

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: **869/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2016-17

**M/s. Kangayam Primary  
Agricultural Co-operative  
Credit Society,**  
150, Main Road,  
Kangayam – 638 701.

**The Income Tax Officer,**  
vs. Ward 1(4),  
Tirupur.

**PAN : AACAA 2357D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थीकी ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.10.2023

घोषणा की तारीख/Date of Pronouncement

: 11.10.2023

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1053367708(1) dated 31.05.2023. The assessment was framed by the Income Tax Officer, Ward 1(5), Tirupur for the assessment

year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 24.12.2018.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the claim of deduction u/s.80P(2)(d) of the Act of interest income from investment in Co-operative bank. For this, the assessee has raised the following ground No.2:-

*2. The Assessing Officer as well as the learned CIT(A) erred in not considering the submissions filed by the appellant in proper perspective, more particularly the factum of interest income from the investments in co-operative banks, which are also co-operative societies.*

*Relying on (i) TCA No.5 of 2015 by Madras High Court, dated 10/08/2016*

*(ii) ITA No.900/CHNY/2020 dated 08/06/2022*

*(iii) ITA No.282/CHNY/2021 dated 29/06/2022 and*

*(iv) ITA No.632/CHNY/2022 dated 15/09/2022*

3. Brief facts are that the assessee is a primary agricultural credit society registered under the Tamil Nadu Co-operative Societies Act, 1983 carrying on the business of banking or providing credit facilities to its members. The assessee filed its return of income for the assessment year 2016-17 on 14.06.2017 admitting total income at 'nil' after claiming deduction of Rs.89,57,539/- u/s.80P of the Act. The assessee's case was selected for scrutiny under CASS and notice u/s.143(2) & 142(1) of the Act were issued. The AO completed the assessment u/s.143(3) of the Act on 24.12.2018 by

holding that the assessee fails the test for 'mutuality', hence disallowed the deduction of Rs.84,43,121/- u/s.80P of the Act. The AO also disallowed the interest of Rs.5,14,418/- received from Erode District Central Co-operative Bank and assessed the total income at Rs.89,57,539/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) allowed the claim of deduction u/s.80P(2) of the Act on the business income earned by assessee society to the extent of Rs.84,43,121/- and subject to some directions to the AO, the deduction was allowed. But the CIT(A) upheld the action of AO in regard to disallowance of claim of deduction u/s.80P(2)(d) of the Act on interest earned from Erode District Central Co-operative Bank by observing in para 4.3.11 as under:-

*“4.3.11 The appellant’s reliance on the Honourable HC court judgement in case of Totgars (quoted supra) and SBI is not found correct. Further, other decisions that have been quoted are prior to the Honourable Supreme Court decision in case of Mavilayi wherein the Apex Court made out a distinction between cooperative bank and cooperative society. Thus, while the appellant is not a cooperative bank hit by the provisions of section 80P(2)(d) and is eligible for deduction u/s.80P(2)(a)(iv) of the IT Act, the specific income of interest from Erode District Central Co-Operative Bank is not income from its business nor income from cooperative societies and therefore, not eligible for deduction u/s.80P(2)(d). Therefore, the AO decision to disallow this income of Rs.5,14,418/- and subjecting it to tax as per section 56 is upheld. The appellant’s appeal on this ground is dismissed.”*

Aggrieved, now assessee is in appeal before the Tribunal.

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.

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

Order pronounced in the open court on 11<sup>th</sup> October, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

**(MANJUNATHA.G)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11<sup>th</sup> October, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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