

आय अधकरण, "बी+यायपीठ, चेनई
PELLATE TRIBUNAL 'B' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवु आर.एल रेडी, यायक सदस्य के सम
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./ T.A. No. 720/Mds/2016

अधारण वष/Assessment Year:2011-12

M/s. Guruvareddiyur PACCS Ltd.,
Chennampatti Main Road,
Guruvareddiyur Post, Bhavani Taluk,
Erode 638 504.

Vs. The Assistant Commissioner of
Income Tax,
Circle II, Erode.

[PAN:AAAAG1657Q]

(अपीलाथ/ Appellant)

(अयथ/ Respondent)

अपीलाथ क ओर से / Appellant by : Shri S. Sridhar, Advocate, erode

अयथ क ओर से/ Respondent by : Shri Supriyo Pal, JCIT

सुनवाई क तारख/ Date of hearing : 14.07.2016

घोषणा क तारख /Date of Pronouncement : 07.10.2016

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 3, Coimbatore, dated 29.01.2016 relevant to the assessment year 2011-12. The assessee has raised two effective grounds viz.,

- (i) The Id. CIT(A) as well as the Assessing Officer erred in not considering the vital fact that the PDS subsidy, which has already been included in trade income of the appellant of the society, has been considered again, while completing the assessment; and

all as the Assessing Officer erred in not considering that the income tax does not distinguish and/differentiate between classes of members which has resulted in the addition of .77,544/- being interest earned from non-members.

2. Brief facts of the case are that the assessee is an AOP [Cooperative Society], filed its return of income on 24.11.2012 admitting total income of .NIL and the same was processed under section 143(1) of the Income Tax Act, 1961 [Act+ in short] on 09.05.2013. Subsequently, the case was selected for scrutiny and notice under section 143(2) of the Act was issued to the assessee on 07.08.2013. In response thereto, the assessee filed all details. After verification of details furnished by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act on 13.03.2014 by assessing the total income at .4,50,090/- and disallowing subsidy at .4,22,531/- and interest earned from non-members at .77,544/-.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) dismissed the appeal filed by the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. Counsel for the assessee has strongly contended that the authorities below have failed to note the fact that the PDS subsidy was already included in trade income of the assessee society in earlier year and the same is once again considered in the

eration. With regard to the addition of interest

income received from B class members, the issue is squarely covered in favour of the assessee by various decision of the Tribunal and moreover, for the earlier assessment year, the Assessing Officer has accepted assessee's contention. On the other hand, the Id. DR dutifully relied on the orders of authorities below.

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. With regard to the addition towards PDS subsidy, by filing copy of the final audit 2009-10, the Id. Counsel for the assessee has submitted that the PDS subsidy was already included in trade income of the assessee society in earlier year and the same is once again considered in the assessment year under consideration. The Id. CIT(A) was of the opinion that the assessee has not offered the subsidy received from the Government for taxation in earlier year. In view of the above, we direct the Assessing Officer to verify as to whether the assessee has been offered to tax in the earlier year and if it is offered to tax, it cannot be taxed in the assessment year under consideration and if it is found not offered to tax, then, the order of the Id. CIT(A) on this issue stands sustained.

6. With regard to the addition towards interest income received from B class members treating as non-members, amounting to .77,544/-, by

Interest receipt has been earned from non-members, the Assessing Officer has brought the same to tax. Denial of benefits under section 80P of the Act to non-member/associate member, in the cases of SL(SLP) 151, Karkudalpatty PACCS Ltd. & Others in I.T.A. Nos. 292 & 293/Mds/2014 dated 17.03.2014, the Coordinate Bench of the Tribunal has found that the definition of %Members+ includes %Associate Members+ as well as per the provisions of State Co-operative Societies Act, 1983. The Tribunal further observed that the objections of the Revenue that %members+ defined in sub-clause (i) of section 80P(2) should only include voting members, would amount to a classification within classification which is beyond the purview of taxing statute, unless provided specifically by the legislature. The findings of the Tribunal have been duly confirmed by the Hon'ble Jurisdictional High Court in the case CIT v. Veerakeralam PACCS Ltd. & others in TCA Nos. 735, 755 of 2014 and 460 of 2015 dated 05.07.2016 by holding that the contention of the Department that the members of the assessee societies who are not entitled to receive any dividend or having any voting right or no right to participate in the general administration or to attend any meeting etc., because they are admitted as associate members for availing loan only and was also charging a higher rate of interest at the rate of 14% is not a ground to deny the exemption granted under section 80P (2)(a)(i) of the Act. In view of the above decision of the Hon'ble Jurisdictional High Court, %Members+ for the purpose of

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e Act, the %B+class members also include on par with %A+class members. When interest income received from %A+class Members are exempted from taxation, we are of the considered opinion that %B+class members are also exempted from taxation. Thus, the disallowance made by the Assessing Officer is deleted and the ground raised by the assessee is allowed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 07th October, 2016 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 07.10.2016

Vm/-

आदेश क० प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थ/ Appellant, 2. प्रत्यर्थ/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रत्यक्ष/DR & 6. गार्डफाईल/GF.