

आयकर अपीलीय अधिकरण, 'बी' (एस एम सी) न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **1463/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2020-21

**Elumalaiyan Powerloom
Weavers Co.Op P & S Society
Limited EH 216,**
No.285/1, Karuppanan Koil
Street, Kumalan Kuttai,
Erode – 638 011.

Vs. The Income Tax Officer,
Ward 1(1),
Erode.

[PAN: AAAAE 3164A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms. S. Sree Lakshmi Valli,
Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.02.2024

घोषणा की तारीख /Date of Pronouncement

: 21.02.2024

आदेश/ ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057189387(1) dated 18.10.2023. The assessment was framed by the Assessing Officer, Assessment Unit, Income Tax Department for the assessment year 2020-21 u/s.143(3) r.w.s. 144B of the

Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 06.09.2022.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the Id. Assessing Officer in making disallowance of claim of deduction u/s.80P (2)(a) (i) of the Act on account of interest and dividend income earned amounting to Rs.8,90,246/-. For this, assessee has raised various grounds, which are argumentative and factual and need not be reproduced.

3. I have heard rival contentions and gone through facts and circumstances of the case. The brief facts of the case are that assessee is a Weavers Co-operative Society registered under the Tamil Nadu Co-operative Society Act, 1983. Assessee claimed business income from cottage industry and interest and dividend income from Co-operative bank. The interest earned on FDR's is Rs.2,22,328/- and dividend received from Erode District Central Co-operative Bank of Rs.3,59,918/- for financial year 2017-2018 and Rs.3,08,000/- for financial year 2018-2019. The Id. Assessing Officer while framing assessment u/s. 143(3) of the Act disallowed the claim of deduction being interest and dividend income earned from Erode District Central Co-operative Bank amounting to

Rs.8,90,246/-. The Id. Assessing Officer recorded his findings as under:-

“From above discussion, it is clear that the interest & dividend income of Rs.8,90,246/- earned from investment of surplus funds and other activities, Is not related to the business income of the assessee as its objective is to provide credit facilities to its members from deposits of its members and to earned interest thereon. Therefore, the amount of Rs.8,90,246/- as discussed above is proposed to be disallowed from the Deduction claimed u/s 80P(2)(a)(ii) / 80P(2)(d) and the same is to be treated as "Income from Other Sources" u/s 56 of the I.T. Act”.

Aggrieved, assessee preferred an appeal before the CIT(A).

4. The Id. CIT (A) dismissed the appeal of the assessee by stating that Erode District Central Co-operative Bank from which assessee has earned dividend and interest income is a Co-operative bank not a Co-operative Society. He noted that the definition of Co-operative society as contained in Section 2(19) of the Act which speaks only of “Co-operative Society” and not a “Co-operative Bank”. According to him, the word Co-operative Bank is missing in clause (d) of subsection (2) of Section 80P of the Act and therefore he confirmed the disallowance made by the Id. Assessing Officer of interest and dividend income earned by the assessee from Erode District Central Co-operative Bank and claimed deduction u/s.80P(2)(a)(i) of the Act. Aggrieved, assessee preferred an appeal before the Tribunal.

5. I have heard rival contentions and gone through the facts and circumstances of the case. I note that the order of the Id. CIT(A) is ex-parte one and posted for hearing only twice i.e as under:-

<i>Sl.No</i>	<i>Date of notice</i>	<i>Date of hearing</i>	<i>Remarks</i>
<i>1</i>	<i>15.09.2023</i>	<i>22.09.2023</i>	<i>No response</i>
<i>2</i>	<i>25.09.2023</i>	<i>02.10.2023</i>	<i>Response submitted on 28.09.2023.</i>

I noted from the above that assessee submitted response on 28.09.2023 and the Id. CIT(A) decided the appeal on 18.10.2023. In my view, the Id. CIT(A) has not given proper opportunity of being heard to the assessee. I further note that Erode District Central Co-operative Bank is a Co-operative Society because it was registered under Tamil Nadu Co-operative Societies Act and not governed by Banking Regulation Act or holding license under Reserve Bank of India. These facts need verification, hence I remit the appeal back to the file of the Id. CIT(A) since this issue was already adjudicated by the Tribunal in the case of M/s. Kangayam Primary Agricultural Co-operative Credit Society vs. Income Tax Officer, Tirpur in ITA No.869/Chny/2023 for the assessment year 2016-2017 vide order dated 11.10.2023 wherein the Tribunal held as under:-

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee is a Primary Agricultural Credit Society registered under the TamilNadu Co-operative Societies Act, 1983 carrying on the business of banking or providing credit facilities to its members. It has kept its funds and made deposits or investments and maintained savings bank account with Erode District Central Co-operative Bank and earned interest income to the extent of Rs.5,14,418/-. According to AO and CIT(A) the Erode District Central Co-operative Bank which operates transactions for the public and governed by Reserve Bank of India regulations, it is clearly hit by the provisions of section 80P(4) of the Act. The Id.counsel for the assessee filed copy of Tribunal's order in the case of The Central Excise Staff Co-op Thrift and Credit Society Ltd., in ITA Nos.111 & 112/CHNY/2023, order dated 31.03.2023, wherein the Tribunal considering the decision of Hon'ble Madras High Court in the case of S-1308 Ammapet Primary Agricultural Co-operative Bank Ltd., in TCA Nos.882 and 891 of 2018 and the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-opertive Bank Ltd., 123 Taxmann.com 161 (SC) decided an exactly identical issue in favour of assessee by observing in para 6 & 7 as under:-

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 Cooperative Bank, BDR interest from Chennai Co-operative Bank, RF interest from CC Co-operative Bank, SRF interest from Cooperative 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 Coordinate Bench decision in the case of Tamilnadu Co- 5 ITA Nos.111 & 112/Chny/2023 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 Cooperative 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.

6. On the other hand, the Id.Senior DR, Shri P. Sajit Kumar, argued that the Erode District Central Co-operative Bank forms a part of RBI recognized banks in India and for that he filed a certificate which reads as under:-

During the course of hearing of the captioned appeal, the honourable Member requested the undersigned to provide a certificate that The Erode District Central Cooperative Bank Ltd' forms a part of the RBI Recognized Banks in India.

Accordingly, this is to certify that, a search was carried out in the official website of Reserve Bank of India (RBI) on the RBI listed banks in India. The list of RBI listed banks in India has been made available by the RBI in the URL link:

<https://www.rbi.org.in/commonman/english/scripts/banksinindia.aspx>

In the above link, the list of 352 District Central Cooperative Banks has been published under the sub-link "Co-operative Banks-District Cooperative Banks'. The list downloaded of these 352 District Central Cooperative Banks is attached to this submission.

As can be verified, at page no.3 1, Sl.no.7, the The Erode District Central Cooperative Bank Ltd' find mentioned.

Thus, The Erode District Central Cooperative Bank Ltd' is an RBI regulated bank and accordingly sub-section (4) of section 80P gets attracted. Any return on investment/deposit made in a cooperative bank by a cooperative society cannot be allowed as a deduction under sub-clause (d) of sub-section (2) of section 80P of the Income Tax Act-1961.

The Id. Senior DR also filed the list of District Central Co-operative Banks which includes the present assessee at page 31 as under:-

"7. The Erode District Central Co-operative Bank Ltd.

No.1, Bhavani Main Road

***Erode – 638 003**"*

7. We noted that the Hon'ble Supreme Court has considered the identical issue in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd., in Civil Appeal No.10069 of 2016, order dated 14.09.2023, wherein the Hon'ble Supreme Court has stated that the Central Co-operative Bank is a Co-operative Society which is registered under the Kerala State Co-operative Societies Act, then it is not a bank per se governed by RBI. Similarly in the present case before us, the Erode District Central

Co-operative Bank also governed by TamilNadu Co-operative Societies Act and once it is governed by Co-operative Societies Act, the assessee is eligible for claim of deduction u/s.80P(2)(d) of the Act. Hence, we are of the view that assessee's case is squarely covered in favour of assessee by the decision of Hon'ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd., supra and hence, we allow the claim of assessee.

6. In view of the above, I direct the Id. CIT(A) to adjudicate the issue afresh after v.erifying the facts and above decision of the Tribunal.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 21st February, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 21st February, 2024
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

