



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 10.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.11172, 11174, 11177 and 11180 of 2023

and

W.M.P.Nos.11034, 11038,11044 and 11048 of 2023

Thorapadi Urban Co-op Credit Society Limited
Rep.by its Secretary
Mr.R.M.Damodaran
No.C-2450, 115, Azath Road, Thoraipadi
Vellore, Tamil Nadu 632 002.

... Petitioner in
WP.Nos.11173,11174 of 2022

Virupachipuram Urban Co-op Credit Society Limited
Rep.by its Secretary
Mr.K.Thirunavukarasu
No.C-2501, 240, Perumal Koil Street
Virupakshipuram
Vellore, Tamil Nadu 632 002.

... Petitioner in
WP.Nos.1117, 11180 of 2022

Vs.

Income Tax Officer
Ward 1
No.2, Barracks Cross Street
Officers Line
Vellore, Tamil Nadu-632 001.

... Respondent
in All WPs



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Prayer in W.P.No.11172 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent contained in its notice issued under Section 148A(b) of the Income Tax Act, 1961, bearing DIN & Notice No. ITBA/AST/F/148A(SCN)/2022-23/1050358249(1), dated 03.03.2023, and all proceedings in furtherance thereof, including but not limited to the order passed by the respondent under Section 148A(d) of the Act bearing DIN & Notice No.ITBA/AST/F/148A/2022-23/1051456869(1), dated 28.3.2023 and the notice issued by the respondent under Section 148 of the Act bearing DIN & Notice No.ITBA/AST/S/148-1/2022-23/1051458312(1), dated 28.3.2023, for PAN:AACAT7809B, assessment year 2016-17, and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent or its superiors, subordinates, agents etc from in any manner reassessing the petitioner's income under Section 147 of the Income Tax Act, 1961, for the Assessment Year 2016-17.

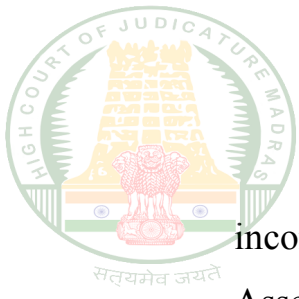
Prayer in W.P.No.11174 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent contained in its notice issued under Section 148A(b) of the Income Tax Act, 1961, bearing DIN & Notice No. ITBA/AST/F/148A(SCN)/2022-23/1050358647(1), dated 03.03.2023, and all proceedings in furtherance thereof, including but not limited to the order passed by the respondent



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under Section 148A(d) of the Act bearing DIN & Notice No.ITBA/AST/F/148A/2022-23/1051737793(1), dated 31.3.2023 and the notice issued by the respondent under Section 148 of the Act bearing DIN & Notice No.ITBA/AST/S/148-1/2022-23/1051739672(1), dated 31.3.2023, for PAN:AACAT7809B, assessment year 2017-18, and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent or its superiors, subordinates, agents etc from in any manner reassessing the petitioner's income under Section 147 of the Income Tax Act, 1961, for the Assessment Year 2017-18.

Prayer in W.P.No.11177 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent contained in its notice issued under Section 148A(b) of the Income Tax Act, 1961, bearing DIN & Notice No. ITBA/AST/F/148A(SCN)/2022-23/1050358816(1),dated 03.03.2023, and all proceedings in furtherance thereof, including but not limited to the order passed by the respondent under Section 148A(d) of the Act bearing DIN & Notice No.ITBA/AST/F/148A/2022-23/1051457656(1), dated 28.3.2023 and the notice issued by the respondent under Section 148 of the Act bearing DIN & Notice No.ITBA/AST/S/148-1/2022-23/1051462336(1), dated 28.3.2023, for PAN:AABAC2040G, assessment year 2016-17, and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent from in any manner reassessing the petitioner's



income under Section 147 of the Income Tax Act, 1961, for the Assessment Year 2016-17.

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Prayer in W.P.No.11180 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent contained in its notice issued under Section 148A(b) of the Income Tax Act, 1961, bearing DIN & Notice No. ITBA/AST/F/148A(SCN)/2022-23/1050358948(1), dated 03.03.2023, and all proceedings in furtherance thereof, including but not limited to the order passed by the respondent under Section 148A(d) of the Act bearing DIN & Notice No.ITBA/AST/F/148A/2022-23/1051738461(1), dated 31.3.2023 and the notice issued by the respondent under Section 148 of the Act bearing DIN & Notice No.ITBA/AST/S/148-1/2022-23/1051743542(1), dated 31.3.2023, for PAN:AABAC2040G, assessment year 2017-18, and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent from in any manner reassessing the petitioner's income under Section 147 of the Income Tax Act, 1961, for the Assessment Year 2017-18.

For Petitioner : Mr.Suhrith Parthasarathy
(All WPs)

For Respondent : Mr.B.Ramaswamy
(All WPs) Senior Standing Counsel for I.T.



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COMMON ORDER

The issue involved in all these writ petitions are common and hence, they are taken up together, heard and disposed off through this common order.

2. The present writ petitioners challenged the impugned notices issued under Section 148 A(b) for reopening the assessment made u/s.148 of the Income Tax Act, 1961 (in short, 'the Act'). The central issue that arise in the present case is as to whether the petitioners are entitled for deduction under Section 80P(2)(d) of the Act. The petitioners submitted that they have made investments with the Co-operative Bank from which, they received interest and therefore they are entitled to claim deduction under section 80P(2)(d). However, the respondent in the impugned notices, has stated that the petitioners / Society are not entitled for deduction holding that the deduction available in the above provision is only for the income and interest received from the Co-operative Society and not from the Co-operative Bank.

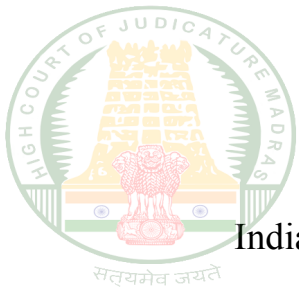
3.The learned counsel appearing for the petitioner submitted that



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any interest received from any Co-operative Society including the Co-operative Bank are entitled for the deduction under Section 80P(2)(d). In this regard, he referred to the definition to the “Co-operative Societies” as defined under Section 2(19) of the Act and would submit that without taking into consideration of meaning of Co-operative Societies under the wrong impression that the interest received from the Co-operative Bank is not liable for deduction under Section 80P(2)(d), the respondent Department disallowed the deduction and therefore the present writ petitions have been filed challenging the impugned orders.

4.Per contra, Dr.B.Ramaswamy, learned Senior Central Government Standing Counsel, vehemently opposed and referring to the written submissions submitted by him in paragraphs 21 to 26, would state that the petitioner received the income from the Co-operative Bank and as per the provisions of the Income Tax Act any income received from the Co-operative Bank is not eligible for deduction under Section 80P(2)(d) of the Act. Further, he contended that the Reserve Bank of



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India also granted permission to carry on the business of banking activities with the entity wherein a Co-operative Society made an investment and to receive the interest from the investment since the RBI had granted the Banking license to the Co-operative Banks. Thus, according to the respondent, the Co-operative Bank lost the status as an entity of Co-operative Society as it would provide the services not only for the members of a Co-operative society but to other general public as well. So taking into consideration of this aspect, the Assessing Officer passed the impugned notices, stating that any interest amount received from the investment made in a Co-operative Bank by a Co-operative Society, is not entitled for deduction under Section 80P(2)(d) of the Act.

5. In support of his contentions, he referred to a judgment of the Hon'ble Supreme Court in **“The Totagars Cooperative Sale Society -Vs- Income Tax Officer, Karnataka”** reported in [2010] 188 Taxman 282 SC.

6. In reply, the learned counsel for the petitioner submitted that



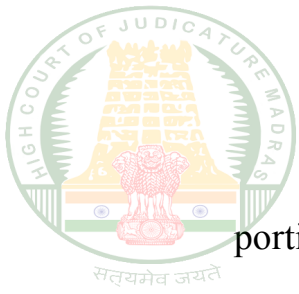
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the law laid down by the Hon'ble Supreme Court in the above said judgment is pertaining to the interpretation and the deduction which would be applicable under Section 80P(2)(a)(i), where it was held, the Co-operative Bank is eligible for deduction if any interest income is received from its own members by providing credit facilities. Therefore, even the said judgment is taken into consideration in the present case, the income was received by the Co-operative Society only and not from the Co-operative Bank, hence the petitioner is eligible for the deduction.

7. I have given due consideration for the submission made by the learned counsel appearing for the petitioner as well as the respondent.

8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?

9. It would be appropriate to extract hereunder the relevant



portion of Section 80P(2)(d).

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“80 P. Deduction in respect of income of co-operative societies:

(1)

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) to (c)

(d) “in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income”

9. A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20.5.2003. In this regard, he also produced a copy of the



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Certificate of Incorporation of the said Co-operative Bank. Therefore,

it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under Section 2(19) as follows:

"2(19). "Co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies.

10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank.

11. The learned counsel for the respondent referred to the



judgment of the Hon'ble Supreme Court rendered in **Totgars Co-operative Sale Society Ltd., v. Income-tax Officer, Karnataka**”,

wherein the issue came up for consideration as to whether the interest income received by a Co-operative Bank from its members by way of providing the credit facilities to its members is eligible for deduction or not. Ultimately the Hon'ble Supreme Court found that under Section 80P(2)(a)(i), the same is eligible for deduction. Therefore, the law laid down by the Hon'ble Supreme Court is not applicable for in the present case as the eligibility of deduction of interest has to be decided under Section 80P(2)(d) and not under Section 80P(2)(a)(i). The learned counsel has also relied upon other judgments which are not applicable for the present facts of the present case.

12. At this juncture, it would be appropriate to refer a judgment passed by a Division Bench of this Court in “**Commissioner of Income Tax Salem v. The Salem Agricultural Producers Co-operative Marketing Society Ltd**” in Tax Case Appeal No.5 of 2015, wherein, apart from other substantial issues, the following issue has been framed



for consideration, which reads as under:

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“Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is to be treated as primary agricultural society and is carrying on the business of banking or providing credit facilities to its members and is entitled for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 with respect to the interest received from Class B members who were involved in non-agricultural society?”.

While answering to the above, the Division Bench held that the respondent therein, which is a Co-operative society, is entitled to avail the benefit under 80P(2)(d) of the Act. The judgment was rendered on 10.08.2016, where the judgement rendered by the Hon'ble Supreme Court in 2010 was considered.

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13. In such view of the matter, since the impugned orders are passed without considering all these aspects, this Court is of the view that the same are liable to be set aside. Accordingly, the Writ Petitions



are allowed and all the impugned notices are set aside. No costs.

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10.10.2023

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

kp

To

Income Tax Officer

Ward 1 No.2, Barracks Cross Street

Officers Line, Vellore, Tamil Nadu-632 001.



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KRISHNAN RAMASAMY.J.,
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W.P.Nos.11172, 11174, 11177 and 11180 of 2023

10.10.2023

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