

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2331/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2017-18

M/s.Morattupalayam – Primary Agricultural Co-op. Credit Society Ltd., 1/142, Kavundampalayam, Morattupalayam (PO), Uthukulli Tk., Tirupur-638 752.	v.	The ITO, Ward-1(2), Tirupur.
[PAN: AACAM 0406 D]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms. A. Vijayalakshmi, CA
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Sheila Parthasarthy, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	04.12.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.02.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee Agricultural Co-op. Credit Society against the order of the Learned Commissioner of Income Tax (Appeals)/Addl./JCIT (A)-2, Jaipur, (hereinafter in short "the Ld.CIT(A)"), dated 11.07.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.



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**2.** The main grievance of the assessee is against the action of the First Appellate Authority confirming the action of the AO denying deduction u/s.80P of the Income Tax Act, 1961 (hereinafter in short "the Act").

**3.** The brief facts are that the assessee is a Primary Agricultural Co-operative Credit Society registered under the Tamil Nadu Co-operative Societies Act, 1983, (hereinafter in short 'TNCS Act') which is under the control of the Dy. Registrar of Co-op. Societies, Tirupur Circle. The assessee filed its return of income (RoI) for AY 2017-18 on 24.03.2018 by returning 'Nil' income after claiming deduction u/s.80P of the Act to the tune of Rs.14,17,524/-. The AO noted after perusal of the bye-laws of the assessee society that it had two types of Members in the Society viz., 'A' Class Members & Associate Members. The AO noted that both types of Members were eligible to avail loan on interest from the Society. According to the AO, 'A' Class Members were eligible to contest elections, vote in such election and were eligible to receive dividend from the Society, whereas Associate Members were not eligible for these privileges. According to the AO, the list of 'A' Class Members and Associate Members were not provided to him. According to the AO from the aforesaid fact, it is clear that Associate Members also contributed to the income/profit of the assessee's society by way of giving interest on the loans availed, but no dividend was given to them. Thus, according to him, participators to



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the profit are different from the contributors to the profit [refer Para No.4 of the assessment order]. Thereafter, he cited the decision of the Hon'ble Supreme Court in the case of **The Citizen Co-op. Society Ltd., Hyderabad v. ACIT** in Civil Appeal No.10245 of 2017 dated 08.08.2017 and was of the opinion that even though TNCS Act allows the assessee to have two kinds of Members ['A' Class Members & Associate Members] and even though, the assessee is not taking deposit from outsiders and/or given any loan to outsiders, fact remains that the contributors to the profit are not participators of profit as in the case of **The Citizen Co-op. Society Ltd., Hyderabad** (supra) and he was of the view that since the order of the Hon'ble Supreme Court was dated 08.08.2017 which was subsequent to the judgment of the Hon'ble Madras High Court in the case of **CIT v. Tamil Nadu Housing Federation Ltd., [Tax case Appeal No.685 of 2014]** pronounced on 23.11.2016, he was of the view that concept of mutuality is breached and thereafter referring to few judgments, the AO held as under:

13. The assessee society has earned interest amounting to Rs. 7,98,028/-/- on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case and in view of the above case law, such interest income falls in the category of Income from other sources which has to be taxed u/s 56 of the Income Tax Act, 1961, for which also no deduction under Chapter VI A is eligible. The assessee has shown business income of Rs.14,17,524/- and claimed deduction u/s.80P amounting to Rs.14,17,524/-.The assessee's returned business income is Nil. However, the assessee has earned income from other sources amounting to Rs.7,98,028/-which the assessee has shown as business income and claimed deduction u/s,80P, which is incorrect in view of



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the above discussion. Hence, the income of the assessee is reworked as under:

Business Income	Rs. 6,19,496/-
Income from Other Sources	Rs. 7.98.028/-
<b>Assessed Income</b>	<b>Rs. 14,17,524/-</b>

4. Aggrieved, the assessee preferred an appeal before the First Appellate Authority who was pleased to uphold the action of the AO.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. According to the Ld.AR, the AO erred in denying deduction u/s 80P of the Act on two classes of membership and the issue raised by him is no longer res integra and cited the decision of the Hon'ble Madras High Court in the case of **PCIT v. M/s.S-1308 Ammapet Primary Agricultural Co-op. Bank Ltd.**, in TCA No.882 & 891 of 2018 wherein identical/similar issue had come up for consideration and the Hon'ble Division Bench of the Hon'ble Madras High Court by order dated 06.12.2018 had decided in favor of assessee; and had framed the substantial question of law as under:

2. The following substantial questions of law are framed for consideration in these appeals:

"i. Whether the Appellate Tribunal was right and justified in following the jurisdictional High Court's decision when there is an Apex Court decision of latter date available?



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ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right and justified in allowing the deduction under Section 80P(2)(a)(i) to the assessee society when the Apex Court, in its decision in the case of Citizen Cooperative Society Ltd. Vs. ACIT [reported in (2017) 84 Taxmann. 114] held in paragraph 25 that such activity of the appellant is that of finance business and cannot be termed as cooperative society ? And

iii. Whether, on the facts and circumstances of the case, the Tribunal was right to conclude that the activities carried on by the assessee are confined to its members only and that too, in a particular geographical area, when the Assessing Officer clearly stated in paragraph 3.1 of the assessment order that anyone can become an associate member of the society on payment of a nominal token fee?"

**7.** According to Ld AR, the facts of the case are similar to that of the assessee's case as noted by the Hon'ble Madras High Court, which is reproduced as under:

8. Before the Assessing Officer, for the assessment year 2014-15, the assessee relied upon two decisions of this Court namely -

(i) in the case of CIT, Coimbatore Vs. M/s.Veerakeralam Primary Agricultural Cooperative Credit Society [TCA.Nos.735 and 755 of 2014 & 460 of 2015 dated 05.7.2016];

and

(ii) in the assessee's own case in TCA.No.490 of 2016 dated 02.8.2016 for the assessment year 2011-12.

The Assessing Officer was of the view that the assessee has got two categories of members namely shareholding members called as A Class members and associate members called as B Class members. The Assessing Officer was also of the view that the associate members are not entitled to receive dividends or exercise their voting rights and cannot participate in the general administration and meetings of the society and that these privileges are given to A Class members. The Assessing Officer further observed that B Class members are admitted for the limited purpose of availing loans and those members, after discharging their loans, relinquished their membership and did not have any role to play in the society whereas A Class members enjoy all rights in addition to other rights and liabilities in the society as specified in the By-laws. The Assessing Officer concluded that the associate members cannot be regarded as members of the cooperative society. The Assessing Officer allowed the deduction under Section 80P(2)(d) of the Act. <http://www.judis.nic.in> The Assessing Officer also concluded that the assessee was not entitled to claim deduction under Section 80P(2)(a)(i) of the Act and that the Department decided to file special leave petitions before the Hon'ble Supreme Court against the said two decisions. The Assessing Officer, further observing that



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the collection of demand would not be enforced till the outcome of the special leave petitions in the Hon'ble Supreme Court, arrived at tax and initiated penalty proceedings under Sections 271(1)(c) and 271B of the Act.

**8.** It was also brought to our notice that the Revenue has relied upon the decision of the Hon'ble Supreme Court in the case of **The Citizen Co-op. Society Ltd., Hyderabad (supra)** which decision has been heavily relied upon by the AO in the present case which is discussed at Para No.10 of the ibid Hon'ble High Court order and the High Court held as under:

9. The assessee carried the matters on appeal to the Commissioner of Income Tax (Appeals) [hereinafter called the CIT(A)], who, by separate orders respectively dated 30.8.2016 and 31.7.2017 respectively for the assessment years 2013-14 and 2014-15, allowed the appeals filed by the assessee. As against the same, the Revenue carried the matters on appeal to the Tribunal. However, the Tribunal, by the impugned orders, dismissed the appeals filed by the Revenue. Therefore, the Revenue is before us.

10. The learned Senior Standing Counsel for the Revenue submits that the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited Vs. ACIT [reported in (2017) 84 Taxmann.com 114] is in favour of the Revenue and that the review petition filed against that decision was dismissed by the Hon'ble Supreme Court in the <http://www.judis.nic.in> decision reported in (2017) 88 Taxmann.com 279. He further submits that in the case of CIT, Panaji, Goa Vs. Goa Staff Cooperative Housing Finance & Federation Ltd. [reported in (2016) 73 Taxmann.com 400], the Revenue filed a special leave petition and leave has been granted by the Hon'ble Supreme Court by order dated 12.8.2016.

11. We have elaborately heard the learned Senior Standing Counsel for the Revenue.

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-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



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liabilities of a member as may be specified in this Act, the Rules and the By-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-Section (2) of Section 80P of the Act.

14. Further, it is to be pointed out that in terms of Sub-Section (4) of Section 80P of the Act, which was inserted vide the Finance Act, 2006 with effect from 01.4.2007 i.e from the assessment year 2007-08, the 'primary cooperative agricultural and rural development bank' means 'a society having its area of operation confined to a taluk, the principal object of which is to provide for long term credit for agricultural and rural development activities'. What was excluded was the 'cooperative banks' and admittedly, the assessee society is a primary agricultural cooperative credit society and therefore, would be entitled to the benefit of Section 80P of the Act.

15. Further, for the assessment year 2014-15, the decision in the case <http://www.judis.nic.in> of Citizen Cooperative Society Limited was relied upon by the Revenue before the Tribunal, which, in paragraph 6.1 of its order dated 28.2.2018 for the assessment year 2014-15, extracted the operative portion of that judgment. In that case, the Hon'ble Supreme Court found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third parties, who were not members in the real sense and were using those deposits to advance gold loans. Therefore, the Hon'ble Supreme Court pointed out that such an activity of the said society was that of a finance business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The Hon'ble Supreme Court found that the said society was not entitled to deduction under Section 80P of the Act.

16. It is noteworthy to point out that the Hon'ble Supreme Court in the decision in the case of Citizen Cooperative Society Limited also observed that in the light of insertion of Sub-Section (4) to Section 80P of the Act by the Finance Act, 2006, such deduction should not be admissible to a cooperative bank and that if it is a primary agricultural credit society or a primary cooperative agriculture and rural development bank, the deduction would still be provided. <http://www.judis.nic.in>

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



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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.

18. Accordingly, the above tax case appeals are dismissed. The substantial questions of law framed are answered against the Revenue.

**9.** In the light of the aforesaid discussion, the Ld.AR contended that the AO finding fault in the assessee having two kind of Members i.e. regular members as well as Associate Members shouldn't come in the way of assessee claiming deduction u/s.80P of the Act. Further, according to the Ld.AR, the AO also has found that even though the assessee is registered as a Primary Agricultural Co-op. Credit Society, it is running a Common Service Center providing loan facility to self help group, etc., and also that assessee is maintaining savings account with various Co-op. Banks and investing funds not immediately required for business purposes in Co-operative Banks. Therefore, according to the AO, the interest earned on such investments can't fall within the meaning of expression profits & gains of business and the AO has relied upon by the decision of the Hon'ble Supreme Court in the case of **M/s.Totgars' Co-op. Sale Society Ltd. v. ITO** reported in [2010] 188 Taxman 282 (SC) in Civil Appeal No.1622 of 2010 dated 08.02.2010 has held that the interest earned of Rs.7,98,028/- needs to be treated as '*income from other sources*' and taxed it. Accordingly, the AO determined the business income of Rs.6,19,496/- and assessed the income at Rs.14,17,524/-



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which action of the AO, according to Ld AR is erroneous and she asserted that since the AO nowhere has contradicted the assessee's assertion that it gives loan only to 'A' Class Members/ Associate Members and since, the assessee is registered under the provisions of the TNCS Act and the TNCS Act defines Members u/s.2(16) which allows such membership, the deduction cannot be denied and definition reads 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-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-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-Section (2) of Section 80P of the Act.

**10.** Therefore, according to Ld AR, the assessee's income in the light of the aforesaid definition as per TNCS Act is attributable from its business of providing credit facility to its Members/ Associate Members, and hence the income of the assessee is allowable u/s.80P of the Act.

**11.** The Ld.AR also submitted that the issue is covered in favour of the assessee by following decisions:



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1. **The Citizen Co-op. Society Ltd., Hyderabad v. ACIT** in Civil Appeal No.10245 of 2017 dated 08.08.2017
2. **CIT v. Tamil Nadu Housing Federation Ltd., [Tax case Appeal No.685 of 2014]**
3. **PCIT v. M/s.S-1308 Ammapet Primary Agricultural Co-op. Bank Ltd.,**

**12.** Per contra, the Ld.DR pointed out that the impugned order is an ex parte order and the assessee failed to appear before the Ld.CIT(A) despite several notices and submitted that the Ld.CIT(A) couldn't consider all the issues flagged by the AO, therefore, the matter be set aside back to the Ld.CIT(A) for adjudication. We find that the impugned order is ex-parte order and find that the Ld.CIT(A) passed the impugned order observing that the assessee has merely uploaded copy of the assessment order dated 24.12.2019 and has not filed any supporting evidence/documents presented by the assessee before the AO or supporting the grounds of appeal raised before him. Therefore, in the impugned order, the Ld.CIT(A) cited the decisions of the Hon'ble Supreme Court that law doesn't help a sleeping person and dismissed the appeal.

**13.** We note that the First Appellate Authority has not decided the issue on merits as envisaged u/s.250(6) of the Act though he has made a bald observation that he was deciding on merits. But there is no whisper about any contentions/grounds raised by the assessee; and moreover, there is no reasons assigned by the Ld.CIT(A) to concur with the views expressed



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by the AO. Hence, it can't be said to be an order passed on merits and therefore, there is clear non-application of mind while adjudicating the grounds of Appeal preferred by assessee; and therefore, we are constrained to set aside the impugned order of the Ld.CIT(A) and restore the issues raised back to the file of the Ld.CIT(A) with a direction to decide the grounds of appeal as per sub-section (6) of section 250 of the Act by passing speaking order.

**14.** The Ld.AR is directed to file/upload written submissions/relevant documents/judgments before the Ld.CIT(A); and the Ld CIT(A) to decide the grounds of appeal after hearing the assessee and in accordance to law.

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

Order pronounced on the 05<sup>th</sup> day of February, 2025, in Chennai.

**Sd/-**  
**(अमिताभ शुक्ला)**  
**(AMITABH SHUKLA)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
**(एबी टी. वर्की)**  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 05<sup>th</sup> February, 2025.  
**TLN, Sr.PS**



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Co-op. Credit Society Ltd.

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आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF