

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 2366/Mds/2017  
निर्धारण वर्ष /Assessment year : 2014-2015

The Income Tax Officer,  
Ward 2(1)  
Salem

**Vs.** M/s. S-1140 Sarkar Kollapatty  
PACCS Ltd,  
Sarkar Kollapatty P.O.  
Salem 636 030.

(अपीलार्थी/Appellant)

**[PAN AADTS 5683A]**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. B. Sagadevan, IRS, JCIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Sridhar, Advocate  
सुनवाई की तारीख/Date of Hearing : 12-12-2017  
घोषणा की तारीख /Date of Pronouncement : 19-12-2017

**आदेश / ORDER**

In this appeal filed by the Revenue, which is directed against an order dated 31.07.2017 of Id. Commissioner of Income Tax (Appeals), Salem, it is aggrieved that the Id. Commissioner of Income Tax (Appeals) held assessee to be eligible for claiming deduction u/s.80P(2)(a)(i) of the Act.

2. Ld. Departmental Representative submitted that assessee was receiving interest from various classes of members, which included resident members and nominal members. As per the Ld. Departmental Representative, term "member" included only a share holding member as per the Tamil Nadu Co-operative Societies Act, 1983. Submission of the Ld. Departmental Representative was that Auditor of the assessee society disclosed only such share holding members as members of the assessee society. As per the Ld. Departmental Representative associate member could not be considered as a member. According to the Ld. Departmental Representative, associate members were not entitled to receive dividend nor entitled to participate in the general administration of the society. Further, as per the Ld. Departmental Representative such members were not having any voting right and they were admitted only for availing loan facility from the assessee society. Thus, according to him, interest earned on loans given by the assessee would not be eligible for deduction u/s.80P(2)(a)(i) of the Act. Reliance was placed on the judgment of Apex Court in the case of *The Citizen Co-Operative Society Ltd vs. ACIT*, (Civil Appeal No.10245 of 2017, dated 8.8.2017).

3. Per contra, Ld. Authorised Representative submitted that Hon'ble Apex Court in the case of *The Citizen Co-Operative Society*

*Ltd* (supra) was considering the applicability of Sec. 80P(2)(a)(i) of the Act on a society which had carved on a category of members known as a nominal members. As per the Id. Authorised Representative in the case of assessee, members who paid interest to the assessee were associate members and not nominal members. Further, according to him, in the case before Hon'ble Apex Court, nominal members were placing deposits with the society. Here the members were given loans by the assessee.

**4.** We have considered the rival contentions and perused the orders of the authorities below. Ld. Commissioner of Income Tax (Appeals) had held assessee to be eligible for deduction u/s.80P(2)(a)(i) of the Act relying on the decision of Co-ordinate Bench in the case of *M/s. SL(SPL) 151, Karkudalpatty Primary Agricultural Co-operative Credit Society Ltd vs. ITO (ITA No.292/Mds/2014, dated 17.03.2014)*. However, the Hon'ble Apex Court in the case of *The Citizen Co-Operative Society Ltd* (supra), where the society was one registered u/s.5 of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995, had adjudicated on the issue whether Co-operative Societies, having transactions with nominal members, would be eligible for claiming deduction under

section 80P(2)(a) (i) of the Act. Their lordship had held as under at paras 17 to 27 of the judgment.

*'17) We have considered the submissions of the counsel for the parties with reference to the record of this case.*

*18) We may mention at the outset that there cannot be any dispute to the proposition that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favor of the assessee (See – Bajaj Tempo Limited, Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay3). It is also trite that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (See – Commissioner of Income Tax, Bombay & Ors. v. Mahindra and Mahindra Limited & Ors.4). Therefore, it hardly needs to be emphasized that all those co-operative societies which fall within the purview of Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to anyone or more of such activities which are mentioned in sub-section (2).*

*19) Since we are concerned here with sub-section (i) of clause (a) of sub-section (2), it recognizes two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.*

*20) In the case of Kerala State Cooperative Marketing Federation Limited & Ors. v. Commissioner of Income Tax5, this Court, while dealing with classes of societies covered by Section 80P of the Act, held as follows:*

*“6. The classes of societies covered by Section 80-P of the Act are as follows: (a) Engaged in business of banking and providing credit facilities to its members; xx xx xx*

*7. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption..."*

*21) In the case of Commissioner of Income Tax v. Punjab State Co-operative Bank Ltd.<sup>6</sup>, while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:*

*"8. The provisions of section 80P were introduced with a view to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption,.... It means that a co-operative society engaged in carrying on the business of banking and a co-operative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.*

XX XX XX

13. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the Legislature wanted to restrict the exemption to a primary co-operative society, it was so made clear as is evident from clause (f) with reference to a milk co-operative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk co-operative society.”

22) The aforesaid judgment of the High Court correctly analyses the provisions of Section 80P of the Act and it is in tune with the judgment of this Court in Kerala State Cooperative Marketing Federation Limited (supra).

23) With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act.

24) Undoubtedly, if one has to go by the aforesaid definition of ‘co-operative bank’, the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore,

would not come within the mischief of sub-section (4) of Section 80P.

25) So far so good. However, it is significant to point out that the main reason for dis entitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violations of the provisions of the MACSA under which it is formed. It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilized to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that he depositors and borrowers are quiet distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act.

26) It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:

*“As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;*

*that no person can earn from him;  
that there a profit motivation;  
and that there is no sharing of profit.*

*It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].*

*In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all.”*

*27) These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80P of the Act”.*

Both the Id. Assessing Officer as well as the Id. Commissioner of Income Tax (Appeals), while deciding the question of granting deduction under section 80P(2)(a) (i) of the Act did not have the benefit of the judgment of Hon’ble Apex Court mentioned supra and

how far the ratio laid down by the Apex Court was applicable in the case of the assessee. In the facts and circumstances of the case, I am of the opinion that the issue whether assessee was eligible for deduction u/s.80P(2)(a)(i) of the Act requires a fresh look by the Id. Assessing Officer. I set aside the orders of the lower authorities and remit the question whether assessee was eligible for deduction u/s.80P(2)(a)(i) of the Act back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

**5.** In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced on Tuesday, the 19th day of December, 2017, at Chennai.

Sd/-  
(अब्राहम पी. जॉर्ज)  
**(ABRAHAM P. GEORGE)**  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 19th December, 2017

**KV**

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        |