

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **31, 32 & 33/CHNY/2021**

निर्धारण वर्ष /Assessment Years: **2010-11, 2014-15 & 2017-2018**

M/s. Tamilnadu Co-operative State
Agriculture and Rural Development
Bank Limited,
No.181, Luz Church Road,
Mylapore, Chennai – 600 004.

The Assistant Commissioner of
Income Tax,
Non Corporate Circle -1(1),
Chennai – 600 034.
Vs.

PAN : AABAT 7344 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. M. Veerabathran Prasanth &
Mr. K. Siddharth, Advocates

प्रत्यर्थी की ओर से/Respondent by

: Dr. S. Palani Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 29.03.2022

घोषणा की तारीख/Date of Pronouncement

: 29.04.2022

आदेश /ORDER

PER MAHAVIR SINGH, VP:

These three appeals by the Assessee are arising out of different orders of the Commissioner of Income Tax (Appeals)-2, Chennai in ITA No.174/2019-20/CIT(A)-2, ITA No.179/2019-20/CIT(A)-2 & ITA No.168/2019-20/CIT(A)-2 vide order of even date 18.03.2020. The original assessment orders were passed by the Assistant / Deputy Commissioner of Income Tax, Circle-

II, Chennai for the Assessment Years 2009 – 2010 and 2013 – 2014 and by Non-Corporate Circle – 1(1), Chennai for the Assessment Year 2017 – 2018 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') vide his order of different dates, i.e.15.03.2013, 19.12.2016 & 25.12.2019 respectively. In regard to the Assessment Year 2010 – 2011, the matter was carried before the CIT(A) to allow the appeal of the Assessee in regard to the claim of deduction u/s.80P(2)(a)(i) of the Act and Revenue carried the matter to the Tribunal and the Tribunal had set aside the matter and remitted to the file of the Assessing Officer. The Tribunal had set aside the matter in I.T.A. No.1552/Chny/2017 vide order dated 02.01.2019. The Assessing Officer passed given effect to the order of the ITAT order, i.e. ACIT, Non-Corporate Circle, Chennai-1 vide order dated 'Nil'. The matter was carried before the CIT(A) and that is the impugned order for the Assessment Year 2010 – 2011. As regards to the Assessment Year 2014 – 2015, the matter was carried originally before the CIT(A) and consequently the Revenue filed an appeal against the order of the CIT(A) before the Tribunal and Tribunal in I.T.A. No.1952/Chny/2017 vide order dated 05.03.2018 remanded the matter back to the file of the Assessing Officer. The Assistant Commissioner of Income

Tax, Non-Corporate Circle, Chennai passed the order giving effect to the order of the ITAT vide order dated 'Nil'. The Assessee carried the matter before the CIT(A) and the CIT(A) vide impugned order dismissed the claim of the Assessee.

2. At the outset, it is noticed that the appeals for the Assessment Years 2010 - 2011 and 2014 - 2015 in I.T.A. No.31/Chny/2021 & I.T.A. No.32/Chny/2021 are barred by limitation by 268 days. The appeal for the Assessment Year 2017 - 2018 in I.T.A. No.33/Chny/2021 is barred by limitation by 117 days. The Assessee has filed an affidavit along with a condonation petition for condonation of delay for these three appeals.

3. The learned Counsel for the Assessee took us through the condonation petition for the Assessment Year 2010 - 2011 and 2014 - 2015 and stated that the orders of the CIT(A) dated 18.03.2020 was received on 20.03.2020 and the Assessee had filed the appeal before the Tribunal for these two Assessment Years on 11.02.2021. The learned Counsel for the Assessee had stated that the due date for filing of appeal before the Tribunal was 16.05.2020 but actually the appeals were filed on 11.02.2021 and thereby occurred a delay of 268 days in both

the years. The learned Counsel stated that the appeal order was received on 20.03.2020 and the Government of India had announced lockdown due to the 'Covid-19' pandemic on 25.03.2020 and the country was under complete lockdown. The learned Counsel for the Assessee stated that due to 'Covid-19' pandemic, even the Hon'ble Supreme Court through a Miscellaneous Application No.21/2022 in Suo Motu Writ Petition No.3 of 2020 has extended the time limit to file all the appeals before all Courts, Tribunals or any Authority in India till 28.02.2020. Therefore, the learned Counsel stated that the petitioner has filed the appeal within the due date as per the order of the Hon'ble Supreme Court and hence requested for condonation of delay of 268 days in these two years.

4. As regards to the Assessment Year 2017 – 2018 in I.T.A. No.33/Chny/2021, the learned Counsel stated that this appeal is barred by limitation by 117 days and the facts are exactly identical and hence requested for condonation of delay in all the three appeals.

5. When these facts was confronted to the learned CIT-DR, Dr. S. Palani Kumar, he opposed the condonation of delay but could not controvert the above stated fact situation.

6. After hearing the rival contentions and going through the case records, the fact that 'Covid-19' pandemic was prevalent and in term of the directions issued by the Hon'ble Supreme Court in Miscellaneous Application No.21/2022 in Suo Motu Writ Petition No.3 of 2020, we condone the delay in all these three appeals and admit these appeals for adjudication on merits.

7. The only common issue in all these three appeals is as regards to the order of the CIT(A) confirming the action of the Assessing Officer in disallowing the deduction of claim u/s. 80P(2)(a)(i) of the Act in regard to the interest income received from category 'A' members and category 'B' members, i.e. Associate Members. The learned Counsel for the Assessee as well as the CIT DR fairly agreed that the issue is only one in all the three appeals of the Assessee and hence they will argue for the Assessment Year 2010 - 2011 and take the facts from this Assessment Year only. Both had agreed that the same decision can be applied to the Assessment Year 2014 - 2015 and 2017 - 2018.

8. The grounds raised are lengthy and argumentative and hence we are not reproducing the grounds.

9. The brief facts are that the Assessee is a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983 under the name and style as "Tamil Nadu Co-operative State Agriculture and Rural Development Bank Limited". The Assessee Society is formed by the state of Tamil Nadu for the purpose of catering to the agricultural needs of the farmers by advancing long term agricultural loans with re-finance facility from NABARD. The credit facility to the farmers is being provided to the Primary Co-operative Agricultural and Rural Development Banks, which in turn provides the credit facility to its farmers. The primary objective of the Assessee's Society is to finance 180 Primary Co-operative Agricultural and Rural Development Banks, who are members of the Assessee's Co-operative Society. These 180 Primary Co-operative Agricultural and Rural Development Banks are 'A' class members of the Assessee's Co-operative Society and there are Associate Members, i.e. "B" class members from whom the deposits / loans were given and received. These deposits / loans were given only to the members and received only from the members. The Assessee Co-operative Society has taken due approval for admission of the Members, i.e. either "A" class members or "B" class members from the Registrar of Co-

operative Societies and with members capital only it has been lending and conducting its business transactions.

10. The original assessment was framed by the Assistant Commissioner of Income Tax, Circle – II, Chennai u/s.143(3) of the Act vide order dated 15.03.2013. The Assessing Officer vide this assessment order completed the assessment u/s.143(3) of the Act by assessing the income as per order u/s.154 dated 15.06.2012 at Rs.3,41,25,368/- and after disallowing the provisions of Rs.40,72,42,343/- set off on the brought forward loss of Rs.44,13,67,711/-, assessed the total income at 'Nil'. Subsequently, the Assessing Officer issued notice u/s.154 of the Act and noted that the Assessee is found ineligible for the claim of deduction u/s.80P in the assessment order passed for the Assessment Year 2009 – 2010 u/s.143(3) of the Act and therefore the benefit extended was withdrawn and income was assessed at Rs.44,13,67,711/- by way of rectification order u/s.154 of the Act dated 30.03.2016. The Assessee carried the matter before the CIT(A)-2, Chennai who allowed the claim of the Assessee in ITA No.69/CIT(A)-2/2016-17; dated 29.03.2017. The Revenue carried the matter before the Tribunal in I.T.A. No.1552/Chny/2017, vide order dated

02.01.2019, wherein the Tribunal remanded the matter back to the file of the Assessing Officer for re-doing the matter by observing in paragraph no.7, as under:

"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 Section 80P envisages exemption of income from tax for a co-operative society in the case of co-operative societies engaged in the business by providing credit facility to its members and the sub-section 4 of the Section 80P carves out an exception to this provision by providing that the exemption u/s.80P shall not be available to a Co-operative Bank. However, primary agricultural co-operative 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 co-operative society or a co-operative bank. In case, it is engaged in the activities of co-operative bank, and activities are not fined to the taluk level, it is clearly hit by provisions of Sub-section-4 of Section 80P of the Act. Further, it is also required 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 Limited vs. ACIT reported in 397 ITR 1 (SC).

11. The Assessing Officer while giving effect to the order of ITAT, disallowed the claim of the Assessee by observing in paragraph nos.7 & 8, as under:

"7. Having perused through the submissions of the Assessee and their reply to the show-cause notice, it is pertinent to make a discussion as to why the Citizen's Co-operative Society vs ACIT will apply in the Assessee's case and as to why the Assessee's reply to the show-cause notice is not acceptable.

7.1: The Assessee states that "Our activities are not extended to non-members at any point in time. Our members are mainly Primary Co-operative Agricultural and Rural Development Banks (A class members). Individuals who wish to avail our facilities are accepted as B class members. Fixed deposits accepted from the B class members are utilized to provide loans to B as well as A class members". From the discussion already made before regarding membership it becomes amply clear that though on paper class 'B' members are treated as "Associate members" they do not satisfy as criteria as members as per the Assessee's own bye-law. Therefore, class B members for all practical purposes are non-members as per the Assessee's own bye-laws.

7.2: The Assessee states that "We do not provide loans to general public whatsoever". I, the Assessee's case, the distinction between "general public" and "Associate member" is tenuous. There is no criteria for becoming an "Associate member" and any member of "general public" can become an "Associate member" or class B member. Therefore, the contention of the Assessee that they do not provide loans to "general public" is not valid.

7.3: The Assessee states that "The depositors and borrowers are not distinct but mutual". This is not the case. Though fixed deposits accepted from the B class members are utilized to provide loans to B as well as A class members, mutually is not established at a structural level. Structurally class A members alone are members as per bye-law and class B members are not members at all. Therefore, the contention of the Assessee that "The depositors are borrowers are not distinct but mutual" is not valid.

7.4: The Assessee states that "it is quite clear that the mutuality concept is well established in our case and as such, the Citizens Co-operative Society case is squarely not applicable to us". This contention of the Assessee is not acceptable. The core edifice of the Citizen's Co-operative Society vs. ACIT judgement ties in the fact that since "mutuality was not established", the deduction u/s.80P(2)(a)(i) is not allowed. In the Assessee's case also it is sufficiently proved from the aforementioned discussion that mutuality is not established at a structural level and that class 'B' members or Associate members is merely another arrangement for getting deposits from general public without giving them effective Member status as per the bye-laws of the Assessee.

8.. Therefore, from the aforementioned discussions it is amply clear that the Citizen's Co-operative Society Vs. ACIT judgement of Honourable Supreme Court applies to the Assessee. Since principle of mutuality has not been established at a structural level, the deduction u/s.80P is disallowed and added to the total income."

Aggrieved, the Assessee preferred an appeal before the CIT(A).

12. The CIT(A) vide order dated 18.03.2020 confirmed the action of the Assessing Officer and denied the claim of deduction u/s.80P(2)(a)(i) of the Act. The CIT(A) by following the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Limited vs. ACIT reported in 397 ITR 1 (SC) disallowed the claim of deduction of the Assessee u/s.80P of the Act vide paragraph No.6.5, as under:

"6.5. As per the Bye-law of M/s. TNCSARD Bank Limited every member joining the Bank must have atleast one share. In M/s. TNCSARD Bank Limited there are two classes of members - (i) Class 'A' members are mainly Primary Co-operative Agricultural and Rural Development Banks and (ii) Class "B" members are any individuals who wish to avail the Assessee's facilities.

"Class B members" are called "Associate members" and the Assessee maintains an "Associate Members Register" with respect to class 'B' members.

"Class B members" are neither share-holders nor have voting rights whereas the bye-laws of the Assessee mandates that every member joining the bank must have atleast one share. Therefore, although "Class B members" are called as "Associate members" they are in fact "non-members".

Therefore, the contention of the Assessee that "The depositors and borrowers are not distinct but mutual" is not valid.

In Citizen Co-operative Society Limited the Assessee was catering to two distinct categories, viz. (i) ordinary members and (ii) nominal members who made deposits with Assessee for obtaining loans, who were not members in real sense.

M/s. TNCSARD Bank Limited is also catering to two distinct categories – (i) Class 'A' members who are mainly Primary Co-operative Agricultural and Rural Development Banks and (ii) Class 'B' members or "Associate members" who are not members in real sense as they are not share-holders and they do not have voting rights.

Thus, the decision of the Hon'ble Apex Court in the case of Citizen Co-operative Society Limited vs. ACIT reported in 397 ITR 1 (SC) is applicable to the case of the Assessee and hence, the disallowance, the claim of deduction u/s.80P is upheld."

Aggrieved, the Assessee is now before the Tribunal.

13. Before us, the learned Counsel for the Assessee argued that the Assessee is a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983 and duly obtained registration certificate as a Co-operative Society on 12.12.1929. Since 12.12.1929, it is operating as a Co-operative Society providing finance to the members of the Society. The learned Counsel for the Assessee explained the two categories of members and also relied on the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules. The learned Counsel for the Assessee stated that the main members are State Government and the

Primary Co-operative Agricultural Rural Development Banks and also individual members who are admitted with the prior approval of the Registrar of the Co-operative Societies as an Associated Member in view of Section 2(6) of the Tamil Nadu Co-operative Societies Act and also Rule 22 of the Tamil Nadu Co-operative Societies Rules. It was contended by the learned Counsel for the Assessee that all the transactions are restricted to only the members and therefore the Assessee cannot be construed to carry on the business of banking as defined u/s.5(b) of the Banking Regulation Act, 1949. It was contended that the Assessee's Society is neither registered as a Banker under the Banking Regulation Act nor has obtained any license from the Reserve Bank of India. The learned Counsel for the Assessee argued that the proviso to Section 80P(4) of the Act specifically excludes the Co-operative Bank out of the ambit of Section 80P of the Act, since they have stated to function as any normal Bank and hence at no point it could be stated that the Assessee was brought into the ambit of Section 80P(4) of the Act. The learned Counsel for the Assessee heavily relied on the decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited vs. Commissioner of

Income Tax, Calicut reported in [2021] 123 Taxmann.com 161 (SC).

14. Before us, the learned CIT-DR argued that as per the provisions of Section 80P of the Act, an Assessee, which is a 'Co-operative society', is entitled for deduction, if the said society is engaged in the activities enlisted in Section 80P(2). However, Section 80P(4) puts an embargo that the provisions of Section 80P are not applicable in the case of 'Co-operative Society' which is a 'Co-operative Bank' except the Co-operative Banks which are: (a) Primary Agricultural Credit Society or (b) a primary Co-operative Agricultural and Rural Development Bank. The said sub-section also stipulates that the definitions for "Co-operative Bank" and 'Primary Agricultural Credit society' shall be taken from part-5 of the Banking Regulation Act, 1949. The other title 'Primary Co-operative Agricultural Rural Development Bank' is defined in clause (b) of the Explanation to sub-section (4). In view of the above position of law, the learned CIT-DR argued that it needs to be examined as to whether a particular 'Co-operative Society' is a 'Co-operative Bank' in terms of the definition laid down in Banking Regulation Act, 1949, so as to decide whether the said 'Co-operative Society' is prohibited

from claiming of deduction u/s.80P. The title 'Co-operative Bank' is defined in Section 56 forming part of PART-V (application of the Act to Co-operative Banks) of the Banking Regulation Act, 1949. At clause (c), it defines the word 'Co-operative Bank' to be read as 'as per Section 5(cci) as "means a State Co-operative Bank, the Central Co-operative Bank and a Primary Co-operative Bank." The Central Co-operative Bank and the State Co-operative Bank shall have the meanings respectively assigned to them in the National Bank for Agricultural and Rural Development Bank Act 1981 as laid down in Section 56(c) read with section (5)(ccvii) of Banking Regulation Act. The State Co-operative society is defined in clause (u) of Section 2 of NABARD Act as "means the "Principal Co-operative Society" in a state, the primary object of which is the financing of other co-operative societies in the State." In the light of the above definitions; reverting to the facts and circumstances of the assessee's case, being the "Principal Co-operative Society" in the state of Tamil Nadu, the principle object of which is the financing of Primary Land Development Banks in the state; fits into the definition of 'State Co-operative Bank' and therefore fits into the definition of "Co-operative Bank." Now, that the Assessee being a 'Co-operative

Bank,' needs to be examined, if the assessee is a 'Primary Agricultural Credit Society' or a 'Primary Co-operative Agricultural and Rural Development Bank' entitled for claiming the deduction u/s.80P of the Act. As per the definition in explanation (b) to Section 80P(4) of the Income Tax Act, the "Primary Co-operative Agricultural and Rural Development Bank" means a society having its area of operation confined to a Taluk'. As the area of operation of the Assessee Society is entire state of Tamilnadu, it does not fit into the definition of 'Primary Co-operative Agricultural and Rural Development Bank'. The 'Primary Agricultural Credit Society' is defined in Section 56 read with Section (5)(cciv) of Banking Regulation Act as (1) The Primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops; and (2) The byelaws of which do not permit admission of any other co-operative society as a member: provided this that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Cooperative Bank subscribing to the share capital of such Co-operative Society out of funds provided by the State government for the purpose. As can be noticed from the bye-

laws of the Society, as per 3 under head 'object' — "3, the object of the Bank shall be primarily, to finance 'primary land development Banks'. Hence, the primary object of the assessee society is not providing financial accommodation (to its Members) for agricultural purposes but only financing the primary land development banks. Therefore, the Assessee society cannot be termed to be a 'Primary Agricultural Credit Society'. In view of the reasons stated in the prior paragraphs, the Assessee being a 'Co-operative Bank' but not either a 'Primary Agricultural Credit Society' or 'Primary Co-operative Agricultural Rural Development Bank', the provisions of Section 80P shall not apply to the Assessee Society in terms of the law laid down in sub-section (4) of the said section.

15. The learned CIT-DR further argued that whether the Assessee was a Co-operative Bank or Co-operative Society. During the course of hearing, one of the main arguments brought on record was that whether the Assessee was a 'Co-operative Society' or a 'Co-operative Bank. The name of the Assessee had created this basic doubt. It is seen that the Assessee bank is the apex bank and it had 180 branches all over Tamil Nadu and they were the "A" category members. List

of those branches were also placed before the Hon'ble Bench. A separate line of argument on this crucial fact was also placed before the Bench by the Senior AR. With the facts and circumstances, it was demonstrated that the Assessee was a Co-operative Bank and that they are not eligible for any deduction u/s 80 P of the Act, as this section gives deduction only to the Co-operative Societies.

16. He further argued that from the perusal of the computation of income for the Assessment Year 2010-2011, it is noticed that the Assessee had claimed deduction u/s 80-P (2)(a)(i) and 80P(2)(d) of the Act. In order to claim deduction u/s 80P(2)(a)(i) of the Act, the Assessee should be a Co-operative Society engaged in carrying on the business of banking or providing credit facilities to its members. This is a touch stone, as the principle of mutuality comes into operation for Co-operative Societies. In order to claim deduction in respect of 80P(2)(d) of the Act, the Assessee should have earned interest income or dividend income from its investment with any other Co-operative Society. It was argued that prima facie, Section 80P of the Act deals with deduction in respect of income of Co-operative Societies and not Co-operative Banks.

The Assessee had claimed that they are Co-operative Society. They furnished only the details of "A" category members who were PCARD Banks located all over Tamil Nadu. They never gave the list of "B" category members or Associate members as they were general public. It was established that the "B" category members were general public, derived the facilities of the Assessee Bank without having any voting rights in the Bank. These "B" category members only gave the maximum business support to the Assessee Bank. In this connection, the reply of the Assessee to Question No.13 given to NFAC, vide their letter dated 11.01.2021 was referred. It is placed at page no.34 of the paper book submitted during the course of hearing.

17. It was also argued by the learned CIT-DR that though they were called as nominal members / Associate members, in the real sense, they were non- members only. The Bye-laws of the Assessee placed in page no.92 of the additional typed set of papers was also referred during the course of argument. Specifically, the object of the Bank at point No.3 was read to demonstrate that it was only a Bank and their object shall be primarily to finance Primary Land Development Banks. The Bank had only this object as per the Bye laws and they did not

have any other object in their bye-laws. At paragraph No.6 of the bye-laws, it was categorically mentioned that every member joining the Bank must have at least one share. However, it is to be mentioned here that the so-called Associate members or "B" class members do not have any share or voting right. What the Tamil Nadu Co-operative Society Act says? As per section 22 and 26 of the Tamil Nadu Cooperative Societies Act, the Associate members cannot have any voting rights. This Act is placed in page No.120 of the Assessee's paper book. As per section 22, an Associate member shall not be entitled to participate in general meeting of the registered society or in elections or to any share in any form. Proviso (iv) to Section 26(1)(c) also held that an Associate member shall not be entitled to vote. It was argued that the Assessee Bank has advanced general finance to all category of members, particularly had given gold loan to various individuals, who were so called Associate members. It was also demonstrated that fixed deposits were accepted from those Associate members and it was utilized to provide loans to "B" as well as "A" category members. This was available from their written reply submitted to Faceless Assessment Unit dated 11.01.2021 at page No.5. It is placed in paper book at page No. 33. Hence, it

was argued that the borrowers and depositors were distinct. On account of these facts, it was also demonstrated that the concept of principle of mutuality is completely violated. It was also argued that the Assessee Bank had given general finance to that category of members, without providing the list of those Associate or nominal members. A broad comparison between Citizens Co-operative Society Limited (supra) and the Assessee was also placed on record and the learned CIT-DR argued that the decision of Hon'ble Supreme Court in the case of Citizens Cooperative Society Limited (supra) is squarely applicable, as under:

Broad comparison between Citizen Co-operative Society Limited and Assessee:

Sl. No	Particulars	Citizen Co-operative	Appellant
[1]	How many categories of members	Two A&B	Two A&B
[2]	Categories	Ordinary Members Nominal Members	Ordinary Members Nominal Members
[3]	Voting Right for Ordinary members given	Yes	Yes
[4]	Whether nominal member or Associate member had voting right ?	No	No Answer to Q.No.5 of the Assessment Order A.Y 2018-2019
[5]	Deposits were accepted from nominal members	Yes	Yes
[6]	Whether such deposits were given as loan to both the categories	Yes	Yes
[7]	Whether the list of associate members was given?	Not available	Not given. Only Regular member list was given.
[8]	Whether Borrowers and Depositors are distinct?	Yes	Yes
[9]	Whether Mutuality exists?	No	No
[10]	Most of the business with B	Yes	Yes

	category members?		Answer to Q.No.13 at page.6 of the Assessment Order for the A.Y.2018-19
[11]	Have they given Gold loan ?	Yes	Yes
[12]	Was it like a general finance ?	Yes	Yes Paragraph 3 and 5 of the faceless assessment order where nature of business explained. It is beyond the object of the Society's Bye Laws.

18. During the course of hearing, it was demonstrated that decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited (supra) relied upon by the Assessee is not at all applicable to the present case. The object of the Assessee Bank as per their Bye-laws is primarily to finance Primary Land Development Banks whereas, Mavilayi Service Co-operative Bank Limited (supra) had more than 43 objects as per their bye-laws, and it was listed in paragraph No. 14 of the decision of Hon'ble Apex court. In the decision, the Hon'ble Supreme Court also held in paragraph No.15 that "It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations as per rules prevailing from time to time opening of medical stores, running of showrooms

and providing loans to members for purposes other than agriculture.” The broad comparison between Mavilayi Service Co-operative Bank Limited (supra) and the Assessee was presented before the Bench by the learned CIT-DR, as under:

Particulars	Mavilayi	Appellant
Object as per Bye Laws	At Clause 5 of the Bye Law	At Clause 3 of the Bye Law
Object:-	There were more than 43 objects; Refer paragraph 14 of the decision of the Supreme Court	Shall primarily to Finance Primary Land Development Banks Refer page:93 of the paper book given by the Appellant
	Some of the objects go well beyond and include performing banking operations Refer paragraph-15 of the decision of the Supreme Court	No such objects for the Appellant

19. During the course of hearing, the learned CIT-DR referred to a letter dated 28.01.2022 written by the MD of the Bank to the Principal Commissioner of Income Tax in connection with the recovery proceedings that was placed before the Bench and argued that the Assessee is a Bank and not a co-operative society, to entitle the deduction of 80P of the Act. The letter categorically mentioned that their banking operations came to a grinding halt on account of recovery proceedings. It says that they were unable to extend credit facility to poor agriculturists

who would be put into much hardship in the event of denial of genuine loan. The point to be noted is that they are giving finance to general public. In the last paragraph, the Managing Director of the bank also mentioned that if the office lifts the bank attachment, they will be able to continue their banking operations.

20. The learned CIT-DR finally summarized his arguments that the Assessee is a Co-operative Bank and not entitled for any deduction u/s 80P of the Act. This section allows deduction only to the Co-operative Societies. Without prejudice to the above, as per the direction of Hon'ble ITAT, if the issue is examined, the decision of Citizens' Co-operative Bank (supra) is squarely applicable to the Assessee Bank. The decision of Mavilayi Service Co-operative Bank Limited (supra) is not at all applicable to the Assessee. Hence, he supported the decision of Assessing Officer and the learned CIT(A) and urged to be upheld.

21. We have heard the rival contentions and had gone through the facts and circumstances of the case. We have perused the case records, including the assessment order and the order of the CIT(A). We have also perused the paper-book

filed by the learned Counsel of the Assessee consisting of pages 1 to 120 and pages 1 to 25. The Revenue has also filed a paper-book consisting of 1 to 84 pages and also filed written submissions along with annexures which were considered. We noted that the first objection of the learned CIT-DR is that the Assessee is a Co-operative Bank and not a Co-operative Society. We will deal with this argument of the learned CIT-DR. First of all, we have gone through the bye-laws of the Assessee Society which are placed at page 92. The relevant objects of the Assessee are mentioned at pages 93 and 94 of the Assessee's paper-book and the relevant reads as under:

Objects :

3. *The object of the Bank shall be primarily to finance Primary Land Development Banks.*

4. *In order to fulfill such object, it shall have power:*

a) *To float debentures on the security / of its assets and of land mortgages, other assets transferred or deemed under the provisions of section 23A of the Act to have been transferred to it by Primary Land Development Banks or against the guarantee of Government of Tamil Nadu for repayment in full of principal and payment of interest in respect of loans granted by Tamil Nadu Co-operative State Land Development Bank to any institution approved by the Government by general or special order in writing, for such period and on such conditions as may be laid down by the provisions of the Act and the regulations made there under by the Board.[R.D. is 938/90C, dated 14.05.1990]*

(aa) TO OBTAIN LOANS WITH GOVERNMENT GUARANTEE FROM ANY FINANCING AGENCIES OR FROM GOVERNMENT WITHOUT FLOATATION OF DEBENTURE ON SUCH CONDITIOONS AS MAY BE LAID DOWN BY THE GOVERNMENT.

- (1) *Enbloc amendments from 1 to 35 and 43 to 54 registered by the DR of CS(c) vide his letter No.Rc.4673/71-k, dated 21.05.1971*
 - (2) *Enbloc amendments from 36 to 42 registered by the DR of CS(c) vide his letter No.Rc.4673/71-k, dated 19.04.1971.*
- (b) *to receive deposits;*
- (c) *to grant loans to Primary Land Development Banks and other institutions referred to in by law 2(c) for the purpose specified in Rule 13 of the Tamil Nadu Co-operative Land Development Banks (Miscellaneous provisions) Rules 1970 and on such terms consistent with their bylaws as the Board shall decide; [No.Rc.1636/77K, dated 26.02.1977)*
- (d) *to function as the agent of any Co-operative Bank, subject to such conditions as the Registrar may, by general or special order, specify;*
- (e) *to acquire such immovable properties and construct such buildings as it may consider necessary for the proper conduct of its business;*
- (f) *to appoint what staff it considers necessary to conduct the affairs of the bank;*
- (g) *to inspect the primary land development banks and the lands mortgaged to them and to appoint the necessary staff or the authority;*
- (h) *to develop, assist and co-ordinate the work of the affiliated primary land development banks and afford them financial and other help wherever necessary;*
- (i) *to do such other things as are incidental to or conducive to the above subject;*

The Assessee's primary objective as mentioned in the objects is to provide finance to primary land development banks to extend loans for agricultural activities. We noted that the Assessee is a Co-operative Society registered under the Tamil Nadu Co-operative Society Act, 1983 and obtained registration as a Co-operative Society on 12.12.1929 and since then, it has been

operating as a Co-operative Society providing finance to the members of the Society. We noted that the Assessee, like other co-operative institutions is a Co-operative Society and was entitled for deduction u/s.80P of the Act, the legislature, through the Finance Act 2006, introduced Section 80P(4) of the Act with a specific intention to exclude co-operative banks from this scope of deduction u/s.80P of the Act. The reasons sighted in the Finance Act, 2006 reads as under:

"166. Co-operative Banks, like any other Bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies [PACS] and Primary Co-operative Agricultural and Rural Development Banks [PCARDB] stand on a special footing and will continue to be exempt for tax under section 80P of the Income Tax Act. However, I propose to exclude all other co-operative banks from the scope of that section."

From the above, it is clear that the provisions of Section 80P(4) of the Act was brought under the statute book, is to exclude the co-operative banks out from the ambit of Section 80P of the Act because, they have functions of any normal bank. In the present case, before us, although the Assessee by nomenclature, the name is "Tamil Nadu Co-operative Society, Agriculture and Rural Development Bank Limited" , but it is a co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983.

22. We noted that the learned CIT-DR heavily relied on the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Limited (supra); wherein the Hon'ble Supreme Court has upheld the disallowance of the claim of deduction u/s.80P of the Act. We noted the facts that the Hon'ble Supreme Court has discussed the following crucial aspects:

- I. *The Society was originally formed under the mutually aided co-operative Societies Act, 1995 [MACSA] and subsequently had got registered under the Multi-State Co-operative Societies Act 2002 and their activities were in violations of the provisions of the Multi-State Co-operative Societies Act 2002 under which it had been functioning;*
- II. *The persons from whom deposits were received were not traceable;*
- III. *Additions were proposed u/s.68 of the Income Tax Act, 1961;*
- IV. *They had approached the Reserve Bank of India [RBI] vide letter dated 19.10.1997 requesting for conversion of the Co-operative Society into an Urban Bank;*
- V. *They had lent money to general public without obtaining permission from the concerned Registrar of the Co-operative Societies;*
- VI. *They had claimed to be a Co-operative Society for the claim of deduction u/s.80P of the Act and Banking Company / Co-operative Bank for the purpose of Section 269SS and 269T.*

23. Now, we have gone through the facts of the Assessee and that, what is the difference as in the case-law of the Hon'ble Supreme Court, in the case of Citizen Co-operative Society Limited (supra) and that of the present case is noted as follows:

- I. *That the Assessee is registered as a Co-operative Society under Tamil Nadu Co-operative Societies Act, 1983.*
- II. *That the Assessee provides services only to its members and not to the public and hence the principle of mutuality applies,*
- III. *That the Society has a record of the name and address of all the members are identifiable and available;*
- IV. *That the Society has not obtained any authorization or License from RBI to operate as a Banking Institution. Added to that, there is no inspection by the Reserve Bank of India [RBI], no reports are sent to RBI, there is no cheque*

withdrawal facility, the Society is not allowed to issue Demand Drafts and finally, the deposits are only from members and no non-members are involved;

- V. *That the Society has taken due approval for admission of members from the Registrar of Co-operative Societies and with members' capital only, it has been lending and conducting its business transactions;*

24. Now, coming to an another objection of the learned CIT-DR that the Assessee never gave the list of "B" category members or Associate members, as they were general public and whole of their accounts were in the banks. It was the argument of the learned CIT-DR that "B" category members were general public derived the facilities of the Assessee Bank without having any voting right in the Bank and moreover, they only gave the maximum business support to the Assessee Bank. We have considered this argument and noted that the Assessee has two categories of members, as under:

- a) Members – State Government and Primary Co-operative Agriculture and Rural Development Banks.
- b) Associate Members – Individuals and other Institutions.

25. We noted that the Assessee had filed before us, the extracts of the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules. The Rule relating to the Associate Member as provided in Section 2(6) and in Section 2(16) reads as under:

a. **Definitions as in the Act:**

- I. Section 2(6) of the Act defines "Associate Member" as member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in this Act and the bye-laws.
- II. Section 2(16) of the Act defines a "Member" as a person joining in the application for the registration of a Society and a person admitted to membership after registration in accordance with the provisions of this Act, the Rules and Bye-laws and includes an Associate Member."

We also noted that the Section 22 of the Tamil Nadu Co-operative Societies Act, 1983 and Rule – 32 of the Tamil Nadu Co-operative Societies Rules describe the procedure for admission of Associate Member and the relevant Rule reads as under:

- I. Section 22 – Admission of Associate Members: - (1) Notwithstanding anything contained in Section 21, every registered society of such class as may be prescribed may admit any person possessing such qualifications as may be prescribed, as an associate member.

(2) Except as otherwise provided in the Rules, an Associate Member shall not be entitled to participate in the general meeting of the registered Society, or in the elections to the Board of such Society or to become an Officer of the registered Society or to any share in any form whatsoever in the assets or profits of the registered Society.
- II. Rule 32 : - Admission of Associate members : - (1) Persons possessing the qualifications specified in sub-rule (2) may, if the bye-laws so provide, be admitted as Associate Members in the following class of Societies namely:

(9) An Associate Member shall not be required to contribute to the share capital of the Society but shall pay such admission fee as may be specified in the bye-laws, which shall not in any case exceed one hundred rupees. The admission fee shall not be refundable.

26. Before us, the learned Counsel for the Assessee explained the procedure and argued that an individual member, to become an Associate member of the Assessee Society, they will have to get the approval from the Registrar of the Co-operative Society. He agreed that the bye-laws of the Assessee Society clearly states that all the members are required to hold shares but Associate members are exempted from holding such shares, in view of the Section 22(2) of the Tamil Nadu Co-operative Societies Act, 1983 and the Rules as amended from time to time. We noted that the Assessee's transactions are restricted only to the members or Associate members and not to the general public as alleged by the learned CIT-DR. According to us, the Assessee cannot be construed to carry the business of Banking as defined u/s.5(b) of the Banking Regulation Act, 1949.

Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from Section 3, read with Section 56 of the Banking Regulation Act, 1949 is that, a Primary Co-operative Bank cannot be a Primary Agriculture Credit Society as such a Co-operative Bank must be engaged in the business of banking, as defined by Section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment of deposits of money from the public. Even the provisions of Section 22(1)(b)

of the Banking Regulation Act, which is also applicable to the Co-operative Societies, but no Co-operative Society shall carry on Banking business in India, unless it is a Co-operative Bank and holds a license issued on it's behalf by the Reserve Bank of India [RBI]. The Assessee in the present case does not hold any license from the Reserve Bank of India or it is neither registered as a Banker under the Banking Regulation Act and as such, the Assessee is not allowed cheque or withdrawal facility and not allowed to issue Demand Draft and finally the deposits are only from the members or Associate members but not from non-members.

27. Before us, the learned Counsel for the Assessee has categorically made statement at the bar and produced evidences that the Assessee has records of the names and addresses of the members and all the members are identifiable and available. Further, it was contended that the Assessee has always submitted all relevant documents as and when sought for and it is not the case of the Assessing Officer that the Assessee has not submitted the relevant documents or any particular depositor is not an Associate member. Further, we also noted that the applicability of the provisions of Section 80P(4) of the Act was first raised by the

Revenue for the Assessment Year 2009 – 2010, as the Assessee had adopted the same deduction and had filed his return of income accordingly. The Tribunal has categorically held that, in Assessment Year 2009 – 2010 in Assessee's own case, in I.T.A. No.1318/Mad/2013, dated 01.05.2014 that the Assessee is a Co-operative Society and is not engaged in the business of Banking and hence the provisions of Section 80P(4) of the Act does not apply to the Assessee's case. However, this matter was carried before the Hon'ble Madras High Court by the Revenue in T.C.A. No.540 of 2015, which was dismissed by the Hon'ble High Court in view of the monetary limit fixed by the CBDT for maintainability of appeal before the Hon'ble High Court but the substantial question of law framed with respect of the Section 80P(4) of the Act was left open and the Tribunal became final on the same.

28. Now, we have noted that the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited (supra) considering the earlier decision in the case of Citizen Co-operative Society Limited (supra) has considered exactly an identical issue on exactly identical facts and held in paragraph nos.39 and 40, as under:

"39. The above material would clearly indicate that the limited object of Section 80P(4) is to exclude co-operative

banks that function at par with other commercial banks, i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is not to be seen, what is clear from Section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a license issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking license to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking,. This was turned down by the RBI in a letter dated 25.10.2013 as follows:

"Application for license

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society [PACS].

In this connection, we have advised RCS vide letter dated UBD (T) No.401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 [AACS], PACS are not entitled for obtaining a banking license. Hence, your society does not come under the purview of the Reserve Bank of India, RCS will issue the necessary guidelines in this regard."

After considering these, the Hon'ble Supreme Court has summed up the issue in paragraph nos.45 and 46 as under:

"45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Limited (supra), must be given effect to Section 80P of the Income Tax Act, being a benevolent provision enacted by the Parliament to encourage and

promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, Section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business, i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench Judgement is wholly incorrect in its reading of Citizen Co-operative Society Limited (supra). Clearly, therefore, once Section 80P(4) is out of harm's way, all the Assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. It must also be mentioned here that unlike the Andhra Act that Citizen Co-operative Society Limited (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Co-operative Cane Unions' Federation Limited vs. Commissioner of Income Tax [1997] 11 SCC 287 referred to section 80P of the Income Tax Act and then held:

"8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the Co-operative Society claiming exemption has been formed. It is therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Co-operative Societies Act. The said provision reads as under:

"2.(n). 'Member' means a person who joined in the application for registration of a Society or a person admitted to

membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power have no such liability or duty;""

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."

29. Another aspect highlighted by the learned Counsel for the Assessee is that the Revenue while framing the assessment u/s.143(3) of the Act for the Assessment Year 2017 – 2018, vide order dated 25.12.2019 has accepted the above stated position that the Assessee is a Co-operative Society and is not engaged in any banking business and therefore eligible for claim of deduction u/s.80P(2) of the Act and further the Revenue has followed the decision of the Hon'ble Supreme Court in the case of Mavilayi Co-operative Society Limited (supra). It means that the Revenue has accepted the position in the Assessment Year 2017 – 2018 while framing the scrutiny assessment and now the Revenue cannot go back from its stand because there is no change in the facts.

30. In view of the above facts discussed and the case-laws of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited vs. Commissioner of Income Tax, Calicut (supra), we are of the view that the Assessee is a Co-operative Society under the name and style as "Tamil Nadu Co-operative State Agricultural and Rural Development Bank Limited" and it is not engaged in the banking activities. It is also clear that in view of Section 3 read with Section 56 of the Banking Regulation Act, 1949, the Assessee cannot be considered as a Primary Co-operative Bank but it is a Primary Agricultural Credit Society because Co-operative Bank must be engaged in the business of Banking as defined in the Section 5(b) of the Banking Regulation Act, which means accepting, for the purpose of lending or investment of deposits of money from the public. Similarly, u/s.22(1)(b) of the Banking Regulation Act, as applicable to Co-operative Societies, no Co-operative Society shall carry on in banking business in India, unless it is a Co-operative Bank and holds license issued on this behalf by the Reserve Bank of India.

In the present case also, there is no banking activity and it is not registered as a Bank and it does not hold any license issued by the Reserve Bank of India. The Assessee being a Primary Agriculture Credit Society is a Co-operative Society. The primary

object of which is to provide financial accommodation to its members, i.e. members as well as Associate members for agriculture purposes or for purpose connected with the agricultural activities. Further, we are of the view that the provision of Section 80P(4) of the Act is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in the banking business, i.e. engaged in lending money to members of the public, which have a license in this behalf from the Reserve Bank of India. Clearly, therefore, the Assessee's case is out of the provisions of Section 80P(4) of the Act. In relation to the Associate members, we are of the view that the provisions of Section 22 read with Rule 32 of the Tamil Nadu Co-operative Societies Act, 1983 and Tamil Nadu Co-operative Societies Rules clearly determine the procedure to admit Associate members and accordingly in the present case, the Assessee's Co-operative Society has admitted the same. In view of the above finding, we hold that the Assessee is entitled for the claim of deduction u/s.80P(2)(a)(i) of the Act. Thus, we reverse the orders of the lower authorities and allow these three appeals of the Assessee.

31. In the result, the three appeals of the Assessee in I.T.A Nos.31,32 & 33/CHNY/2021 are allowed.

Order pronounced in the court on 29th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 29th April, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF