

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH : PANAJI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos.94 & 95/PAN/2018
Assessment Years: 2010-11 & 2011-12

ITO,
Ward-1,
Nipani.

Vs. Shri Arihant Credit Souhard
Sahakari Ltd.,
346, Arihant, Patil Galli,
A/P Borgaon,
Taluka Chikodi,
Distt. Belagavi.

PAN: AABAS0813K

(Appellant)

(Respondent)

Assessee by : Shri Ashok Mudnur, CA
Revenue by : Shri Mayur Kamble, Sr. DR
Date of Hearing : 15.06.2022
Date of Pronouncement : 01.09.2022

ORDER

PER C.M. GARG, JM:

These appeals have been filed by the assessee against the orders of the CIT(A), Belagavi, dated 08.12.2017 for Assessment Years 2010-11 & 2011-12.

2. Identical grounds of appeal taken by the assessee for both the years (except that there is difference in figures). The grounds of appeal for AY 2010-11 (ITA No.94/PAN/2018) read as under:-

“1. In the facts and circumstances of the case, the CIT(Appeals) erred in allowing the deduction u/s 80P(2)(a)(i) considering the submission of the assessee that it is engaged in providing credit facilities to its members only.

(2) In the facts; and circumstances of the case, the CIT(Appeals) erred in accepting as correct the submission of the assessee without examining the Balance-sheet wherein, the category of members dealt with by the assessee society clearly indicated that the assessee is not doing business with members alone.

(3) The Id CIT(A) in the facts and circumstances of the case of Hon’ble Apex Court ought to have called for remand report in regard to whether the assessee is a co-operative society meant for its members only and whether any income was earned by way of investment/loans etc to non-members

(4) The ld.CIT(A) erred in not applying the ratio of the decision of Hon’ble Supreme Court in the case of Citizen Co-op Society Ltd, Hyderabad v. ACIT, C-9(l), Hyderabad in Civil Appeal No.10245 of 2017 (Arising out of SLP (C) No.20044 of 2015) dated 8.08.2017 since the assessee is also catering to the category of members called associate members which is not akin to regular member.

(5) The ld.CIT(A) erred in coming to the conclusion that the assessee society is a co-operative society meant only for its members and eligible for deduction under section 80P(2)(a)(i) ignoring the ratio laid down by the Hon’ble Apex Court in the case of Citizen Co-op Society Ltd.

(6) The learned CIT(Appeals) erred in not considering the fact that the Special Leave Petition filed by the Department before the Hon’ble Supreme Court, vide SLP No. 18221 of 2015 has been converted to Civil Appeal No. 5103/2015 which is pending for a final decision on the same issue, in the case of CIT Vs. Biluru Gurbasava Pattin Sahakari Sangh Niyamit.

(7) The ld.CIT(A) has erred in not appreciating the fact that the assessee is not eligible for deduction u/s 80P(2)(a)(i) as it has violated the mutuality of the Co-operative society laid down by Co-operative Societies Act by accepting Cash deposits from non members in view of the Apex Court decision (supra).

(8) For these and other grounds that, may be urged at the time of hearing, the order of the learned CIT(Appeals) may be set aside and that the order of the Assessing Officer be restored.

3. The assessee has also raised identical additional grounds of appeal for both the years (except that there is difference in figures). The additional grounds of appeal taken by the assessee for AY 2010-11 (ITA No.94/PAN/2018) read as under:-

“1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the additions made in the hands of the society amounting to Rs.3,16,00,000/- on the ground that substantive addition has been confirmed in the case of Shri Abhaykumar B Patil.

2. The protective addition of Rs.3,16,00,000/- deleted by the learned CIT(A) may be restored.”

Grounds of appeal No.1 to 8

4. Apropos ground no.1 to 8, the Learned Senior Departmental Representative (Sr. DR) was drawn our attention towards relevant part of the assessment order submitted that in paras 8 to 8.12, the Assessing Officer dealt with the matter in detail and thereafter rightly held that the assessee’s contention are not acceptable. Since the primary co-operative bank means a co-operative society, therefore, being a co-operative society, it has to deal with members only. The members can be regular members or nominal members. Secondly, the membership to a co-operative society as per the State Co-operative Societies Act is open to all individuals who are major and have sound mind. The membership of state co-operative society is open to all and the membership cannot be denied by the society as its will unless the assessee disqualifies on other grounds. Thus, the membership is open to public and members are part of public and the membership is not restrictive. The Ld. Sr. DR submitted that the Ld. CIT(A) has ignored the facts and circumstances of the case and without examining the balance sheet, wherein

the category of members dealt with by the assessee society clearly indicated that the assessee is not doing business with members alone but also doing business with others society members, which are not akin to regular member. The Ld. DR vehemently pointed out that the assessee society is a co-operative society meant only for its members and eligible for deduction u/s 80P(2)(a)(i) of the Act, but the Ld. CIT(A) has granted relief to the assessee ignoring the ratio laid down by the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (supra). The Ld. Sr. DR also submitted that the Ld. CIT(A) has also erred in not considering the fact that the Special Leave Petition filed by the Department before the Hon'ble Supreme Court vide SLP No.18221 of 2015 has been converted into Civil Appeal No.5103/2015 which is pending for a final decision on the same issue, in the case of CIT vs Biluru Gurbasava Pattin Sahakari Sangh Niyamit (supra). The Ld. Sr. DR submitted that the assessee society is not eligible for deduction u/s 80P(2)(a)(i) of the Act as it has violated the mutuality of the co-operative society laid down by Co-operative Societies Act by accepting cash deposits from non members in view of the Hon'ble Supreme Court's decision in the case of Citizen Co-operative Society Ltd. (supra). Therefore, the Ld. SR. DR prayed that the order of the Ld. CIT(A) may kindly be set-aside by restoring the order that of the Assessing Officer.

5. Replying to the above, the Learned Authorized Representative supporting the order of the Ld. CIT(A) and placing reliance on the recent judgment of the Hon'ble Supreme Court in the case of Mavillayi Service Co-operative Bank Ltd. vs CIT, reported in [2021] 123 taxmann.com 161(Hon'ble Supreme Court) submitted that nominal members are also members and

loans given to such nominal members would qualify for the purpose of deduction u/s 80P(2)(a)(i) of the Act. The ld. Counsel submitted that ITAT Chennai Bench, after considering all the judgments of Hon'ble Supreme Court available at that point of time including the recent judgment of Mavillayi Services Co-operative Bank Ltd. (supra) has allowed the claim of the assessee u/s 80P(2)(a)(i) of the Act in the case of AA-435 Velankattuvalasu Primary Agricultural Cooperative Credit Society Ltd. vs ACIT in ITA Nos.600 & 601/Chny/2021 for the assessment years 2011-12 and 2017-18 dated 29.04.2022. Therefore, the order of the Ld. CIT(A) kindly may uphold.

6. Upon careful consideration and rival submission and after careful perusal and respectfully consideration of judgment of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. (supra) and order of ITAT Chennai Bench in the case of AA-435 Velankattuvalasu Primary Agricultural Cooperative Society Ltd. vs ACIT, we observe that identical issue was placed before the ITAT Chennai Bench in the case of AA-435 Velankattuvalasu Primary Agricultural Co-operative Society (supra), wherein, the Co-ordinate Bench of the Tribunal, after considering the judgment of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd.(supra)and subsequent judgment in the case of Mavilayi Service Co-operative Bank Ltd. (supra) held as under:-

“8. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that this issue is squarely covered exactly on identical facts 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, the decision pronounced on 29.04.2022, wherein considering the decision of Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd., supra and the decision of Hon'ble Madras High Court in the case of S-1308 Ammapet Primary

Agricultural Co-operative Bank Ltd., supra, the deduction is allowed u/s.80P(2) of the Act in respect of income earned from associated members. The Tribunal in the case of Tamilnadu Co-operative State Agriculture and Rural Development Bank Limited, supra held as under:-

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 Cooperative 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 Cooperative Society providing finance to the members of the Society. We noted that the Assessee, like other co-operative institutions is a Cooperative 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 Cooperative 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 Cooperative 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 Cooperative 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 Cooperative 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 CITDR 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 cooperative 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 byelaws 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 [AACCS], 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 Cooperative 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 cooperative 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 cooperative 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 Cooperative 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 byelaws 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 Cooperative 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 Cooperative 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 cooperative 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 Cooperative 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.

Accordingly, we find the issue is squarely covered and hence, in this case also we allow the claim of deduction u/s.80P(2) of the Act."

7. Therefore, when, we analyze and evaluate the facts and circumstances of the present case, then we find that the issue if having similar and identical facts with the issue involved in the case of AA-435 Velankattuvalasu Primary Agricultural Credit Society Ltd. vs ACIT (Supra) and Co-ordinate Bench of the Tribunal, after considering the judgment of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. vs CIT (Supra) held that nominal members are also members and loan given to such nominal members would also qualify the claim of society for the purpose of deduction u/s 80P(2)(a)(i) of the Act. Therefore, the Ld. CIT(A) was right in granting relief to the assessee on this issue. Thus, we are unable to see any valid reason to interfere with the finding arrived by the Ld. First Appellate Authority and thus, we uphold the same. Accordingly, grounds no.1 to 8 of the Revenue being devoid of any merit and are dismissed.

Additional grounds no. 1 and 2 for AY 2010-11

8. The Ld. Sr. DR vehemently supporting the assessment order submitted that the assessee has given details of one of the depositor Shri Abhay Kumar

B Patil, who had deposited an amount of Rs.8.85 Crores as per diary impounded by the Department during the course of survey proceedings, u/s 133A of the Act. The Ld. Sr. DR further submitted that the assessee was provided the details of loan given brother of Shri Abhay Kumar B. Patil and his family members and after going through the details provided by the assessee and the details available in the impounded material, an amount of Rs.8.85 Crores was rightly added in the hands of Shri Abhay Kumar B. Patil substantially as Shri Abhaykumar B. Patil denied for cross examination with Shri. S. K. terdale, AGM. The Ld. Sr. DR further submitted that Shri. Abhaykumar B. Patil denied for cross examination by stating that he don't have any relation with the assessee and has not given any deposits to Shri. Terdale, AGM but the A.O was able to prove with corroborative and circumstantial evidence that the amount was in fact belonged to Shri. Abhaykumar B. Patil only. Therefore, the AO In view of the denial by Shri Abhaykumar B. Patil, in order to protect the interest of revenue, an amount of Rs.8.85 crores was added protectively in the hands of the assessee out of Rs.3,16,00,000/- was added in hands of the assessee for A.Y.2010-11. The Ld. Sr. DR submitted that the Ld. CIT(A) has granted relief to the assessee without any basis impugned appellate order may kindly be set-aside by restoring the order of the AO.

9. Replying to the above, the Ld. AR of the assessee submitted that the same CIT(A) dismissed the appeal of the Shri Abhay Kumr B. Patil confirming the addition in the hands of Shri Abhay Kumar B. Patil. The same amount in fact was belonging to Shri Abhay Kumar B. Patil only and thus the addition was sustained which was made on substantial basis. The Ld. AR

strenuously contended that when the substantial addition has been confirmed in the hands of the Shri Abhay Kumar B. Patil then the Ld. CIT(A) was right in deleting the protective addition in the hands of the assessee society as both addition cannot be allowed in the hands of Shri Abhay Kumar B. Patil as well as the assessee society. Therefore, the Ld. CIT(A) was right in deleting the addition.

10. On careful consideration and rival submission, first of all we may point out that the Ld. CIT(A) has decided the issue in favour of the assessee with the following observations and finding, which reads as under:-

20. Issue of protective assessment:

In the Assessment order A.O stated that assessee has given details of one of the depositors nShri. Abhaykumar B. Patil who had deposited an amount of Rs.8.85 crores as per the dairy impounded at the time of survey. Assessee provided the details of loan given to brothers of Shri. Abhaykumar B. Patil and his family members. After going through the details provided by the assessee and the details available in the impounded material an amount of Rs.8.85 crores was added in the hands of Shri. Abhaykumar B. Patil substantively as Shri. Abhaykumar B. Patil denied for cross examination with Shri. S. K. terdale, AGM. Shri. Abhaykumar B. Patil denied stating that he don't have any relation with the assessee and has not given any deposits to Shri. Terdale, AGM. A.O was able to prove with corroborative and circumstantial evidence that the amount was infact belonged to Shri. Abhaykumar B. Patil only. In view of the denial by Shri. Abhaykumar B. Patil in order to protect the interest of revenue an amount of Rs.8.85 crores is added protectively in the hands of the assessee. A.O has added an amount of Rs.3,16,00,000/-in hands of the assessee on protective basis for A.Y.2010-11.

20.1 Amount alleged to have been deposited by Shri Abhaykumar B. Patil amounting to Rs.885 lakhs was assessed in the case of Shri Abhaykumar B. Patil and protective assessment was made by Assessing Officer in the hands Society's Case.

20.2 The appeal in the case Shri Abhaykumar B. Patil was dismissed by the undersigned vide appellate order ITA No.97/BGM/2014-15 dtd: 01/11/2017 deciding that the amount in fact was belonging to Shri Abhaykumar B. Patil only and sustained the assessment made in the hands of Shri Abhaykumar B. Patil. Addition made in the case of Shri. Abhaykumar B. Patil of Rs.3,16,00,000/- was confirmed for the A.Y.2010-11 by the undersigned..

20.3 As substantial assessment was confirmed in the case of Shri Abhaykumar B. Patil the Protective assessment made in the case of appellant society is deleted as the same Income cannot be assessed in both the hands simultaneously.

20.4 However, appellant society had violated the principles of mutuality of the Co-operative society and received deposits in cash from Non-members and repaid them in cash. There is a clear violation of 269SS/T of the I. T. Act. Assessee did not followed the principles/norms of keeping the correct details of depositors in whose names FDs were made. Assessing Officer may initiate appropriate proceedings under Income-tax and other laws for such violation.”

11. On careful consideration and rival submissions and in the light of observations and findings arrived by the Ld. CIT(A), we are in agreement with the conclusion drawn by the Ld. CIT(A) that the substantive addition has been confirmed in the hands of the Shri Abhay Kumar B. Patil by deciding that the amount was actually belonging to the Shri Abhay Kumar B. Patil only and thus the addition has been sustained in the hands of Shri Abhay Kumar B. Patil, then protective addition made in the hands of the assessee society cannot survive simultaneously and hence we uphold that the Ld. CIT(A) was right in deleting the protective addition in the hands of the assessee society by taking cognizance of the fact that the substantial addition has already been confirmed in the hands of Shri Abhay Kumar B. Patil. Therefore, we are unable to see any valid reason to interfere with the finding arrived by the Ld. First Appellate Authority and thus, we uphold the same. Accordingly,

additional grounds no.1 and 2 of the Revenue for AY 2010-11 being devoid of any merit and are dismissed.

ITA No.95/Pan/2018 (AY 2011-12)

Grounds No.1 to 8 of the Revenue's Appeal (AY 2011-12)

12. On being asked the by the Bench in the beginning of hearing, the Ld. Sr. DR appearing on behalf of the Revenue and Ld. AR appearing on behalf of the assessee, fairly stated that the facts and circumstances of AY 2011-12 are identical to the facts and circumstance of AY 2010-11. Therefore, our conclusion drawn for AY 2010-11 in the earlier part of this order on grounds no.1 to 8 would apply mutatis mutandis to grounds of appeal no.1 to 8 of the Revenue's appeal for AY 2011-12. Accordingly, grounds no. 1 to 8 of the Revenue are dismissed by respectfully following the order of the ITAT Chennai Bench in the case of AA-435 Velankattuvalasu Primary Agricultural Cooperative Credit Society Ltd. vs ACIT (supra) and judgment of the Hon'ble Supreme Court in the case of Mavilayi Services Co-operative Bank Ltd. vs CIT (supra) .

Additional ground no. 1 and 2 for AY 2011-12

13. As we have noted that the Ld. Sr. DR and Ld. AR in the beginning of hearing have agreed that the facts and circumstances of additional ground no.1 and 2 for AY 2010-11 except quantum, are identical and similar to the facts and circumstances of grounds no.1 and 2 of the Revenue for AY 2011-12. Therefore, our conclusion drawn for additional ground no. 1 and 2 for AY

2010-11 would apply mutatis mutandis to the grounds no.1 and 2 for AY 2011-12. Consequently, additional ground no.1 and 2 for AY 2011-12 being devoid of merit and are dismissed.

14. In the result, both appeals of the Revenue are dismissed.

Order pronounced in the open court under Rule 34(4) of the IT(AT) Rules, 1963 on 01.09.2022 .

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 01st September, 2022.

Shekhar,

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi