

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2607/Mds/2016
निर्धारण वर्ष /Assessment Year: 2013-14

The Income Tax Officer,
Ward 2(3),
Salem-7.

Vs. M/s.S-1236 Valapadi Primary
Agricultural Co-op. Credit
Society Ltd., Valapadi Post,
Salem – 636 115.

[PAN: AAEAS 8232 R]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.Supriyo Pal, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.M.Narayanan,
(Retd.Addl.CIT)

सुनवाई की तारीख/Date of Hearing

: 16.03.2017

घोषणा की तारीख /Date of Pronouncement

: 27.03.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This appeal of the Revenue is directed against the order of Commissioner of Income-tax (Appeals), Salem, dated 30.06.2016 in ITA No.213/2015-16 for assessment year 2013-14 and raised the following grounds:

1. *The order of Commissioner of Income Tax (Appeals) is contrary to law and against the facts and the circumstances of the case.*
2. *The Commissioner of Income Tax (Appeals) ought to have considered that the Hon'ble ITAT, Panaji Bench in Shri Chandraprabhu 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 Hon'ble ITAT 'B' Bench, Chennai in the case of M/s. SL(SPL) 151 Karkudalpatty PACCS Ltd. Vs ITO which has been relied upon by him 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 Tamilnadu 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.*
6. *For the above reasons and any other reasons that may be adduced at the time of hearing, it is prayed that the order of the Commissioner of Income Tax (Appeals) may be cancelled and that of the Assessing Officer restored.*

2. All the grounds of appeal are related to the deduction claimed by the assessee u/s.80P(2)(a)(i) of Income-tax Act, 1961 (in short 'the Act').

3. The assessee is a co-operative society engaged in extending credit facilities to its members. For the assessment year 2013-14, the assessee filed its return of income admitting total income of Rs.Nil and claimed the deduction u/s.80P to the tune of Rs.70,82,531/-. The Assessing Officer completed the assessment on total income of Rs.53,10,944/-. In the assessment, the AO disallowed the claim of assessee u/s.80P(2)(a)(i) and allowed the deduction u/s.80P(2)(d) amounting to Rs.17,21,587/- and further deduction of Rs.50,000/- u/s.80P(2)(c) and the balance amount brought to tax. The Assessing Officer disallowed the claim of the assessee

on two grounds. Firstly, the Assessing Officer was of the opinion that the assessee is engaged mainly in commercial banking business. The Assessing Officer has also noticed that even though the assessee is registered as an Agricultural Co-operative Society, the assessee has not carried out any activities in connection with the agriculture. Further, the Assessing Officer noticed that the assessee is extending jewel loans @ 14.25%, the deposit loans and other loans @12.5% interest which is more or less of commercial rate of interest rates and are equated with interest rates charged by the commercial banks. Only KCC loans interest charged @7% which is a meager amount. The Assessing Officer in his observations stated that the activities of the society are never for any agricultural activities or purposes. The AO stated that mere naming the society as a Primary Agricultural Co-operative Society is not sufficient for claiming the deduction u/s.80P(2)(a)(i) but the principal or predominant activities of the bank should be in connection with agricultural purposes or purposes connected with agricultural activities. As the assessee is not carrying on the above activities, the Assessing Officer disallowed the deduction u/s 80P(2)(a)(i) and observed from the details of interest income that the major portion of interest received was on account of jewel loans. It is gathered that the jewel loans are issued to Associate Members who are admitted as Associate Members for the limited purpose of availing loans only and the interest charged on jewel loan was 14.25% which is not in consonance with agricultural activities of the society. The Assessing Officer was of the view that the interest rate of 14.25% is nothing but

commercial rate of interest and at par with nationalized banks and other co-operative banks. Therefore, the Assessing Officer held that the society is engaged in commercial banking activities and provided loans to Associate Members, hence the society is not eligible for claiming deduction u/s.80P(2)(a)(i) and accordingly denied the deduction.

4. Aggrieved by the Order of the AO, the assessee went in appeal before the CIT(A). The CIT(A) allowed the claim of the assessee relying on the decisions of ITAT, Chennai in the following cases:

- (i) *I.T.A.No.825/Mds/2015 dated 23.9.2015 in the case of M/s S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd.*
- (ii) *I.T.A.No. 292/Mds/2014 dated 17.3.2014, M/s. SL(SPL) 151 Karkudalpatty PACCS Ltd.*
- (iii) *I.T.A.Nos.730, 731 and 732/Mds/2014 dated 30.6.2014*

5. The Ld. DR supported the Order of the Assessing officer.

6. On the other hand, the Ld. AR argued that the Assessing Officer has mistaken that the society is a bank but it is a Primary Agricultural Co-operative Society which is engaged in the agricultural activities to its members. The Ld.AR vehemently opposed the Assessing Officer's observations and holding that the assessee is engaged in the banking business. The Ld.AR further submitted that the assessee advance loans to its Associate Members for agricultural purposes. The jewel loans were also given for agricultural purposes as stated by the Ld.AR. The Ld.AR

further stated that the assessee has never floated the bylaws of the society on external facilities in the capacity of Primary Co-operative Bank to its members. Therefore, the Ld.AR contended that the CIT(A) has rightly allowed the assessee's appeal and the CIT(A)'s order should be confirmed. He has placed reliance on the judgment of Madras High Court in the case of CIT vs. Tiruchengode Agricultural Producers Cooperative Marketing Society Ltd. and in S-1308 Ammapet Primary Agricultural Cooperative Bank Ltd in Tax Case Appeal Nos.484 to 487 and 490 of 2016, dated 2.8.2016, wherein the High Court as held as under:

"9. In the instant case, while allowing the appeals filed by the assessee, the Commissioner of Income Tax (Appeals), had relied upon, the following portion of the decision of the Tribunal arrived in I.T.A.No. 292/Chny/2014:

7. We have heard both parties and gone through the case file. As stated in the preceding paragraphs, the CIT(A) has proceeded to enhance the assessment (supra) only on the ground that the assessee's credit and various other loan facilities have been allowed to be availed by B' class 'nominal' members whose liability is limited, at the best, to the extent of loan repayable instead of 'A' class members who have voting rights and dividend claim, and also that the latter members are jointly and severally liable. In this backdrop, when we peruse the relevant provisions of the State Co-operative Societies Act, 1983, governing the assessee-society it is evident from the definition of 'member' u/s 2(16) that the same includes an 'associate member' recognition as per the Act. The net result is that once the 'nominal' members also enjoy statutory condition imposed by the legislature u/s 90P(2)(a)(i). We make it clear that we are dealing with the deduction provision to be interpreted liberally. In our considered opinion, the objections of the revenue that the 'members' defined in sub clause(i) of section 80P should only include voting members would amount to a classification within classification which is beyond the purview of tax statute; unless provided specifically by the legislature. Moreover, we find that the case law of Hon'ble Punjab and Haryana High Court (supra) also supports the assessee's case wherein it has been held under the very provision that for the purpose of impugned deduction, it is irrelevant so far as classification of the members in 'A' or 'B' category is concerned.

Following the decision of the Punjab and Haryana High Court, the appellate authority as well as the Income Tax Appellate Tribunal, has passed the order impugned.

10. The appellate authority, namely, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal has clearly held that the assesseees are not co-operative bank and that their activities in the nature accepting deposits, advancing loans etc., carried on by the assesseees are confined to its members only and that too in a particular geographical area. Therefore, the respondent societies are eligible for deduction under section 80P(2)(a)(i) of the Act. The contention of the appellants that the members of the assessee societies are not entitled to receive any dividend or having any voting right or no right to participate in the general administration or to attend any meeting etc. because they are admitted as associate members for availing loan only and was also charging a higher rate of interest at the rate of 14%, is not a ground to deny the exemption granted under Section 80P (2)(a) (i) of the Act.

11. The decision rendered by this Court in TCA 735, 755 of and 460 of 2015 dated 05.07.2016, squarely covers the present facts of the case, so far as it relates to the ineligibility of the respondent societies, under Section 80P (2)(a)(i). In the light of the above discussion and the decisions, we are of the view that the substantial questions of law raised in the instant appeals are answered against the Revenue."

The Ld.AR also relied on the decision of this Tribunal in the case of M/s.S-39 Gajalnaickenpatty PACCS Ltd., in ITA No.1079/Mds/2016 dated 30.09.2016 for the AY 2012-13.

7. We heard the rival submissions and perused the material placed on record. The CIT(A) allowed the claim of the assessee following the decisions of the ITAT, Chennai, cited supra. We have also gone through the judgment of the Hon'ble Madras High Court in the case of S-1308 Ammapet Primary Agricultural Cooperative Bank Ltd.(cited supra) and it is squarely applicable to the assessee's case. The Ld.DR did not place any material controverting the decisions relied up on by the Ld.CIT(A) in his order and the Hon'ble Madras High court judgment cited supra. In view of the above, we do not find any infirmity in the order of the CIT(A) and the same is upheld.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 27th March, 2017, at
Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 27th March, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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