

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.2.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Appeal No.91 of 2021

M/s.S 1911 AN Pudur PACCS ...Appellant

Vs

The Principal Commissioner of
Income Tax, Salem ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 05.10.2018 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai made in M.P.No.122/Chny/2018 in ITA.No. 2331/Chny/2017 for the assessment year 2014-15.

For Appellant: Mr.N.V.Balaji
For Respondent: Mrs.V.Pushpa, JSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 05.10.2018 made in M.P.No.122/Chny/2018 in ITA.No.2331/

Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) for the assessment year 2014-15.

2. The assessee has filed this appeal by raising the following substantial questions of law:

"i. Whether, under the facts and circumstances of the case, the Tribunal was right in holding that the appellant is not entitled for deduction under Section 80P ?

ii. Whether, under the facts and circumstances of the case and based on material before the Tribunal, the finding of the Tribunal that there is no mistake apparent from record in the order of the Tribunal in ITA.No.2331/Mds/2017 and C.O.No.180/Chny/2017 not perverse?

iii. Is the finding of the Tribunal that the appellant is a cooperative bank and therefore not entitled for deduction under Section 80P not perverse?

iv. Whether, under facts and circumstances of the case and in law, the Tribunal was right in holding that provisions of Section 80P(4) is applicable to the assessee?
And

v. Whether, under the facts and circumstances and in law, the Tribunal was

right in holding that principles of mutuality is not present in the appellant's case and therefore, the appellant is not eligible for deduction under Section 80P(2)(a)(i)?”

3. We have heard Mr.N.V.Balaji, learned counsel appearing for the appellant/assessee and Mrs.V.Pushpa, learned Junior Standing Counsel accepting notice for the respondent/Revenue.

4. As against the common order passed by the Tribunal in both the main appeal as well as in the cross objection, the assessee filed **TCA.Nos.170 and 171 of 2020** and by a common judgment dated **17.7.2020, to which, one of us (TSSJ) was a party**, the said appeals were allowed in favour of the appellant – assessee following the decision of this Court, to which, **one of us (TSSJ) was a party**, in the case of **PCIT Vs. S1308 Ammapet Primary Agricultural Cooperative Bank Ltd., Ammapet [T.C.A. Nos.882 & 891 of 2018 dated 06.12.2018]**. The relevant portions of the said common judgment dated 17.7.2020 read as follows :

"3. Identical issue was decided by the Division Bench of this Court in the case of the Principal Commissioner of Income Tax, Salem Vs., S1308 Ammapet Primary Agricultural Cooperative Bank Ltd., Ammapet, in T.C.A.No. 882 & 891 of 2018 dated 06.12.2018. The

assessee in the said case was also a Cooperative Society carrying on business of Banking. The question was whether the assessee was entitled to deduction under Section 80P(2)(a)(i) of the Act, as the activity carried on by the assessee being a finance business, it cannot be termed as a Cooperative Society.

4. The Court after considering the definition of 'Member' under the Tamil Nadu Cooperative Societies Act, 1983 and also taking note of Section 80P(4) of the Act, considered the definitions of the expressions 'Members' and an 'associated members' under the Cooperative Societies Act and held that an 'associated member' is also a member in terms of Section 2(16) of the Cooperative Societies Act. Accordingly, the said Tax Case Appeal was dismissed and the Substantial Question of Law was answered against the Revenue.

5. The case on hand is also an identical matter. The only difference being, the assessee lost before the Tribunal and therefore, the assessee is before us by way of these appeals. For better appreciation, we refer to the relevant paragraphs in the case of Ammapet Primary Agricultural Cooperative Bank Ltd., (cited supra):

'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.

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 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.

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.

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

6. We are convinced that the aforesaid judgment will squarely applicable to the assessee's case.

7. For all the above reasons, these Tax Case Appeals are allowed and the Substantial Questions of Law is answered in favour of the assessee."

5. As the said tax case appeals namely TCA.Nos.170 and 171 of 2020 filed against the common order passed by the Tribunal in both the main appeal as well as the cross objection were decided in favour of the assessee, nothing survives for consideration in this appeal.

6. Accordingly, the above tax case appeal is closed. No costs.

01.2.2021

To

- 1.The Income Tax Appellate Tribunal, 'C' Bench, Chennai.
- 2.The Principal Commissioner of Income Tax, Salem.

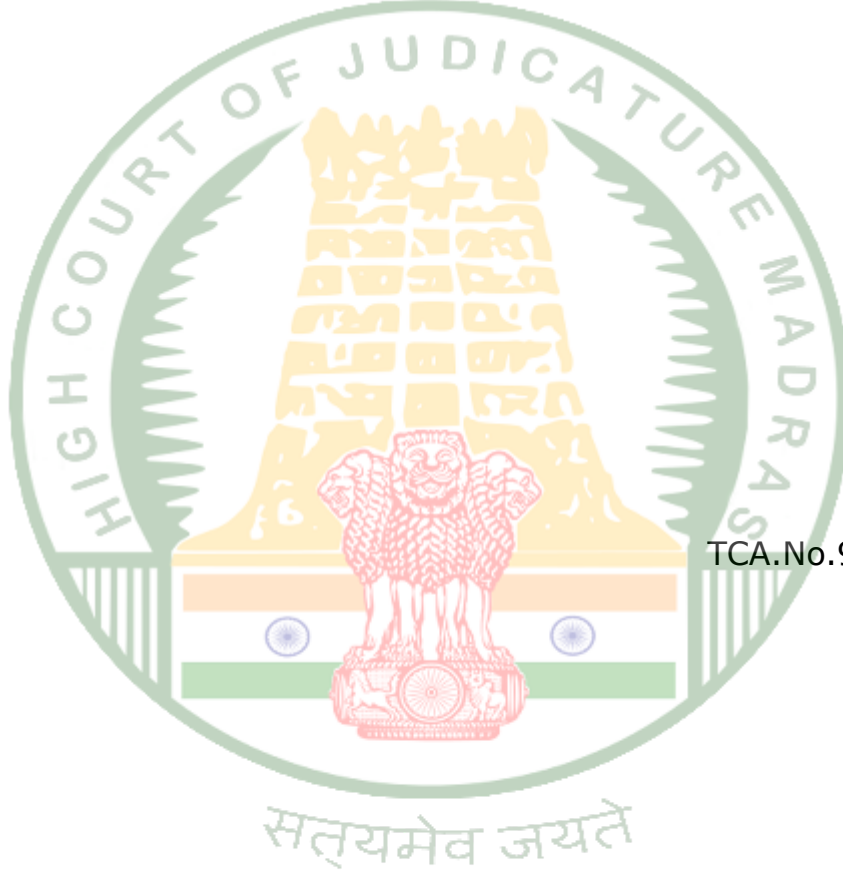
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T.S.SIVAGNAM,J
AND
R.N.MANJULA,J

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