

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **852/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2017-18

**M/s. Vennandur Coop
Primary Agricultural Credit
Society,**
D.No.5/120-1, Rasipuram Main
Road, Vennadur-Post,
Rasipuram-Tk.,
Namakkal – 637 505.

The Income Tax Officer,
vs. Ward 3,
Namakkal.

PAN: AAAAV 2120R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.S. Lakshmi Venkatraman,
F.C.A

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.01.2023

घोषणा की तारीख/Date of Pronouncement

: 11.01.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Appeal No.CIT(A) Salem/10945/2019-20 dated 05.09.2022. The assessment was framed by the Income Tax Officer,

Ward 3, Namakkal for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 10.12.2019.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in disallowing the claim of deduction u/s.80P(2)(a)(1) of the Act by holding that the associate members are not entitled to claim of deduction. For this, assessee has raised the following effective ground No.2:-

“On the facts and circumstances of the case the appellant being Primary Agricultural Society is entitled to exemption u/s 80P(2)(a)(1) of the Income Tax Act which position has been settled by the decision of the Honourable Madras High Court in the case of PCIT, Salem vs. M/s. S-1308 Ammapet PACCS Limited in tax appeal Nos.882 and 891 of 2018 and in the context of Judicial discipline the first appellate authority should have followed the above decision of Jurisdictional High Court. The SLP filed by the department against the above decision has also been dismissed by the Apex Court by order dated 17.01.2020.

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee is a primary agricultural cooperative credit society registered under the TamilNadu Cooperative Societies Act. The assessee for the relevant assessment year 2017-18 filed its return of income on 22.02.2018 admitting 'Nil' income after claiming deduction u/s.80P of the Act for

an amount of Rs.14,90,193/-. During the course of assessment proceedings, the AO noted that the assessee society is providing credit facilities to its regular members i.e., 'A' class members as well as associated members which are 'B' class members. According to AO, the assessee calls the associated members as nominal members. The AO noted that the co-operative society functions under the State Co-operative Act and the word used is 'member' in various sections, which means shareholding members only. The AO relying on the decision of Hon'ble Supreme Court in the case of M/s.Citizen Co-operative Society Ltd., vs. ACIT, (2017) 84 taxmann.com 114(SC) disallowed the claim of deduction. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of AO despite the fact that he has relied on the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, 123 Taxmann.com 161 (SC). Aggrieved, assessee came in appeal before the Tribunal.

4. We noted that this issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., *supra* wherein this Tribunal is consistently following the issue of regular members as well as associated members because the Tamil Nadu Co-operative Societies Act

permits so. This issue has been considered by this Tribunal in the case of ITO vs. The Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd., in ITA Nos.2954 to 2956/Chny/2027, order dated 13.07.2022 wherein we have considered the decision of Hon'ble Madras High Court decision in the case of S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., in T.C.A Nos.882 and 891 of 2018 and held as under:-

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.

4.2 The facts being identical, respectfully taking this issue as covered we direct the AO to allow the claim of deduction u/s.80P of the Act and this appeal of assessee is accordingly allowed.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 11th January, 2023 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th January, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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