

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **697/CHNY/2024**
निर्धारण वर्ष/Assessment Year: 2012-13

**M/s. K 637 Pasur Primary
Agricultural Co-op Credit
Society,**
Co-operative Main Road,
Pasur,
Erode – 638 154.

The Income Tax Officer,
Vs. Ward 2(3),
Erode.

PAN: AABAK 5021B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P.M. Kathir, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri N. Sanjay Gandhi, JCIT

सुनवाई की तारीख/Date of Hearing : 13.06.2024
घोषणा की तारीख/Date of Pronouncement : 13.06.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order passed of the Addl/JCIT (A)-3, Mumbai in Order No.ITBA/APL/S/250/2023-24/1060674565(1) dated 08.02.2024. The assessment was framed by the Income Tax Officer, Ward 2(3), Erode for the assessment

year 2012-13 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) disallowing the claim of deduction u/s.80P(2)(a)(i) of the Act on the issue that the society has earned interest from 'B' class Member.

3. The facts of the assessee appeal are that the assessee is a primary agricultural co-operative credit society. The AO during the course of assessment proceedings noticed that the assessee has claimed deduction u/s.80P of the Act amounting to Rs.6,79,566/- being income from providing credit facilities to its members and income from investments. The AO on perusal of details noticed that the credit facility was provided by the assessee society to its 'A' class members and 'B' class members. The AO noted that the 'B' class members are non-share holding members and are admitted to the society mainly for the purpose of availing loans against specified security on payment of non-refundable admission fees and their membership exists for limited period of 3 years. Even the 'B' class members are not allotted shares and they do not have any right to vote, participate in election. Hence, he disallowed the interest

income earned from 'B' class members amounting to Rs.6,79,566/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO by following the decision of Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd., vs. ACIT reported in [2017] 84 taxmann.com 114 (SC). Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee filed copy of Tamil Nadu Co-operative Societies Act, 1983 and drew our attention to the relevant section 2(16), wherein the definition of members is given as under:-

“(16) “member” means 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 by-laws and includes an associate member.”

The Id.counsel argued that as per this definition, an associated member is also notified and accordingly, these 'B' class members are nothing but the associated members of Co-operative society. The Id.counsel stated that this issue is decided by the Hon'ble High Court of Madras in the case of S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., reported in 426 ITR 244, wherein it is held as under:-

12. Admittedly, the assessee society is registered under the provisions of the TNCS Act. It defines the word 'members' under Section 2(16) to mean a person joining in the application for the registration of society and a person admitted to the membership after registration in accordance with the provisions of the Act, the Rules framed thereunder and the By-126 laws and includes an associate member. The expression 'associate member' is defined under Section 2(6) of the TNCS Act to mean a 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, the Rules and the By-126 law.

13. Thus, the definition of the word 'members' includes an associate member and therefore, the Assessing Officer fell into an error in drawing a distinction between A Class members and B Class members. For the purpose of being entitled to a relief under Section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-126 Section (2) of Section 80P of the Act.

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17. In the preceding paragraphs, we have pointed out the definitions of the expressions 'members' and 'associate member' under the TNCS Act and held that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. Furthermore, the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Clause (b) to Sub-Section (4) of Section 80P of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the assessee as confirmed by the Tribunal. We do not find any good ground to entertain these appeals.

6. We have heard rival contentions and gone through facts and circumstances of the case. 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., reported in 123 Taxmann.com 161 (SC). 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., *supra* 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.

6.1 In term of the above, we are of the considered view that there cannot be any classification of 'A' Class and 'B' Class members in respect of societies registered under Tamil Nadu Co-Operative Societies Act, 1983. Hence, the assessee co-operative society is

entitled for the claim of deduction u/s.80P(2)(a)(i) of the Act and the appeal of the assessee is allowed.

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

Order pronounced in the open court at the time of hearing on 13th June, 2024 at Chennai.

Sd/-

(एस. आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 13th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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