

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **179/CHNY/2019, 627, 628, 629 & 630/CHNY/2020**
निर्धारण वर्ष /Assessment Year: 2009-10, 2008-09, 2010-11, 2013-14 &
2014-15

**Kalapet Primary Agricultural
Cooperative Credit Society Ltd.,** v.
Car Street, Periya Kalapet,
Pondicherry – 605 014.

The Income Tax Officer,
Ward -4,
Pondicherry.

PAN: AAAAK1570G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Chinthapalli Mehar Chand, JCIT

सुनवाई की तारीख/Date of Hearing

: 24.05.2022

घोषणा की तारीख/Date of Pronouncement

: 08.06.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

These appeals filed by the assessee are directed against different orders of learned Commissioner of Income Tax (Appeals)-Puducherry in ITA No.32/CIT(A)-PDY/2017-18 & 353,355,374,375/CIT(A)-PDY/2018-19 both dated 31.12.2018 & 27.02.2020. The assessments were framed by the ITO, Ward 4, Puducherry u/s.154 r.w.s. 254 of the Income Tax Act, 1961 (hereinafter 'the Act'), for

the assessment year 2009-10 vide order dated 30.09.2017 and for the assessment years 2008-09, 2010-11, 2013-14 & 2014-15 u/s.143(3) r.w.s. 254 of the Act vide orders of even date 28.12.2018.

2. At the outset, it is noticed that the appeals filed by the assessee in ITA Nos.627 to 630/CHNY/2020 are time barred by 42 days. As per Form 36 filed by the assessee before us, it is noted that the order of CIT(A) dated 27.02.2020 was received by the assessee only on 05.03.2020. The appeal is to be filed on or before 04.05.2020. The Id.counsel for the assessee at bar stated that it is the period during which lockdown was imposed and COVID period started and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the directions of Hon'ble Supreme Court, we condone the delay and admit the appeals.

3. The only issue in these five appeals of assessee is as regards to the order of CIT(A) confirming the denial of claim of deduction

u/s.80P(2)(a)(i) of the Act. The assessee has raised identically worded grounds in all the appeals and hence, we take the facts and grounds from ITA No.179/CHNY/2019 for the assessment year 2009-10. The relevant grounds raised by assessee reads as under:-

2. The CIT(A) erred in confirming the denial of the claim of deduction under sec.80P(2) (a) (i) of the Act to the assessee.
3. The CIT(A) failed to appreciate that the assessee is a Primary Agricultural cooperative credit society, registered under the Pondichery Cooperative Societies Act, 1972 and fully satisfies the statutory requirements of providing credit facilities to its members and hence the denial of the claim of deduction is unjust, arbitrary, based on surmises and conjectures.
4. The CIT(A) further failed to appreciate that the activity of the assessee of providing credit facilities is only to its members and also confined to its area of operation, namely, Kalapet Taluk and that the distinction sought to be made by the officer is perverse and subjective and the assessee having satisfied the parameters laid down, the benefit of deduction u/s.80P(2) (a) (i) is to be allowed to the assessee.
5. The CIT(A) further failed to appreciate that the Hon'ble Madras High Court in the recent decisions in the case of M/s.AA-713, Kodumudi Growers Cooperative Bank Ltd. and M/s.Ammamet PACCS (after considering the SC decision), has referred to the earlier Madras High Court decision and held that the distinction sought to be made by revenue between 'A' class and 'B' class members is non-existent and granted the deduction under sec.80P(2) as claimed by the assessee.
6. The CIT(A) failed to appreciate that the decision of the Supreme Court referred is factually different, in as much as, in that case, the activity of providing credit to 'B' class members was not authorised under the parent law and so the apex court held there was violation, thereby denying the claim of the deduction and hence merely following the said decision which does not apply to the facts herein is unjust and untenable in law.
7. The CIT(A) further failed to appreciate that the assessee does not possess the approval of RBI to function as a cooperative bank with core banking operations and is a cooperative society entitled to the statutory deduction.

8. The CIT(A), in any event, ought to have considered the contentions of the assessee in the proper perspective and thus accepted the claim of deduction u/s.80P(2) (a)(i) of the Act.

4. Brief facts noted by AO in his order u/s.154 r.w.s. 254 of the Act, giving effect to the order of ITAT are undisputed, which are given in page 1 of the order giving effect to the order of ITAT by the AO. The AO while passing order u/s.154 r.w.s. 254 of the Act giving effect to the order of ITAT noted that whether the assessee is entitled to claim deduction u/s.80P(2)(a)(i) of the Act. He noted that the assessee is a registered Co-operative Society under the Co-operative Societies Act, Government of Pondicherry with Registration No.96 dated 25.09.1959. He admitted that the assessee is a Co-operative Society but as regards to the condition that assessee Co-operative Society should have transacted the business with its member and he classified three categories of members viz., Class A, B & C. He noted three classes as under:-

Class A member: Also known as first category member, who can avail advances in the form of KCC (Kisaan credit card) loan and they have a say in the management of society as they have voting rights.

Class 'B' member : The Government of Puducherry belongs to this class.

Class 'C' member : This class of members are allowed to take membership for the limited and specific purpose of availing jewel loan. Loan against deposits and loan against cash certificates etc. They are the real contributors of the funds to the assessee society which is being utilized for the purpose of advancing loans to Class-A members and also Class-C members. These members do not have a voting right in the process of election of managing body or in any other activity of the assessee body and are not entitled for sharing of profits in any form.”

The dispute raised by AO is as regards to class 'C' members and noted that the assessee accepts deposits from some persons who are neither class 'A' nor class 'B' and they have no voting rights. The AO further noted that though assessee is a Primary Co-operative Bank as it fulfills the conditions laid down u/s.56(ccv) of the Banking Regulation Act, hence primary object or primary business of the assessee is of transacting banking business. Accordingly, the AO noted that the assessee was carrying on the operation of banking by accepting deposits from public i.e., class 'C' members and non-members apart, which are repayable on demand or withdrawal or otherwise, for the purpose of lending. The matter was referred to JCIT for directions u/s.144A of the Act, who also noted the same. The AO considering the directions of JCIT u/s.144A of the Act and discussing that the assessee as a Co-operative Bank as it is carrying on the business of banking and also is a 'Primary Co-operative Bank' as it fulfills the conditions laid down in section 56(ccv) of the Banking Regulation Act. Hence, the AO denied the claim of deduction u/s.80P(2)(a)(i) of the Act, amounting to Rs.33,46,074/-. Aggrieved against appeal effect given by AO and passing of assessment order u/s.154 r.w.s. 254 of the Act, assessee preferred appeal before CIT(A).

5. The CIT(A) noted down the decision of Hon'ble Supreme Court in the case of Citizen Co-operative Bank Ltd., vs. ACIT, 397 ITR 1 (SC)

for confirming the action of AO in denying the claim of deduction u/s.80P(2)(a)(i) of the Act to the assessee. Aggrieved, assessee preferred appeal before the Tribunal.

6. Now, before us the Id.counsel for the assessee only argued that the issue has been concluded by the decision of Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd., vs. CIT, (2021) 431 ITR 1 (SC), wherein the Hon'ble Supreme Court has considered the decision of Co-ordinate Bench of Supreme Court in the case of Citizen Co-operative Bank Ltd., *supra*, and Hon'ble Supreme Court has laid down certain principles which are culled out from the judgment as under:-

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (*supra*) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so – which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only

co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that 45 case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

6.1 The Hon'ble Supreme Court also discussed the ratio descending of the case law of Citizen Co-operative Bank Ltd., and noted that 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 licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Therefore, once section 80P(4) is out of harm's way, all the assessees 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.

6.2 The Hon'ble Supreme Court also considered the definition of 'member' in the Kerala State Co-operative Bank and loan given to such nominal members and finally held that the same would qualify for the purpose of claiming deduction u/s.80P(2)(a)(i) of the Act. The Hon'ble Supreme Court further held that unlike the facts in Citizen Co-operative Society Ltd., *supra*, the Kerala State Society Act expressly permits loans to non-members u/s.59(2) & (3). It was noted that giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd., *supra*.

6.3 In view of the above decision of Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd., we noted that the assessee is primary agricultural co-operative credit society and it transacts business only with members whether 'A' class, 'B' class or 'C' class as noted by the AO. The Pondicherry Co-operative Societies Act, 1972 is a pari-materia to the Co-operative Societies Acts of Tamil Nadu State and Andhra Pradesh. As referred by Id.counsel for the assessee, the decision of Hon'ble Madras High Court in the case of S 1911 AN Udhur PACCS vs. PCIT in T.C.A. Nos.170 & 171 of 2020 dated 17.07.2020, after taking note of definition of 'member' under Tamil

Nadu Co-operative Societies Act, 1983 held that this issue has been dealt with in the case of PCIT vs. S1308 Ammapet Primary Agricultural Cooperative Bank Ltd., Ammapet in T.C.A. No.882 & 891 of 2018 dated 06.12.2018. The Hon'ble Madras High Court in para 5 has extracted the relevant portion of judgment of S1308 Ammapet Primary Agricultural Cooperative Bank Ltd., as under:-

“5. The case on hand is also an identical matter. The only difference being, the assessee lost before the Tribunal and therefore, the assessee is before us by way of these appeals. For better appreciation, we refer to the relevant paragraphs in the case of Ammapet Primary Agricultural Cooperative Bank Ltd., (cited supra):

12. Admittedly, the assessee – society is registered under the provisions of the TNCS Act. It defines the word ‘members’ under Section 2(16) to mean a person joining in the application for the registration of society and a person admitted to the membership after registration in accordance with the provisions of the Act, the Rules framed thereunder and the By-laws and includes an associate member. The expression associate member is defined under Section 2(6) of the TNCS Act to mean a 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, the Rules and the By-law.

13. Thus, the definition of the word ‘members’ includes an associate member and therefore, the Assessing Officer fell into an error in drawing a distinction between A Class members and B Class members. For the purpose of being entitled to a relief under Section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-Section (2) of Section 80P of the Act.

14. Further, it is to be pointed out that in terms of Sub-Section (4) of Section 80P of the Act, which was inserted vide the Finance Act, 2006 with effect from 01.4.2007 i.e from the assessment year 2007-08, the ‘primary cooperative agricultural and rural development bank’ means ‘a society having its area of operation confined to a taluk, the principal object of

which is to provide for long term credit for agricultural and rural development activities'. What was excluded was the 'cooperative banks' and admittedly, the assessee society is a primary agricultural cooperative credit society and therefore, would be entitled to the benefit of Section 80P of the Act.

15. Further, for the assessment year 2014-15, the decision in the case of Citizen Cooperative Society Limited was relied upon by the Revenue before the Tribunal, which, in paragraph 6.1 of its order dated 28.2.2018 for the assessment year 2014-15, extracted the operative portion of that judgment. In that case, the Hon'ble Supreme Court found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third parties, who were not members in the real sense and were using those deposits to advance gold loans. Therefore, the Hon'ble Supreme Court pointed out that such an activity of the said society was that of a finance business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The Hon'ble Supreme Court found that the said society was not entitled to deduction under Section 80P of the Act.

16. It is noteworthy to point out that the Hon'ble Supreme Court in the decision in the case of Citizen Cooperative Society Limited also observed that in the light of insertion of Sub-Section (4) to Section 80P of the Act by the Finance Act, 2006, such deduction should not be admissible to a cooperative bank and that if it is a primary agricultural credit society or a primary cooperative agriculture and rural development bank, the deduction would still be provided.

17. In the preceding paragraphs, we have pointed out the definitions of the expressions 'members' and 'associate member' under the TNCS Act and held that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. Furthermore, the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Clause (b) to Sub-Section (4) of Section 80P of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the

assessee as confirmed by the Tribunal. We do not find any good ground to entertain these appeals.

18. Accordingly, the above tax case appeals are dismissed. The substantial questions of law framed are answered against the Revenue.

7. We noted that facts are exactly identical to recent decision delivered by Chennai Bench of ITAT in the case of TN Co-operative State Agricultural & Rural Development in ITA Nos.31 to 33/Chny/2021 order dated 29.04.2022 and this issue has been dealt with after considering the recent decision of Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd., *supra*. Admittedly, the assessee is a primary agricultural credit co-operative society and is governed by Tamil Nadu Co-operative Societies Act and it is carrying out its co-operative business with its members, the claim of deduction u/s.80P(2)(a)(i) of the Act cannot be denied. Hence, we reverse the orders of lower authorities and allow this issue of all five appeals of assessee.

8. The one issue remains in ITA No.179/CHNY/2019 is as regards to the order of CIT(A) confirming the action of AO in disallowing the interest paid to members of the society without deduction of TDS u/s.194A of the Act, thereby invoking the provisions of section 40(a)(ia) of the Act.

9. At the outset, the Id.counsel for the assessee stated that this issue is squarely covered by the decision of Hon'ble Madras High Court

in the case of Coimbatore District Central Co-operative Bank Ltd., vs. ITO, 382 ITR 266, wherein it is held that the amended provision of section 194A of the Act is prospective and not retrospective and further this does not apply to a co-operative society carrying on banking business with the approval of RBI, was not liable to deduct TDS u/s. 194A of the Act on the interest payment made to its members. The Id.DR could not controvert the same.

10. As the issue is covered by the decision of Hon'ble Madras High Court in the case of Coimbatore District Central Co-operative Bank Ltd., *supra*, the amended provision of section 194A w.e.f. 01.06.2015, which is held as prospective, will not apply to the present case because before us the assessment year is 2009-10. Hence, this issue of assessee's appeal is allowed.

11. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 8th June, 2022 at Chennai.

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 8th June, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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