

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' 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.:2954, 2955 & 2956/CHNY/2017

निर्धारण वर्ष /Assessment Years: 2009-10, 2013-14 & 2014-15

**The Income Tax Officer,**  
Ward-5,  
Namakkal – 637 001.

vs. **M/s. The Tiruchengode**  
**Agricultural Producers Co-**  
**operative Marketing Society Ltd.,**  
No.9, Katchery Street,  
Velur Road, Tiruchengode Taluk,  
Namakkal – 637 211.

(अपीलार्थी/Appellant)

**PAN: AAAAT 2058C**  
(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA Nos.:298, 299 & 300/CHNY/2021

निर्धारण वर्ष /Assessment Years: 2009-10, 2013-14 & 2014-15

**M/s. The Tiruchengode**  
**Agricultural Producers Co-**  
**operative Marketing Society**  
**Ltd.,**  
No.9, Katchery Street,  
Velur Road, Tiruchengode Taluk,  
Namakkal – 637 211.

vs. **The Income Tax Officer,**  
Ward-5,  
Namakkal – 637 001.

**PAN: AAAAT 2058C**  
अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by

: Shri Y. Sridhar, Advocate

राजस्व की ओर से /Revenue by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.07.2022

घोषणा की तारीख/Date of Pronouncement

: 13.07.2022

**आदेश / O R D E R****PER MAHAVIR SINGH, VICE PRESIDENT:**

These three appeals by the Revenue in ITA Nos.2954, 2955 & 2956/Chny/2017 are arising out of three different orders of Commissioner of Income Tax (Appeals), Salem -7 in ITA Nos.111, 110 & 147/2016-17, all dated 26.09.2017. The assessments were framed by the Income Tax Officer, Ward-5, Namakkal by different orders for assessment years 2009-10, 2013-14 & 2014-15 u/s.143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter the 'Act') vide orders of different dates i.e., 18.03.2016 & 21.03.2016.

2. The only common issue in these three appeals of Revenue is as regards to the order of CIT(A) reversing the order of AO by holding that the assessee is entitled for claim of deduction u/s.80P(2)(a)(i) of the Act. For this, Revenue has raised identically worded grounds in all the three assessment years and the grounds raised in AY 2009-10 read as under:-

2. The learned Commissioner of Income-tax (Appeals) has erred in holding that the assessee is entitled for deduction u/s.80P(2)(a)(i).

3. The learned Commissioner of Income-tax (Appeals) ought to have considered that the Hon'ble ITAT, Panaji Bench in Shri Chandrababhu

Urban Co. Operative Credit Society Ltd. (2014)(45 taxman 14) clearly brought out the definition of " Banking Business".

4. The learned Commissioner of Income-tax (Appeals) ought to have distinguished the fact that assessee society caters to the needs of "resident members" and Nominal Members" and that the loans to the Nominal Members" and receipt of interest thereof, tantamount to the assessee society conducting business dealings.

5. The Commissioner of Income-tax (Appeals) ought to have considered that in the Tamilnadu Co-operative Societies Act, 1983 the term "Members" is dealt in sections 4,5,6,8,13,14,15,20,21,23,24,25,26,27,28,29,30, 31,32,33, 34,35,38,40,41,42,44,46,51,66,69,72,81 and 85. In all these section the term 'member" means ONLY SHARE HOLDER - MEMBER. Hence the intention of the legislature is that associate member will not be treated as member.

6. The learned Commissioner of Income-tax (Appeals) ought to have considered that the Statutory Auditor for Co-operative Society, in his report, discloses only share Holder - Members as Members and did not include the Associate Member in the report.

7. The learned Commissioner of Income-tax (Appeals) erred in allowing the assessee deduction u/s 80P(2)(a)(i) when the aforesaid activity is merely that of a finance business and cannot be treated as a Co-operative society so as to be eligible for the said deduction.

8. The learned Commissioner of Income-tax (Appeals) failed to take cognizance of the latest decision of the Hon'ble Apex Court in the case of The Citizen Co-operative Limited reported in 84 taxmann.com 114(SC)(2017), wherein the facts are identical and squarely applicable to the fact of the instant case.

9. The learned Commissioner of Income-tax(Appeals) failed to note that the principles of mutuality was missing between the society and the nominal members who do not have any share in voting etc. and receipt of interest from those members will automatically be in violation of the Mutually Aided Co-operative Societies Act, 1995(MACS) under which the assessee society is formed.

2.1 Since, the facts and circumstances in all the three appeals are identical and the issue is also exactly identical, we are taking up ITA No.2954/Chny/2017 for AY 2009-10 and will decide the issue.

3. Briefly stated facts are that the assessee is a co-operative society and its main object is arranging finances to its members for development of agricultural activity, milk products, etc. The assessee filed its return of income for the relevant assessment year 2009-10 admitting total income at 'Nil' after claiming deduction u/s.80P(2)(a)(i) of the Act. The assessee has disclosed the following incomes and claimed deduction as under:-

1. Interest income u/s.80P(2)(a)(i)	-	Rs.2,76,89,991/-
2. Marketing of Agriculture produces u/s.80P(2)(a)(iii)	-	Rs.1,41,19,896/-
3. Basic deduction being consumer co-operative society u/s.80P(2)(c)	-	Rs. 1,00,000/-
4. Interest from Co-op institutions u/s. 80P(2)(d)	-	Rs. 11,20,990/-
Total deduction u/s 80P	-	<u>Rs.4,30,30,877/-</u>

The AO noted that the assessee's society is not only advancing loans to members but also advancing loans to associated members in contravention of the provisions of section 80P(2)(a)(i) of the Act. According to AO, this provision provides deduction only to the society which is providing credit facilities to its members. According

to AO, loan is provided to associated members for jewellery, etc., and rate of interest charged is 14%. According to AO, the assessee co-operative society is doing finance business. Therefore, the AO disallowed the claim of deduction u/s.80P(2)(a)(i) of the Act and assessed the total income at Rs.1,79,09,233/-. The AO computed the gross total income as under:-

	Gross Total Income	-	Rs.3,32,07,071
Less:	Allowable deduction :-		
	80P(2)(a)(iii) (as discussed)	- Rs.1,41,19,896	
	80P(2)(C) (as discussed)	- Rs. 1,00,000	
	80P(2)(D) (as discussed)	- Rs. 10,77,942	Rs.1,52,97,338
	Assessed Income	-	Rs.1,79,09,233
	@ Rounded of	-	Rs.1,79,09,230

Aggrieved, assessee preferred appeal before CIT(A).

3.1 The CIT(A) allowed the claim of assessee that the loan given to associated members, they are actual members of the society although they are not entitled to receive any dividend nor they have any voting right to participate in the general administration or to attend any meetings. They are admitted for availing loan and subsequently discharging their loan. The CIT(A) relied on the decision of ITAT, 'C' Bench in the case of M/s.S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., in ITA

No.825/Mds/2015, order dated 23.09.2015. The CIT(A) also noted that the Hon'ble Madras High Court has affirmed the decision of this Tribunal in the case of M/s.S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., *supra*. Aggrieved, Revenue is in appeal before us.

4. Now before us, the Id.counsel for the assessee Shri S. Sridhar, Advocate appeared, on the other hand Shri AR.V. Sreenivasan, Addl.CIT argued on behalf of the Revenue.

5. We have heard rival contentions and gone through facts and circumstances of the case. Admitted facts are that the assessee is a co-operative society engaged in the business of development of agricultural activities, milk products etc., and also financing to its members i.e., accepting and providing loans to its members, whether associate members or members. We noted that the AO disallowed the claim of deduction on the ground that the assessee had lent money to the members who are associate members and have received the interest at par with the commercial banks. According to AO, the assessee is not eligible for claim of deduction u/s.80P(2)(a)(i) of the Act and according to him, the assessee's

activities are purely in the nature of commercial banking activity and therefore hit by provisions of section 80P(4) of the Act. We noted that this issue is squarely covered by the decision of Hon'ble Madras High Court in assessee's own case and in the case of S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., filed by in T.C.A Nos.484 to 487 and 490 of 2016 order dated 02.08.2016, wherein the Hon'ble High Court has held in favour of assessees and the relevant reads as under:-

3. This issue has been considered by Income Tax Appellate Tribunal, Chennai 'B' Bench in the cases of SL(SLP) 151, Karkudalpatty Primary Agricultural Co-operative Credit Society Ltd and S 1382 Mullukuruchi Primary Agricultural Co-operative Credit Society Ltd in I.T.A. Nos. 292 & 293/Mds/2014 vide common order dated 17.03.2014 and also the decision of 'C' Bench in the cases of M/s. 1915 Vellalapatty Primary Agricultural Co-operative Credit Society Ltd. in I.T.A. Nos. 385 & 386/Mds/2014, M/s.6648 Attur Mulluvadi Primary Agricultural Co-operative Credit Society Ltd. in I.T.A. No. 387/Mds/2014 vide common order dated 01.05.2014. After perusing the relevant provisions of State Co-operative Societies Act, 1983, governing similar assessees, the Tribunal found that definition of 'members' includes 'associate members', as well. The Tribunal found that such nominal members also enjoy statutory recognition as per the State Co-operative Societies Act. The Tribunal further observed that the objections of the Revenue that 'members' defined in sub-clause (i) of Section 80P(2) should only include voting members, would amount to a classification within classification which is beyond the purview of taxing statute; unless provided specifically by the legislature.

4. Therefore, we find that the issue raised in these appeals stands adjudicated by the Tribunal in favour of the assessee. Accordingly, we set aside the orders of the lower authorities on this point and direct the assessing authority to grant the benefit to the assessee available under Section 80P(2)(a)(i).

8. In the case of ITO Vs. M/s. Veerakeralam Primary Agricultural Co-operative Credit Society in ITA No.197/Mds/2013 dated 11.02.2014, the Tribunal dismissed the appeal of the Revenue. Against the order of the Income Tax Appellate Tribunal, the aforesaid Veerakeralam Primary Agricultural Co-operative Credit Society filed an appeal under Section 260A of the Income Tax Act, 1961, in T.C.A. Nos. 735, 755 of 2014 and 460 of 2015 before this Court. By judgment dated 05.07.2016, the appeals were dismissed, on the following reasoning:

3. Sub-section (4) of Section 80P of the Income Tax Act, 1961 is extracted below :

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation For the purposes of this sub-section ---

- (a) co-operative bank and primary agricultural credit society shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);
- (b) primary co-operative agricultural and rural development bank means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

It is seen that the primary object of the society is to provide financial accommodation to its members to meet all the agricultural requirements and to provide credit facilities to the members, as per the bye-laws and as laid down in Section 5 (cciv) of the Banking Regulation Act, 1949. Further, from the CPT Circular dated 12.03.2008, it is evident that a credit co-operative society is not a co-operative bank, as defined in Part V of the Banking Regulation Act, 1949. The object of a 'Co-operative bank' is to accept deposits from the public, for lending or investment of money. On perusal of the findings of the Appellate Authority as well as the Appellate Tribunal, it is categorically made clear that the assessee society will not come under the object of the principal business of a co-operative bank, which is a banking business. The benefit of Section 80P is excluded for deductions by co-operative banks, whereas the primary agricultural credit societies are entitled for the said deduction.

14. ....

15. In the recent decision of the Kerala High Court, in the case of Chirakkal Service Co-operative Bank Ltd., Kannur vs. the Commissioner of Income Tax, reported in (2016) 68 taxmann.com.298 (Kerala), the High Court considered similar substantial questions of law (Issue No.A) raised by the assessee, regarding the entitlement for exemption under sub section (4) of Section 80P. By considering the fact that the assessee is a primary agricultural society, the Kerala High Court has answered the substantial question of law in favour of the assessee and held that the primary agricultural credit societies, registered as such under the KCS Act and classified so under that Act, including the appellants, are entitled to such exemption. Therefore, the aforesaid decisions is applicable to the instant case.

16. In the light of the aforesaid facts and circumstances of the case, we are of the view, that the substantial question of law framed in the instant appeals, is answered against the Revenue. The exception barred out in Section 80P (4) of the Income Tax Act, 1961, is applicable to the assessee credit society. Hence, the appeals are accordingly dismissed.

9. In the instant cases, while allowing the appeals filed by the assessee, the Commissioner of Income Tax (Appeal), had relied upon, the following portion of the decision of the Tribunal arrived in ITA No.292/Chny/2014:-

*7. We have heard both parties and gone through the case file. As stated in the preceding paragraphs, the CIT (A) has proceeded to enhance the assessment (supra) only on the ground that the assessee's credit and various other loan, facilities have been allowed to be availed by 'B' class 'nominal' members whose liability is limited, at the best; to the extent of loan repayable instead of 'A' class members who have voting rights and dividend claim, and also that the latter members are jointly and severally liable. In this backdrop, when we peruse the relevant provisions of the State Co-operative Societies Act, 1983, governing the assessee-society, it is evident from the definition of 'member' u/s 2(16) that the same includes an 'associate member' recognition as per the Act. The net result is that once the 'nominal' members also enjoy statutory condition imposed by the legislature u/s 80P (2) (a) (i).*

*We make it clear that we are dealing with the deduction provision to be interpreted liberally. In our considered opinion, the objections of the revenue that the 'members' defined in sub clause (i) of Section 80P should only include voting members would amount to a classification within classification which is beyond the purview of tax statute; unless provided specifically by the legislature. Moreover, we find that the case law of Hon'ble Punjab and Haryana High Court (Supra) also supports the assessee's case wherein it has been held under the very provision that for the purpose of impugned deduction, it is irrelevant so far as classification of the members in 'A' or 'B' category is concerned. Following the decision of the Punjab and Haryana High Court, the appellate authority as well as the Income Tax Appellate Tribunal, has passed the order impugned.*

10. The appellate authority, namely, the Commissioner of Income Tax (Appeal) and the Income Tax Appellate Tribunal has clearly held that the assesseees are not co-operative bank and that their activities in the nature of accepting deposits, advancing loans etc., carried on by the assesseees are confined to its members only and that too in a particular geographical area. Therefore, the respondent Societies are eligible for deduction under Section 80P (2) (a) (i) of the Act. The contention of the appellants that the members of the assessee societies are not entitled to receive any dividend or having any voting right or no right to participate in the general administration or to attend any meeting etc., because they are admitted as associate members for availing loan only and was also charging a higher rate of interest at the rate of 14%, is not a ground to deny the exemption granted under Section 80P (2)(a) (i) of the Act.

11. The decision rendered by this Court in TCA 735, 755 of 2014 and 460 of 2015 dated 05.07.2016, squarely covers the present facts of the case, so far as it relates to the ineligibility of the respondent societies, under Section 80P (2)(a)(i). In the light of the above discussion and the decisions, we are of the view that the substantial questions of law raised in the instant appeals are answered against the Revenue.

5.1 Further, this issue is now covered by the Co-ordinate Bench decision in the case of Tamilnadu Co-operative State Agriculture and

Rural Development Bank Limited, in ITA Nos.31 to 33/Chny/2021, order dated 29.04.2022, wherein we have already considered the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited vs. CIT, Calicut reported in [2021] 123 Taxmann.com 161 (SC) and held as under:-

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.

5.2 As the issue is squarely covered and the facts are identical to the above referred case laws, respectfully following the Hon'ble Supreme Court decision in the case of Mavilayi Service Co-operative Bank Limited, *supra*, Hon'ble Madras High Court decision in the assessee's own case & S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., and the Co-ordinate Bench decision in the case of Tamilnadu Co-operative State Agriculture and Rural Development Bank Limited, *supra*, we dismiss the appeal of Revenue. Consequently, all the three appeals of Revenue are dismissed.

### **ITA Nos.298 to 300/CHNY/2021**

6. These three appeals by the assessee for the same assessment years as we have already dealt with in the above three appeals of Revenue i.e., 2009-10, 2013-14 & 2014-15 are arising out of the common order of CIT(A), Salem-7 in ITA No.E-

28, 29, 30/2017-18, order dated 13.02.2019. The AO while giving appeal effect to the order of CIT(A) in CIT(A), Salem order in ITA No.111/2016-2017, 110/2016-17 & 147/2016-17 dt. 26.09.2017 for assessment years 2009-10, 2013-14 & 2014-15 respectively vide orders of even order dated 14.11.2017 have not followed the directions of CIT(A) but disallowed the claim of deduction u/s.80P(2)(a)(i) of the Act repeating the same additions which was made originally.

7. We noted that the subject matter of these three appeals by assessee for assessment years 2009-10, 2013-14 & 2014-15 is exactly identical to the subject matter raised by Revenue in ITA Nos.2954, 2955 & 2956/Chny/2017 above, wherein we have already adjudicated the issue of claim of deduction u/s.80P(2)(a)(i) of the Act.

8. We noted that these three appeals by assessee are barred by limitation by 855 days and assessee has filed identical reasons in its petition supported by affidavit for all the three years stating the reason that the assessee was pursuing the matter before Hon'ble

Madras High Court and the relevant reasons stated in affidavit reads as under:-

The reasons for the delay are as under:

For the assessment years 2008-09 and 2010-11, the Assessing Officer, while giving effect to the orders of the CIT(A), exceeded his jurisdiction: aggrieved the appellant/petitioner filed appeals before the CIT(A);CITA) allowed the appeals of the appellant/petitioner; Aggrieved, Department filed appeals before ITAT, Chennai and ITAT Chennai in ITA Nos:362 and 363/17 allowed the appeals by common order dated 22/09/2017 and dismissed the Cross Objections filed by the appellant/petitioner in 46 and 47 of 2017.

Aggrieved, the appellant/petitioner filed tax cases before the Madras High Court and the details are as under:

Assessment year	2008-09		2010-11	
Filing No.:	9245/18 dt. 02/02/2018	9249/18 dt. 02/02/2018	9251/18 dt. 02/02/2018	9247/18 dt. 02/02/2018
Registration No.	466/2020 dt. 21/12/2020	468/2020 dt. 21/12/2020	469/2020 dt. 21/12/2020	472/2020 dt. 21/12/2020

The appellant/petitioner society filed 4 tax cases, (i.e) 2 against the appeals by the Department and 2 against the Cross Objections by the appellant/petitioner society. The Hon'ble Madras High Court by order dated 18/12/2020, copy is attached herewith, allowed the tax cases referred above in favour of the appellant/petitioner society.

The appellant/petitioner society, in view of the pendency of its tax cases filed on 02/02/2018, did not file appeals against the common order of the CIT(A), Salem dt. 13/02/2019 for the assessment years 2009-10, 2013-14 and 2014-15, since the issue involved was similar.

As soon as the order of the Madras High Court dated 18/12/2020, decided in favour of the appellant petitioner society, was communicated, it decided to file appeals before the ITAT for the above assessment years.

In view of the pandemic and COVID-19, the appeals could not be filed immediately and they are filed now with a delay of 855 days.

8.1 As the reasons stated seem reasonable, we condone the delay and admit the appeals.

8.2 On merits, we have dismissed the appeals of Revenue for all these three assessment years i.e., 2009-10, 2013-14 & 2014-15 and the issue arose out of the order of CIT(A) in Revenue's appeal is exactly identical in these three appeals of assessee because the AO while giving appeal effect to the order of CIT(A) in these three years, despite CIT(A) allowing the appeals of assessee, the AO made addition against which assessee preferred appeals before CIT(A) and had travelled again to ITAT. As we have dismissed the Revenue's appeals on merits and the issue is exactly identical, we allow these appeals of the assessee.

9. In the result, the appeals filed by the Revenue in ITA Nos.2954, 2955 & 2956/Chny/2017 are dismissed and the appeals filed by the assessee in ITA Nos.298, 299 & 300/Chny/2021 are allowed.

Order pronounced in the open court on 13<sup>th</sup> July, 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 13<sup>th</sup> July, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                         |                              |
|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue       | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF.            |