

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

श्री इंटूरी रामा राव, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND  
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.1552/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2010-11

The Asst. Commissioner of-  
Income Tax,  
Non-Corporate Circle-2,  
Chennai-600 034.

**Vs.** M/s.Tamilnadu Co-operative-  
State Agricultural &  
Rural Development Bank,  
181-183, Luz Church Road,  
Mylapore, Chennai-600 034.

(अपीलार्थी/**Appellant**)

**[PAN: AABAT 7344 J]**  
(प्रत्यर्थी/**Respondent**)

Department by  
Assessee by

: Mrs.Sri Shanmuga Priya, JCIT  
: Mr.Viswanathan, CA

सुनवाई की तारीख/Date of Hearing

: 13.12.2018

घोषणा की तारीख /Date of Pronouncement

: 02.01.2019

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER:**

This is an appeal filed by the Revenue directed against the Order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.69/CIT(A)-2/2016-17 dated 29.03.2017 for the AY 2010-11.

2. The Revenue raised the following grounds of appeal:

1. *The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.*

2.1. *The learned CIT(A) erred in holding that the assessee is eligible for deduction U/s. 80(P)(2) of the Act.*

2.2 The Learned CIT(A) has not appreciated the fact that the assessee bank may not function as a normal scheduled bank. But it functions as a bank specialized in re-finance. The business of banking cannot be narrowly taken to the definition of banking as per the Banking Regulations Act. The assessee bank gets loans from NABARD, State Governments, raises debentures and finance to its members.

2.3 The learned CIT(A) failed to appreciate that the assessee bank claims that it only lends to its members. The annual report of the bank states that the bank has disbursed jewel loans both directly and also through its member primary banks, but the bank claims that the members of its member banks become associate members and avail loans. Sec. 80P(2) speaks only about lending loans to its member and the scope cannot be widened.

2.4 The learned CIT(A) failed to appreciate that the intention of legislature is that the provisions of section 80P(2) cannot be Agricultural credit society or a primary Co-operative Agricultural and Rural Land Development Bank.

2.5 The CIT(A) failed to appreciate that the Tamil Nadu Cooperative State Agricultural & Rural Development Bank Limited is the Apex bank to all primary Co-operative agricultural and rural development banks in the state. According to explanation (b) to section 80P(4), the primary co-operative agricultural and rural land development banks can claim this deduction only if its operation is restricted to a 'Taluk'. In the instant case, the operations are spread all over the state and being the apex bank, the assessee cannot claim the status of a primary bank.

2.6 The learned CIT(A) erred in holding that the assessee being a co-operative bank is eligible for deduction u/s.80P of the Act, without appreciating the fact that the assessee bank is entitled to float debentures and to receive deposits as per clause 4 of the bye laws and further entitled to subscription of shares, debentures and other borrowings as per clause-13 of the bye laws, making it clear that the assessee has all characteristics of a bank, and not a primary agricultural credit society.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

3. At the outset, there is a delay of 9 days in filing of the present appeal. The Revenue has filed a petition for condonation of delay stating that the delay had occurred in obtaining the administrative approvals. Thus, the Revenue was prevented by sufficient cause for the delay in filing of the appeal has been caused on account of reasons which are beyond the control of the AO. Thus, it is prayed that the delay in filing of the present appeal to be condoned. On the other hand, Id. AR had no objections for condonation of delay. Under these circumstances, we condoned the delay and admitted the appeal.

4. Briefly, the facts of the case are as under:

The Respondent-assessee society is a cooperative society registered under Tamilnadu Cooperative Societies Act, 1983. It is formed by the state of Tamilnadu for the purpose of catering to the Agricultural needs of the farmers by advancing long term agricultural loans with re-finance facility from NABARD. It is stated that the credit facility to the farmers provided to the primary Cooperative Agricultural and Rural Development Banks which in turn providing the credit to its farmers. The main source of income was derived by way of interest on the loans provided to the cooperative societies. The return of income for the AY 2010-11 was filed on 10.11.2010 declaring a total income of Rs.14,52,960/-. Against the said return of income, the assessment was completed by the ACIT, Circle-II, Chennai, vide order dated 15.03.2013 passed u/s.143(3) of the Income Tax Act, 1961 at a total income of Rs.'NIL' after setting off of the brought forward losses of Rs.44,13,67,711/-. While doing so, the AO disallowed the provision made on interest receivable on NFS of Rs.16,47,32,243/- and disallowance of provision for ordinary debentures of Rs.24,25,10,000/-. The AO was of the opinion that since the provision is only contingent and cannot be allowed as a deduction, rejecting the contention of the appellant that the provisions are written off in the books of accounts. Subsequently, the AO passed order u/s.154 dated 30.02.2016 after giving an opportunity to the assessee not allowing the set off of brought forward losses of Rs.41,39,53,482/-. The alternative

submission of the Respondent-assessee that the deduction u/s.80P was not allowed by the AO.

5. Being aggrieved by this Sec.154 order, an appeal was preferred before the Ld.CIT(A) vide impugned order allowed the benefit of deduction u/s.80P placing reliance on the decision of the Tribunal in the assessee's own case for the AY 2009-10. Being aggrieved by this appeal, the Revenue is in appeal before us in the present appeal. The Ld.CIT(A) vehemently argued that the appellant society not eligible for deduction u/s.80P as it is a cooperative bank and also engaged in its business operations, which are not confined to any taluk level. Thus, it is submitted that the Respondent-assessee is hit by the provisions of Sub-Sec.4 Sec.80P of the Income Tax Act, 1961. It is further submitted that Respondent-assessee society had business transaction with non-Members also. In the light of the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT reported in 397 ITR 1 (SC), the appellant-society is not eligible for deduction u/s.80P. On the other hand, Ld.AR submitted that it is not a cooperative bank, it is merely a cooperative society and the provisions of sub-Sec.4 Sec.80P of the Act, are not applicable to the Respondent-society.

6. We heard the rival submissions and perused the materials placed on record.

7. The only issue in the present appeal is that whether the Respondent-society is entitled for deduction u/s.80P of the Act. The provisions of Sec.80P envisages exemption of income from tax for a cooperative society in the case of cooperative societies engaged in the business by providing credit facility to its members and the sub Sec.4 of the Sec.80P carves out an exception to this provision by providing that the exemption u/s.80P shall not be available to a Cooperative bank. However, primary agricultural cooperative societies which are engaged in agricultural and rural development bank whose business operations are confined to taluk level, the deduction would be available. In the present case, the AO had not gone into the question of verifying whether the Respondent-assessee-society is a mere cooperative society or a cooperative bank. In case, it is engaged in the activities of cooperative bank, and activities are not confined to the taluk level, it is clearly hit by provisions of Sub.Sec.4 of Sec.80P of the Act. Further, it is also requires to be verified whether the activities of the Respondent-society are confined to its Members and non-members also. In these circumstances, we are of the considered opinion that the matter should be restored to the file of the AO for the purpose of carrying out exercise of verification of business activities of the appellant on the above lines and accordingly we remit the issue to the file of the AO for examining the applicability of the decision of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT reported in 397 ITR 1 (SC).

8. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on the 2<sup>nd</sup> January, 2019 in Chennai.

**Sd/-**

(धुव्वुरु आर.एल. रेड्डी)

**(DUVVURU R.L.REDDY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 2<sup>nd</sup> January, 2019.

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