

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.260/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013

The Income Tax Officer,
Ward No.2,
Namakkal

Vs. M/s. S-328, Kalapanaickenpatti PACCS
Ltd,
Kalapanaickenpatti,
Namakkal 637 404.

(अपीलार्थी/Appellant)

[PAN AAGAS 1859J]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. A.V. Sreekanth, IRS, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. M. Balu, C.A.

सुनवाई की तारीख/Date of Hearing

: 06-04-2016

घोषणा की तारीख /Date of Pronouncement

: 27-04-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Department is directed against order of the Commissioner of Income-tax (Appeals), Salem in ITA No. 225/2014-15, dt 21.12.2015 for the assessment year 2012-2013

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The grounds of appeal raised by the Revenue are under:-

'2. The Commissioner of Income Tax (Appeals) ought to have considered that the Hon'ble ITAT, in Shri Chandrabhabhu Urban Co-operative Credit Society Ltd. (2014)(45 taxmann 14) has clearly brought out the definition of 'Banking business'.

3. The Commissioner of Income Tax (Appeals) ought to have considered that the order of hon'ble ITAT B Bench, Chennai in the case of M/s. SL (SPL) 151 Karkudalpatty PACCS Ltd vs. ITO has not become final as an appeal has been filed u/s.260A before the Hon'ble Madras High Court.

4. The Commissioner of Income Tax (Appeals) ought to have considered that in the Tamil Nadu Co-operative Societies Act, 1983 the term "Member" is dealt in various sections and in all these sections the term "member" means only SHARE HOLDER - MEMBER. Hence the intention of the legislature is that associate member will not be treated as member.

5. The Commissioner of Income Tax (Appeals) ought to have considered that the Statutory Auditor for Co-operative Society, in his Report, discloses only Share Holder - Members as Members and did not include the Associate Member in the report."

3. The Brief facts of the case the assessee is a Primary Agricultural Co-operative Bank Ltd, engaged in banking business and trading in civil supply, goods and filed return of income on 28.09.2012 and the case was selected for scrutiny under CASS. Notice u/s.143(2)

dated 12.08.2013 was issued to the assessee. The Id. Assessing Officer on perusal found that assessee has claimed deductions under the provisions of section 80P of ₹48,18,780/-. In response to notice, the Id. Authorised Representative of assessee appeared from time to time and filed Books of account, bills, vouchers and other relevant details called for. The assessee claimed deductions u/s.80P (2)(a) of the Act ₹3,82,253/- u/s.80P(2)(b), ₹54,461/- and u/s.80P(2)(d) ₹43,87,121/-. The Id. Assessing Officer verified books of accounts and considered the statements for claim of deduction. The Assessing Officer on further examination found that the assessee society claimed deduction u/s.80P(2) of the Act in respect of business of banking and providing credit facilities to its members and complied stipulated conditions and also providing credit facilities to Members and Non Members and running public distribution shops and distribution of fertilizers to general public including non members. The Id. Assessing Officer observed the entire business activities of society as providing credit facilities and trading for both members and nonmembers and rejected the deduction. The Id. Assessing Officer verified the claim of deduction u/s.80P(2)(d) of the Act, were the assessee society received interest income from Salem District Central Co-operative Banks and not from other Co-Operative society and perused the provisions u/s.80P(2) (d) of the Act and concluded that Deduction u/s.80P(2)(d)

of the Act is not allowed as assessee society has received interest receipt from District Central Co-operative Bank and completed the assessment with assessed income of ₹.48,23,835/-. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, The Id. Authorised Representative reiterated the submissions of assessment proceedings. The Id. Commissioner of Income Tax (Appeals) on perusal of grounds and arguments, the assessee society is working on the concepts of mutuality, principle but the Id. Assessing Officer has rejected society, claim of deduction under provisions of Sec. 80P of the Act because the assessee society has not restricted activities to its members and also provided services on par with commercial banking.

The Commissioner of Income Tax (Appeals) on examination of the assessment records and material relied on the recent Co-ordinate Bench decision of Tribunal in the case of M/s. S-1308, Ammapet Primary Agricultural Co-Operative Bank Ltd in ITA No.825/Mds/2015, dated 23.09.2015 allowed the assessee appeal. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue has assailed an appeal before the Tribunal.

5. Before us, the Id. Departmental Representative reiterated his submissions on the grounds of appeal and contested the judicial decisions relied by the Commissioner of Income Tax (Appeals) were the department has filed an appeal in Jurisdictional Hon'ble High Court against ITAT order and prayed for set aside of the order of Commissioner of Income Tax (Appeals).

6. Contra, the Id. Authorised Representative relied on the order of Commissioner of Income Tax (Appeals) and judicial decisions and opposed to the grounds of the Revenue.

7. We heard the rival submissions and perused the material on record and judicial decisions. The Id. Departmental Representative contention that decision relied by the Commissioner of Income Tax (Appeals) has not reached finality and appeal has been filed before jurisdictional High Court and is pending and also urged that on definition of the member relying on the Audit report were the member means share holder and does not include associate member. The Id. Authorised Representative argued on membership of society and supported with Apex Court decision of M/s. U.P. C-operative Cane Union Federation Ltd, Lucknow vs. CIT (1999) 237 ITR 574(SC) and definition of member as the provision of T.N. Co-operative Societies

Act 1983 and filed written submissions and explained that there is no cheque facility is available to members and the business of providing credit facilities to its members and activities of Primary agriculture co-operative credit society are not at par with co-operative banks and relied on *ITO vs. S-1308, Ammapet Primary Agricultural Co-Operative Bank Ltd in ITA 825/Mds/2015*. We considering the apparent facts and findings of the lower authorities on the grounds raised by the Revenue and the argument of the Id. Authorised Representative. Prime facie the assessee is registered as Co-operative society and engaged in banking business and trading in civil supplies goods. The Department has disputed on the activities of the society on par with any commercial banking. Therefore, we are inclined to set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue to the file of the Assessing Officer to verify the following:-

- (i) Loans are granted to non-members
- (ii) Any current accounts are opened for traders.
- (iii) Whether the society is a member of clearing house.
- (iv) Whether bank issued guarantee on behalf of customers
- (v) Whether dealt in foreign exchange transactions.
- (vi) Verify inspection report of RBI if any.

With these findings, the Assessing Officer is directed to verify and pass the order accordingly after providing adequate opportunity of being heard. The grounds of the Revenue is partly allowed for statistical purpose.

8. In the result, the appeal of the Revenue in ITA No.260/Mds/2016 is partly allowed.

Order pronounced on Wednesday, the 27th day of April, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai
दिनांक/Dated:27.04.2016
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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