

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 517/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013

The Income Tax Officer,
Ward 2(3),
Salem 636 007.

Vs. M/s. S-55, Keerippatty Primary
Agricultural Co-op Credit Society Ltd,
Keerippatty post, Attur T.K.
Salem 636 107.

(अपीलार्थी/Appellant)

[PAN AAAAK 5455E]

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 518/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013

The Income Tax Officer,
Ward 2(3),
Salem 636 007.

Vs. M/s. S-1299, V. Mannarpalayam
Primary Agricultural Co-op. Credit
Society Ltd, V. Mannarpalayam Post,
Valappady T.K. Salem 636 115.

(अपीलार्थी/Appellant)

[PAN AAEAS 8231N]

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 519/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013

The Income Tax Officer,
Ward 2(3),
Salem 636 007.

Vs. M/s. S-45, Thalaivasal Primary
Agricultrual Co-op Credit Society Ltd,
Thalaivasal post, Attur T.K.
Salem 636 112.

(अपीलार्थी/Appellant)

[PAN AACAS 2473A]

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 520/Mds/2016
निर्धारण वर्ष /Assessment year : 2012-2013

The Income Tax Officer,
Ward 2(3),
Salem 636 007.

Vs. M/s. S-45, Narasingapuram Primary
Agricultural Co-op Credit Society Ltd,
Narasingapuram Post, Attur T.K.
Salem 636 112.

(अपीलार्थी/Appellant)

[PAN AAAAP 3472C]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. P. Radhakrishnan, IRS, JCIT
: None

सुनवाई की तारीख/Date of Hearing

: 10-05-2016

घोषणा की तारीख /Date of Pronouncement

: 11-05-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

These appeals filed by the Revenue are directed against different orders of Commissioner of Income-tax (Appeals), Salem for the assessment year 2012-2013 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). Since the issue in these appeals is common in nature, hence these appeals are combined, heard together, and disposed of by a common order for the sake of convenience.

2. The grounds of appeal raised by the Revenue are under:-

2. *The Commissioner of Income Tax (Appeals) ought to*

have considered that the Hon'ble ITAT, Panaji Bench in Shri Chandrababhu Urban Co-operative Credit Society Ltd. (2014)(45 taxmann 14) clearly brought out the definition of 'Banking business'.

3. *The Commissioner of Income Tax (Appeals) ought to have considered that the order of hon'ble ITAT B Bench, Chennai in the case of M/s. SL (SPL) 151 Karkudalpatty PACCS Ltd vs. ITO has not become final as an appeal has been filed u/s.260A before the Hon'ble Madras High Court*
4. *The Commissioner of Income Tax (Appeals) ought to have considered that in the Tamil Nadu Co-operative Societies Act, 1983 the term "Member" is dealt in sections 4, 5, 6, 8, 13, 14, 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 40, 41, 42, 44, 46, 51, 66, 69, 72, 81 and 85. In all these section the term "member" means ONLY SHARE HOLDER - MEMBER. Hence the intention of the legislature is that associate member will not be treated as member.*
5. *The Commissioner of Income Tax (Appeals) ought to have considered that the Statutory Auditor for Co-operative Society, in his Report, discloses only Share Holder - Members as Members and did not include the Associate Member in the report".*

Since the issue is common in all appeals, we consider the facts as narrated in ITA No.520/Mds/2016 of assessment year 2012-13 for adjudication.

3. The Brief facts of the case the assessee is a Primary Agricultural Co-operative Bank Ltd, engaged in banking business and trading in PDS commodities and filed return of income on 06.08.2013 and processed u/sec. 143(1) of the Act and the case was selected for scrutiny under CASS. Further, notice u/s.143(2) was issued to the

assessee. The Id. Assessing Officer on perusal found that assessee has claimed deduction under the provisions of section 80P of ₹86,37,596/. In response to notice, the Id. Authorised Representative of assessee appeared from time to time and produced Books of account and other details. The Id. Assessing Officer verified books of accounts and considered the statements for claim of deduction. The Assessing Officer on further examination found that the assessee society claimed deduction u/s.80P(2) of the Act in respect of business of banking and providing credit facilities to its members and complied stipulated conditions and also providing credit facilities to Members and Non Members and running public distribution shops for commodities. The Id. Assessing Officer observed the entire business activities of society as providing credit facilities and trading for both members and nonmembers and rejected the deduction. The Id. Assessing Officer verified the claim of deduction u/s.80P(2)(d) of the Act, where the assessee society received interest income from Salem District Central Co-operative Banks and not from other Co-Operative society and perused the provisions u/s.80P(2) (d) of the Act and concluded that Deduction u/s.80P(2)(d) of the Act is not allowed as assessee society has received interest receipt from District Central Co-operative Bank and relied on jurisdictional High Court decision in the case of *CIT vs.*

Madras Auto Rickshaw Driver Co-Operative Society 143 ITR 981

completed the assessment with assessed income of ₹48,23,835/-. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, The Id. Authorised Representative reiterated the submissions of assessment proceedings. The Id. Commissioner of Income Tax (Appeals) on perusal of grounds and arguments, the assessee society is working on the concepts of mutuality, principle but the Id. Assessing Officer has rejected society, claim of deduction under provisions of Sec. 80P of the Act because the assessee society has not restricted activities to its members and also provided services on par with commercial banking. The Commissioner of Income Tax (Appeals) on examination of the assessment records and material relied on the Co-ordinate Bench decision of Tribunal in the case of *M/s. S-1308, Ammapet Primary Agricultural Co-Operative Bank Ltd in ITA No.825/Mds/2015, dated 23.09.2015* allowed the assessee appeal. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue has assailed an appeal before the Tribunal.

5. Before us, the Id. Departmental Representative reiterated the submissions on the grounds of appeal and contested the judicial decisions relied by the Commissioner of Income Tax (Appeals) were the department has filed an appeal in Jurisdictional Hon'ble High Court against ITAT order and prayed for set aside of the order of Commissioner of Income Tax (Appeals).

6. None appeared on behalf of the assessee. We proceed to dispose off this appeal after hearing the Id. Departmental Representative and we perused the material on record and judicial decisions. The Id. Departmental Representative argued and submitted that the decision of ITAT relied by the Commissioner of Income Tax (Appeals) was challenged by the Revenue and filled appeal u/sec. 260A of the Act in Madras High Court and the case is pending. We find the facts and circumstances of the present case are similar to decision of Co-ordinate Bench of Tribunal in the case of *ITO vs. M/s. S-328, Kalapanaickenpatti PACCS Ltd in ITA No.260/Mds/2016, assessment year 2012-2013, dated 27.04.2016* where it was held at para 7 as under:-

'7. We heard the rival submissions and perused the material on record and judicial decisions. The Id. Departmental Representative contention that decision relied by the Commissioner of Income Tax (Appeals) has not reached finality and appeal has been filed before jurisdictional High Court and is

pending and also urged that on definition of the member relying on the Audit report were the member means share holder and does not include associate member. The Id. Authorised Representative argued on membership of society and supported with Apex Court decision of M/s. U.P. Co-operative Cane Union Federation Ltd, Lucknow vs. CIT (1999) 237 ITR 574(SC) and definition of member as the provision of T.N. Co-operative Societies Act 1983 and filed written submissions and explained that there is no cheque facility is available to members and the business of providing credit facilities to its members and activities of Primary agriculture co-operative credit society are not at par with co-operative banks and relied on ITO vs. S-1308, Ammapet Primary Agricultural Co-Operative Bank Ltd in ITA 825/Mds/2015. We considering the apparent facts and findings of the lower authorities on the grounds raised by the Revenue and the argument of the Id. Authorised Representative. Prime facie the assessee is registered as Co-operative society and engaged in banking business and trading in civil supplies goods. The Department has disputed on the activities of the society on par with any commercial banking. Therefore, we are inclined to set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue to the file of the Assessing Officer to verify the following:-

- (i) Loans are granted to non-members*
- (ii) Any current accounts are opened for traders.*
- (iii) Whether the society is a member of clearing house.*
- (iv) Whether bank issued guarantee on behalf of customers*
- (v) Whether dealt in foreign exchange transactions.*
- (vi) Verify inspection report of RBI if any.*

With these findings, the Assessing Officer is directed to verify and pass the order accordingly after providing adequate opportunity of being heard. The grounds of the Revenue is partly allowed for statistical purpose.

We respectfully following the decision, setaside the order of CIT(A) and remit the issue in dispute back to the file of the Assessing Officer on similar

directions. The appeal of the Department is allowed for statistical purpose.

7. Consequently, the appeals of the Revenue in ITA Nos.517, 518 & 519/Mds/2016 are allowed for statistical purpose.

8. In the result, the appeals of the Department in ITA Nos. 517 to 520/Mds/2016 allowed for statistical purpose.

Order pronounced on Wednesday, the 11th day of May, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:11.05.2016

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |