

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' 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 No.: 934/CHNY/2020  
निर्धारण वर्ष /Assessment Year: 2016-17

**ITO**  
Ward -2,  
Cuddalore.

**M/s. NLC Indcoserve,**  
v. Opposite Thermal Power  
Station -1,  
Neyveli – 607 807.

(अपीलार्थी/Appellant)

**PAN: AAAAN-0095-M**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT  
: None

सुनवाई की तारीख/Date of Hearing

: 26.05.2022

घोषणा की तारीख/Date of Pronouncement

: 08.06.2022

**आदेश /O R D E R**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal by the Department is arising out of the order of Commissioner of Income Tax (Appeals), Puducherry in ITA No. 439/CIT(A)-PDY/2018-19 dated 27.08.2020 against the assessment order passed by ITO, Ward-2, Cuddalore u/s. 143(3) of the Income-tax Act, 1961 (herein after referred to as "the Act") dated 27.12.2018.

2. In this the Department is aggrieved by the deletion of disallowance made by the Ld. AO in respect of claim made by the assessee u/s. 80P(2)(a)(vi) of the Act by the Ld. CIT(A).

3. There is a delay of 10 days in filing of this appeal by the assessee. The assessee placed on record petition for condonation of delay along with affidavit explaining the reason for the delay in filing the appeal. The Ld. Counsel for the assessee submitted that the delay in filing the appeal is attributable to the Pandemic of Covid-19 and is covered by the decision of Hon'ble Supreme Court in its decision in suo moto Writ Petition (Civil) No.3/2020 dated 10.01.2022 had held that the period from 01.03.2020 to 28.02.2022 should be excluded while reckoning limitation period. Further, the Hon'ble Supreme Court has allowed 90 days from 01.03.2022 to file the belated appeals. Accordingly, the Counsel claimed that this appeal is filed within the time permitted by the Hon'ble Supreme Court and thus, prayed for its admission by condoning the delay. The assessee has put on record an Affidavit explaining the reasons for the delay. We have duly considered the contentions of the Id. Counsel and gone through the record. Accordingly, for the just decision of the controversy, we find it proper to condone the delay of 10 days which is related to Covid-19 pandemic and thus, admit it for adjudication.

4. Before us none appeared on behalf of the assessee and Department was represented by Mr. AR V Sreenivasan, Addl. CIT.

5. Ld. Sr. DR fairly submitted that the issue pertaining to claim of the assessee u/s. 80P(2)(a)(vi) of the Act is squarely covered in favour of the assessee in the case of assessee itself decided by the coordinate bench of ITAT, Chennai in ITA No. 2539/Chny/2017 for AY 2010-11 passed on 18.06.2018. The assessee also made its submissions vide letter dated 26.05.2022 wherein also it was stated that the issue is covered in assessee's own case by the decision of coordinate bench of ITAT, Chennai.

6. We have considered the rival contentions and perused the order of the coordinate bench of ITAT in assessee's own case in ITA No. 2539/Chny/2017 dated 18.06.2018. We find that facts and circumstances of the case in the hand before us are identical to what were considered by this Tribunal in assessee's own case for AY 2010-11. Relevant extracts from the said order from para 4 to para 5 are reproduced for ease of reference:

*4. We have considered the rival contentions and perused the orders of the authorities below. Facts for the impugned assessment year is pari materia to what was considered by this Tribunal in assessee's own case for assessment year 2012-2013. Paras 2 to 7 of the order dated 18.08.2017 of this Tribunal is reproduced hereunder:-*

2. M/s. NLC Indcoserve, or NLC Industrial Co-operative society, the assessee, is registered as a co-operative society under Tamil Nadu Co-operative Act, 1983. In the assessment made for the assessment year 2012-13, the assessee claimed deduction u/s. 80P(2)(a)(vi) at Rs. 67,98,303/-. The Assessing Officer required the assessee to establish its claim. After considering its reply, the object of the society, its membership qualification and removal, conduct of general meetings, rules in connection with general body, constitution of the board, bye-law etc., the AO held, inter alia, that the assessee's board consists of 11 members viz., women members 3, schedule caste/schedule tribes 2, nominee of NLC 4, MD (Senior Officer) 1, other member 1, and the NLC may at any time withdraw any nominee so nominated to fill up the vacancy or vacancies for fresh nominees. Thus, the society is under the control of NLC Limited and the actual labour member had no independent right carry out the activities of the society. The society has provided voting rights to individual/persons who are nominated by the NLC, which is against the provisions of section 80P(2)(a)(vi). Since, the provisions in the rules and the bye-law of the society is not in accordance with the requirement of 80P(2)(a)(vi), the AO denied the benefit for deduction claimed by the assessee and added it to the taxable income. Aggrieved, the assessee filed an appeal before the CIT(A).

3. The CIT(A) following the decisions of the Hon'ble High Court of Madras in the case of CIT Vs Salem District Printers Service Industrial Co-operative Society Ltd [2007] 290 ITR 371 and the Hon'ble High Court of Kerala in the case of CIT vs Palghat Food Corporation of India, Labour Contract Co-operative Society Ltd [2003] 266 ITR 315 held that the voting rights in elections have not been conferred on the NLC or its nominated persons as per Rule 22 of bye-laws of the assessee's society, hence, the provisions of section 80P(2)(a)(vi) are not violated by the assessee society and it is eligible for deduction. Aggrieved, the revenue filed this appeal, inter alia, with the following grounds:

2. The Commissioner of Income Tax (Appeals) erred in deleting the addition made on the ground that NLC is a member as per bye-laws of the society. If NLC has voting rights, assessee is not eligible for deduction u/s. 80P. If NLC has no voting rights, then it is eligible for the deduction u/s. 80P.

3. The Commissioner of Income Tax (Appeals) had failed to note that the core issue is the non restriction of the voting

*right of NLC to 'one vote' against the 'four votes' allowed during the Meeting of the Board of General Body.*

*4. The company failed to appreciate the fact that out of 11 members, during the decision making process, only five members are elected members, which constitutes less than 50% of the total votes. The others are nominated members who constitute more than 50%.*

*5. The Commissioner of Income Tax (Appeals) failed to note that the affairs of the assessee society are controlled by the NLC.*

*6. Subsequent to completion of the assessment for this assessment year 2012-13, Revenue Audit Party had raised objection for not considering the above issue for the earlier assessment year 2010-11 was reopened and the reassessment proceedings are pending."*

- 4. The DR took us through the assessment order and argued that :*
- a. Under the Bye-law Rule No. 6, NLC could be enrolled as a member of society.*
  - b. Under Rule 22 of Bye-law every member has a right to vote (including the nominated members of NLC also in the General Meeting).*
  - c. Under Rule Nos. 19, 24 & 32 of Bye-law NLC nominated members were given major roles in the board.*
  - d. Sec 80P provides as a precondition that the bye-laws restrict the right to vote to*
    - i. The individuals contributing their labour*
    - ii. Cooperative Credit financing funding  
Operations and*
    - iii. State Government*
  - e. Since the byelaws permit the voting by NLC, the requisite conditions for claiming the deduction are not fulfilled.*
  - f. The AO also made an observation relating to amendment of bye-law relating to Business where the words 'through subcontract' was struck through and observed that the same*

*was violative of the requirements of Sec 80P. In view of the above, the AO has correctly rejected the claim of the deduction . She pleaded on the basis of the grounds of appeal that the appeal may be allowed.*

5. *Per contra, the AR submitted that the CIT(A) has elaborately examined the membership of the society, voting rite , the major roles of the nominated members in the board, amendment in bye -laws, the actual operation of the society etc , applied the ratios of the Hon'ble High Courts of Madras & Kerala in the cases of CIT Vs Salem District Printers Service Industrial Co-operative Society Ltd [2007] 290 ITR 371 (Mad)and CIT vs Palghat Food Corporation of India, Labour Contract Co-operative Society Ltd [2003] 266 ITR 315 (Ker) and allowed the appeal. Hence, he pleaded that the revenue's appeal may be dismissed.*

6. *We have heard the rival submissions. The relevant portion of the order of the CIT(A) is extracted as under :*

*7.11 The Hon'ble High Court of Madras in the case of CIT v. Salem District Printers Service Industrial Co-Operative Society Ltd [2007] 290 ITR 371 has held with reference to the proviso to Section 80P of the Act that "Our reading of the proviso only shows that in respect of classes of members mentioned therein, the society should restrict the voting rights. The proviso does not mean that the society cannot have any other classes of members. In other words, classes of members enumerated in the proviso extracted above are only a few types of members that would have been admitted in the society and it does not mean no person not falling within the three classes enumerated in the proviso, could become member of the society". Following this decision of jurisdictional High Court, I hold that there is no bar for NLC being member of the assesseeSociety and this is not sufficient to hold the society ineligible for deduction u/s. 80P.*

*7.12 The issue of voting rights of members was considered by the Hon'ble Kerala High Court in the case of CIT v. Palghat Food Corporation of India Labour Contract Co-operative Society Ltd [2003] 266 ITR 315 wherein the Court has held that it is necessary to ascertain status of members, 1.e. whether they could be treated as active members or were mere nominal members in society with reference to section 20 of the Kerala Co-operative Societies Act and remitted back the n matter to Tribunal for adjudication as the Tribunal had failed to consider status of "sympathisers" in accordance with provisions of the*

*Kerala Co-operative Societies Act. The operative portion of the order is reproduced below:*

*"5, The following facts are not in dispute. The assessee is a co-operative society, the members of which are engaged in labour work, on contract with the Food Corporation of India, Palakkad. The entire income, belonging to the Society are from the said contract work. The exemption sought for by the assessee was denied solely on the ground that the bye-laws of the Society are contrary to the proviso to section 80P(2)(a). Therefore, it is necessary to refer to the provisions of section 80P. Under section 80P, in the case of a Co-operative Society, if the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sum specified in sub-section (2) in computing the total income of the assessee. Under clause (vi) of sub-section (2), the income, which relates to the collective disposal of the labour of its members, is liable to be deducted. There is no dispute that the income of the Co-operative Society relates to the collective disposal of the labour of its members. However, the proviso to sub-section (2)(a) says that in case of a Co-operative Society falling under sub-clause (vi) or sub-clause (vii), the rules and bye-laws of the society should restrict the voting right to the following classes of its members, viz. (1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities; (2) the co-operative credit societies which provide financial assistance to the society; and (3) the State Government. As we have already noted, under the bye-laws of the society voting power is given to its members, who are sympathisers, who have no right to work, also' (clause 5 of the bye-laws dealt with by the Assessing Officer in paragraphs 2 and 3 of the assessment order). Thus, going by the proviso mentioned above, the inhibition contained in the said proviso will apply. However, the case of the assessee is that the clause 5 of the bye laws, giving, voting right to the members who are sympathisers without any right to labour, is against the provisions of the Co-operative Societies Act, and the Rules framed thereunder, and that Rule 5 of the said Rules clearly provides that the bye-laws of the society shall not be contrary to the provisions of the Act. It is also the assessee's case that section 20 of the Act interdicts the conferment of any voting right to persons other than members (If the Society. Hence, we have to refer*

*to the provisions of the Co-operative Societies Act and the Rules framed thereunder. Section 20 of the Act reads thus:*

*"Votes of members.-Every member of a society shall have one vote in the affairs of the society:*

*Provided that –*

*(a) nominal or associate member shall not have the right to vote;*

*(b) where the Movement is 11 member of the society, each person nominated by the Government on the committee of the society shall have one vote except when the right to vote is to be exercised for election of office bearers of the society; "*

*The expression 'nominal or associate member' is defined in section 2(m) as follows:*

*"(m)'nominal or associate member' means a member who possess only such privileges and rights of a member who is subject only to such liabilities of a member as may be specified in the bye- laws;"*

*6. Thus, going by the provisions of section 20, voting right is conferred only to an active member of a society. It is also specified that a nominal or associate member shall not have the right to vote. Thus, the question that arise for consideration is as to whether sympathisers, who have no right to labour can be treated as active members of a society, or only nominal or associate member falling under clause (a) of the proviso to section 20 read with section 2(m). Rule 5 of the Co-operative Societies Rules clearly provides that the bye-laws of a co-operative society shall (not be contrary to the provisions of the Act. If the voting power conferred to members, who are sympathisers, without the right to labour under clause (5) of the bye-laws is contrary to the provisions of section 20 of the Co-operative Societies Act, certainly, by virtue of the provisions of Rule 5, the said right conferred has to be held to be ultra vires, and consequently, has to be of no effect. "*

*7.13 The analogy of the decision of Hon'ble Kerala High Court is very much applicable to the facts and circumstances of the case under consideration. For this purpose, the provisions of the Tamil Nadu Co-operative Societies Act 1983 (TNCSA 1983, in short) are examined. Under Chapter III of the said Act,*

*"Qualifications for membership and their rights and liabilities" are given. Under this Chapter, section 21 deals with "Qualifications for membership of society". Clause (iv) include 'any body of persons whether incorporated or not and whether or not established by or under any law, if such body is approved by the Government in this behalf by general or special order, shall be eligible for admission as a member of a registered society. As the bye-laws of the society has been approved by the Registrar of Cooperative Societies on behalf of the State Government, membership of NLC in the society can be considered as confirming to the provisions of the TNCSA, 1983. Section 26 under the same chapter deals with "Votes of members' of the Society. Sub-section (4) of Section 26 clearly prohibits rights of nominee of Government, nominated members, etc to vote at elections. The bye-laws of the Society which has been elaborately discussed in. the 'preceding paragraphs clearly shown that they confirm to the provisions of the TNSCA, 1983. Chapter IV of (INCSA, 1983 deals with the Management of registered societies and conduct of general meetings comes under this chapter and expressly dealt in Section 32 of the Act. Thus; daily management of the Society, i.e. day-to-day affairs of the Society which.is managed by the Board elected under bye-laws of the society is distinct from the general body of the Society where the rights of nominated members to vote has been clearly restricted and therefore, the operation of proviso to sub-section (2) of Section 80P does not have any application in this case. As observed by the Kerala High Court, any deviation to the TNSCA, 1983 in the bye-laws would not have any effect and it would only render de-registration of the Society under the Act. The AO has not shown that the registration of the Society has been revoked under law for violation of the provisions of TNSCA, 1983. Following the 97th Amendment to the constitution of India, consequent Amendments in TNSCA 1983 and TNSCR 1988, the Bye-laws of the assessee Society may also require amendments in tandem with thorough overhaul of its clauses.*

*7.14 Combined reading of the latest Tamil Nadu Cooperative Societies Act 1983 and the Tamil Nadu Cooperative Societies Rules 1988 with the relevant provisions of the Bye Laws of the assessee society and the appreciation of actual functioning of the assessee society with purposive and harmonious interpretation in the back-drop of the proviso to S 80P(2)(a)(vi) of the Income tax Act 1961 show the following:*

a. *NLC has been co-opted as a member only for operational ease and convenience to assist the Board of the assessee society in administration. Without the assistance of NLC, smooth running of the assessee society will be practically difficult.*

b. *The ultimate authority of the administration is vested with the General Body of the members.*

c. *NLC or its nominated members, if any, do not have voting rights in elections of the assessee society as per Rule 22 of its Byelaws.*

d. *Board is responsible for management of affairs of the assessee society and not NLC Board can have 11 members, of which 4 can be nominated from NLC by Government. Rule 22 of the Byelaws of the assessee society stipulates that the nominated members of the Board have no voting rights in elections.*

*7.15 Therefore, following the above decisions of the Hon'ble High Courts of Madras and Kerala (supra) and as the voting rights in elections have not been conferred on the NLC or its nominated members as per Rule 22 of Byelaws of assessee society, I am of the view that the provisions of the Proviso to S 80P(2)(a)(vi) are not violated by the assessee society and so it is eligible for the deduction”.*

*7. From the above, it is clear that the board of the assessee society is responsible for the affairs of the assessee society and not the NLC board .The ultimate authority of its administration is vested with the General Body of the members. NLC or its nominated members, if any, do not have voting rights in elections of the assessee society as per Rule 22 of its Byelaws. NLC has been co-opted as a member only for operational ease and convenience to assist the board of the assessee society in administration, without which the smooth running of the assessee society will be practically difficult .Further, the registration of the society has not been revoked under law for violation of the provisions of TNSCA, 1983. On such facts and circumstances, the order of the CIT(A) does not require any interference and hence the revenue’s appeal is dismissed.*

*There being no change in facts, we are not inclined to take a different view for the impugned assessment year.*

*5. In the result, the appeal of the Revenue stands dismissed.”*

7. There being no change in facts and law and following judicial consistency, we are inclined to follow the findings given by this Tribunal in assessee's own case (supra) and accordingly appeal of the Revenue is dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 08<sup>th</sup> June, 2022 at Chennai.

**Sd/-**

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

**Sd/-**

(गिरीश अग्रवाल)

**(GIRISH AGRAWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 08<sup>th</sup> June, 2022

**JPV**

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.            |