

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' 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**

**आयकरअपीलसं./I.T.A.Nos.111 & 112/Chny/2023**

(निर्धारणवर्ष / Assessment Years:2017-18 & 2018-19)

The Central Excise Staff Co-op Thrift and Credit Society Ltd. NOX-397, 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai. -600 034.	Vs	The Income Tax Officer, Non-Corporate Ward-3(5) Chennai.
PAN:AAEAT 9030G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.Vasudevan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	28.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	31.03.2023

**आदेश / ORDER**

**PER MAHAVIR SINGH, VP:**

These two appeals by the assessee are arising out of separate orders passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1047824542(1) / 1047824745 both dated 06.12.2022. The assessments were completed by the Income Tax Officer, Non-Corporate Ward-3(5), Chennai, for the relevant assessment years 2017-18 & 2018-19 u/s.143(3) / 143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter "the Act") vide orders dated 20.12.2019 / 26.02.2021. Since, the facts and issue involved

in these appeals is common, for the sake of convenience, they were heard together and disposed off by this consolidated order.

2. The only common issue in these two appeals of the assessee is as regards to order of the CIT(A) confirming action of the Assessing Officer in making disallowance of claim of deduction u/s.80P(2)(d) of the Act, being interest earned received from deposits made with Chennai Central Co-operative Bank amounting to Rs.29,68,672/- in assessment year 2017-18 and Rs.1,12,75,645/- in assessment year 2018-19.

3. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that the Assessing Officer noted that the assessee, an employees' co-operative society, has earned interest income from deposits kept in Chennai Central Co-operative Bank as under:-

S.No.	Particulars	Amount (in Rs.)
1.	Interest from CC Bank, Nungambakkam	582
2	Gratuity interest from CC Bank, Nungambakkam	63,824
3	Dividend from shares of CC Bank, HO	12,94,219
4	BDR Interest from CC Bank, HO	40,011
5	RF Interest from CC Bank, HO	15,37,785
6	SRF interest from CC Bank, HO	1,975
7	BF Interest from CC Bank,	30,276

	Nungambakkam	
	Total Rs.	29,68,672

4. The facts are being taken from assessment year 2017-18. The Assessing Officer noted that the assessee has claimed deduction u/s.80P(2)(d) for an amount of Rs.29,68,672/-, but the Assessing Officer disallowed the same by following decision of the Hon'ble Supreme Court in the case of Civil Appeal No.1622/2010 to 1629/2010 and by order dated 08.02.2010 in Totgars Co-operative Sale Society Ltd. Vs, ITO (2010) 322 ITR 283. The Assessing Officer disallowed claim of the deduction u/s.80P(2)(d) and added to returned income of the assessee. Aggrieved, the assessee preferred appeal before the CIT(A).

5. The CIT(A) also confirmed decision of the Assessing Officer disallowing claim of deduction u/s.80P(2)(d) by applying provisions of section 80P(4) and by holding that interest income earned by depositing excess fund in co-operative bank is a part of co-operative society's business and hence, denied claim of deduction. Aggrieved, the assessee came in appeal before the Tribunal.

6. We noted that there are interest income from Chennai Central Co-operative Bank, gratuity interest from Chennai Central Co-operative Bank, dividend from shares of CC Co-operative Bank, BDR interest from Chennai Co-operative Bank, RF interest from CC Co-operative Bank , SRF interest from Co-operative Bank and BF interest from CC Co-operative Bank in aggregate amounting to Rs.29,68,672/-. Admittedly, Chennai Central Co-operative Bank is a co-operative society and registered under Co-operative Society's Act of Tamil Nadu. This issue has been settled by the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, 123 Taxmann.com 161 (SC). A similar 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, vide order dated 13.07.2022, wherein, the Tribunal 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.*

7. The facts being identical, respectfully taking this issue as covered, we direct the Assessing Officer to allow the claim of deduction u/s.80P of the Act and allow both the appeals of assessee accordingly.

8. In the result, both these appeals of the assessee are allowed.

Order pronounced in the open court on 31<sup>st</sup> March, 2023

Sd/-  
(जी. मंजुनाथ )  
( G.Manjunatha )  
लेखा सदस्य / Accountant Member  
चेन्नई/Chennai,  
दिनांक/Date: 31.03.2023  
DS

Sd/-  
( महावीर सिंह )  
( Mahavir Singh )  
उपाध्यक्ष/ Vice-President

आदेश की प्रतिलिपि अर्पित/Copy to:

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