

आयकर अपीलीय अधिकरण , 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, CHENNAI**

श्री जॉर्जमथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2607/Chny/2017

निर्धारण वर्ष/Assessment Year: 2014-15

Income Tax Officer,  
Ward-2(4),  
Salem. 7

M/s. K K 142 Pottaneri, PACCS  
Vs. Ltd., Pottaner P.O., Mettur TK,  
Salem 636 453.

**[PAN: AABAK0355J]**

Revenue by : Shri S. Nataraja, JCIT

Assessee by : Shri M. Balu, CA ITP

सुनवाई की तारीख/Date of Hearing : 12.02.2018

घोषणा की तारीख/Date of Pronouncement : 27.03.2018

**आदेश / O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed this appeal against the order of the CIT(A), Salem in ITA No: 288/2016-17 dated 31.08.2017 for assessment year 2014-15.

2. The above assessee is a Primary Agricultural Co-operative Credit Society registered under Tamilnadu Co-operative Societies Act, 1983. It claimed deduction u/s. 80P(2)(a)(i). While the making the assessment for the assessment year 2014-15, the AO analysed the provisions of the State Co-

operative Act, examined the books of account and found that the society had advanced loans to non-voting/non-profit sharing members and earned profit from them. However, the profit was shared only with the voting members/shareholding members, hence, principles of mutuality did not exist among all the classes of members and accordingly held that the assessee is not eligible for deduction u/s. 80P(2)(a)(i) and completed the assessment. Aggrieved, the assessee filed appeals before the CIT(A). The CIT (A) allowed the appeal. Aggrieved the Revenue filed this appeal.

3. The DR submitted that an assessee would be eligible for relief only if it falls within two categories of co-operative banks i.e., 'primary agricultural co-operative society' and 'primary co-operative agricultural and rural development bank'. From the details furnished by the assessee and on going through the books etc. the following facts emerged:

(a). Even though the bank is registered as a primary agriculture co-operative society, it has not carried out any activities in connection with the agriculture activities/purposes as provided under explanations of section 80(P)(4). The activity of the bank is entirely that of commercial banking and it has earned interest income at par with other commercial banks. During the financial year relevant to the above assessment year, the Society has advanced loans, which includes jewel loans, Pay loan, Microcredit loans, deposit loans, consumer loans, Short-term loans, housing loan etc. On perusal of the jewel loan

applications, which is the major chunk of lending of the above bank, it is noted that all such loans have been given for the purposes other than agricultural activities. This is purely a commercial banking activity. Further, during the course of hearing, it was stated that the rate of interest during the period relevant to the above assessment year on various loans is 12% to 14% which is at par with other commercial banks. For agricultural activity, the society has to charge interest at the rate not above 70/0 whereas the prevailing rate is 12% to 14%.

(b). The circumstances clearly indicate that the activities of the society are never intended to help the agriculturists by providing cheap money for promotion of agriculture. The activities are clearly carried out with profit motive. Merely naming the society as "primary agriculture co-operative society" is not sufficient for claiming deduction under section 80P(2)(a)(1), but the principal or predominant activities of the bank should be in connection with agricultural purposes or for purposes connected with agricultural activities. Considering the above discussions, it is held that the bank is not eligible for claiming deductions under the provisions of the section 80P(2)(a)(i).

( c ) Sec.80P(2)(a)(i) provides for deduction to a society engaged in carrying on the business of providing credit facilities to its 'members'. Here the 'member' means 'share-holding members' (also called A-class member) only. On perusal of the details of interest income, it is seen that a major portion of

the interest receipts are on account of jewel loan granted to 'associate members' (also called B-Class members). Anyone can become an associate member of the society on payment of a nominal token fee. The 'associate members' are not entitled to receive any dividend or having any voting rights and also do not have any right to participate in general administration and to attend any meeting etc. Only A-class members are allowed the above privileges. B-class members are admitted for the limited purpose of availing loans only. Subsequently, on discharging of their loan liability, they simply relinquish their membership and do not have any further role to play in the society. On the other hand, share-holding members are enjoying all these rights in addition to other rights and liabilities' in the society as specified in the bye-law. 'Associate members' cannot be regarded as members of the Society.

(d) The Co-operative Societies function under the State Co-operative Societies Act. In the State Co-operative Societies Act, the word 'member' is used in various Sections, to mean 'share-holding members' only. Section 2(7) of State Co-operative Societies Act defines 'associate member' as the "one who possesses only such privileges and rights and subject to only such liabilities as may be specified in the bye-laws". As per the Bye-law of the society, the difference in right and privilege between the shareholding member and Associate member can be distinguished as below:

Particulars	Member	Associatemember
Payment towards share capital	YES	NO
Right to vote	YES	NO
Right to be an office bearer	YES	NO
Right to participate in general body	YES	NO
Right to profits or losses	YES	NO
Right over the assets of the society	YES	NO
Right to refund the membership fee paid	YES	NO
Period upto which membership is valid	Till the death or till such period the membership is not revoked due to insolvency, insanity etc.,	Membership is valid up to a period of 3 years or till the existence of loan whichever is earlier
Renewal of membership	YES	NO

From the above, it is clear that the associate member is admitted in to the society for the purpose of availing loan and don't have any other rights /obligations as endowed to a "member". The DR relied on the decision of the Hon'ble SC in the case of The Citizen Co-operative Society Limited, Through its Managing Director, Hyderabad vs ACIT dated 08.08.2017 in Civil Appeal No. 10245 of 2017. Per contra, the AR submitted that the CIT(A) is right in holding that the assessee is entitled for deduction u/s. 80P(2)(a)(i). As per section 2(16) of the Tamilnadu Co-operative Societies Act, 1983, "Member" means a person joining in the application for the registration of a society and a person admitted to the membership after registration in accordance with the provisions of this Act, the rules and by-laws includes an associate members. It envisages the "Associate Member" enrolled as per bye law is a Member.

Thus, the respondent society has been engaged in carrying out business of credit facilities to its members. Since, the respondent society has satisfied this condition, it becomes eligible for the deduction u/s. 80P(2)(a)(i). The society accepts deposits only from members who shall be regular members having voting rights and the associate members who are members without voting rights respectively and the most important fact to be understood was the society does not accept any deposits from general public other than its members and the associate members. It is not doing any banking business, nor it has any license from RBI. Since, the "Associate Member" shall be construed as a "Member" as per section 2(16) of the TN Co-operative Societies Act, all the depositors and the borrowers of the respondent society are having a capacity and characters of either Members or Associate members, except in terms of the voting rights, and hence the assessee is entitled for deduction u/s. 80P(2)(a)(i). Further, the AR tried to distinguish the ratio of the Supreme Court relied on by the DR.

4. We heard the rival submissions. The AO analysed the provisions of the State Co-operative Act and found that the 'associate members' are not entitled to receive any dividend or having any voting rights and also do not have any right to participate in general administration and to attend any meeting etc. Only A-class members are allowed the above privileges. B-class members are admitted for the limited purpose of availing loans only.

Subsequently, on discharging of their loan liability, they simply relinquish their membership and do not have any further role to play in the society. On the other hand, share-holding members are enjoying all these rights in addition to other rights and liabilities' in the society as specified in the bye-law. 'Associate members' cannot be regarded as members of the Society etc , as extracted supra , in a table form. The AO examined the books of accounts and found that the society had advanced loans to non-voting/non-profit sharing members and earned profit from them. However, the profit was shared only with the voting members/shareholding members and hence, principles of mutuality did not exist among all the classes of members and accordingly held that the assessee is not eligible for deduction u/s. 80P(2)(a)(i) and completed the assessment. These findings have not been disputed. Thus, when the profits of the assessee are not shared with Associate Members as is done with the Members, it is clear that these assessee's case fail on the principles of mutuality. Let us examine the relevant portion of the decision of the Supreme Court in the case of The Citizen Co-operative Society Limited, Through its Managing Director, Hyderabad vs ACIT dated 08.08.2017 in Civil Appeal No. 10245 of 2017, relied on by the DR, as under:

*" 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 licence 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 disentitling 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 violation 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 utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quite 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.*

*28) This appeal, therefore, fails and is hereby dismissed with costs."*

5. From the above, it is clear that the Hon'ble Supreme Court rejected the above assessee's claim holding that the principles of mutuality was missing in that case. Although, both the Members to the transactions of this assessee are the contributors towards surplus, however, the Associate Members are not entitled to the benefits of surplus of the assessee and hence, the principles of mutuality is missing in this case. The assessee cannot be treated as a Co-operative Society meant only for its Members and providing credit facility to its Members and hence they are not entitled to the benefit of section 80P(2)(a)(i) of the Act. The Revenue's above appeal is allowed.

6. In the result, the Revenue's appeal is allowed.

Order pronounced on Tuesday, the 27<sup>th</sup> day of March, 2018 at Chennai.

**Sd/-**  
**(जॉर्जमाथन)**  
**(GEORGE MATHAN)**  
**न्यायिकसदस्य/Judicial Member**

**Sd/-**  
**(एसजयरामन)**  
**(S. JAYARAMAN)**  
**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 27<sup>th</sup> March, 2018

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT      | 5. विभागीयप्रतिनिधि/DR   | 6. गार्डफाईल/GF             |