road,
Erode, Erode District .. Appellant
AA 520, Veerappampalayam Primary
Agricultural Cooperative Society
Limited, represented by its Secretary,
AA.520, Veerappampalayam
Arachalur (Via), Erode 638 101 .. Respondent

W.A. No. 2395 of 2021:- Appeal filed under Clause 15 of the Letters Patent against the order dated 06.09.2019 passed in Writ Petition No. 1608 of 2019 on the file of this Court

Prayer in WP.No.1608 of 2019: Writ Petition filed under Article 226 of the Constitution of India to Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in order No.ITBA/AST/S/143(3)/2018-19/1014552487(1), dated 24.12.2018 and quash the same.

W.A. No. 73 of 2022:- Appeal filed under Clause 15 of the Letters Patent against the order dated 27.06.2019 passed in Writ Petition No. 3389 of 2019 on the file of this Court

Prayer in WP.No.3389 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent herein in order No.ITBA/AST/S/143/(3)/2018-19/1014657509(1) passed by the respondent for the Assessment Year 2016-2017 and quash the order dated 29.12.2018.

For Appellant	:	Mr. A.N.R. Jayaprathap Senior Standing counsel in both the Writ Appeals
For Respondent	:	Mr. C. Prakasam in both the Writ Appeals

COMMON JUDGMENT

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

Both the writ appeals are filed by the Revenue, questioning the validity of the orders dated 06.09.2019 and 27.06.2019 passed by the learned Judge in the respective Writ Petition Nos.1608 and 3389 of 2019.

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. According to the respondents / writ petitioners, they are the Cooperative Credit Societies registered under the Tamil Nadu Cooperative Societies Act, 1983. They filed their return of income for the assessment year 2016-2017 declaring 'nil' income and claimed deduction under Section 80-P of Income Tax Act (in short, 'the Act'). Such returns filed by the respondents/writ petitioners were processed under Section 143 (1) of the Act and the assessment was completed determining the total income and demanded payment of tax, while disallowing their claim made under Section 80P of the Act. Aggrieved by the orders of assessment, the respondents / writ petitioners have

filed the aforesaid two writ petitions.

4. The learned Judge, on consideration of the submissions made by both sides, disposed of the said writ petitions, 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.

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

6. 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, instead of filing statutory appeals, preferred the writ petitions under Article 226 of the Constitution of India 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."

Stating so, the learned Senior Standing Counsel prayed for appropriate direction to the respondents / co-operative societies in these writ appeals.

7. In view of the aforesaid submissions made on the side of the appellant, the learned counsel appearing for the respondents / co-operative societies sought leave of this court to file statutory appeals before the appellate authority, as against the orders of assessment passed by the assessing officer. 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 to be filed by the respondents herein.

8. Having regard to the submissions made by the learned counsel on either side, this court grants four weeks time from the date of receipt of a copy of this judgment, to the respondents herein to file statutory appeals before the appellate authority. On such filing, the appellate authority shall entertain the same, without raising any issue relating to limitation aspect, consider the claims of the respondents/co-operative societies including their eligibility under section 80P of the Act 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.

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

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

msr/rsh

To

1. The Income Tax Officer,
   Ward-2(2), Erode,
   Income Office,No.15, Gandhiji Road,
   Erode, Erode District

2. The Income Tax Officer,
   Ward-2(1), Income Office,
   No.15, Gandhiji Road,
   Erode, Erode District

+1cc to Mr.C.Prakasam, Advocate, S.R.No.16639
+2ccs to Mr.A.P.Srinivas, Advocate, S.R.No.16741

W.A.Nos. 2395 of 2021 and 73 of 2022

GMR(CO)
SU(06/04/2022)