

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.508, 509 & 510/Chny/2015

निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10 & 2010-11  
&

आयकर अपील सं./ITA Nos.1186 & 1187/Chny/2017

निर्धारण वर्ष / Assessment Years : 2011-12 & 2013-14

M/s The Salem Dt. Co-op. Milk  
Producer Union Ltd.,  
Sithanur,  
Thalavaipatty Post,  
Salem District.

v. The Assistant Commissioner of  
Income Tax, Circle – II,  
No.3, Gandhi Road,  
Salem – 7.

PAN : AAAAT 3146 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.S. Subramanian, CA

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 06.03.2018

घोषणा की तारीख/Date of Pronouncement : 09.03.2018

### **आदेश /ORDER**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the assessee are directed against the  
respective orders of the Commissioner of Income Tax (Appeals),

Salem, for the assessment years 2008-09, 2009-10, 2010-11, 2011-12 and 2013-14.

2. When these appeals were taken up for hearing, Shri T.S. Subramanian, the Ld. representative for the assessee, filed an application under Section 158A(1) of the Income-tax Act, 1961 (in short 'the Act') in Form No.8 claiming that the issue arises for consideration in these appeals are pending before the Madras High Court on the appeals filed by the assessee under Section 260A of the Act for the assessment years 1989-90, 1992-93, 1993-94 and 1997-98. According to the Ld. representative, the assessee agrees to apply the decision that may be taken by the Madras High Court in the pending appeals for the years under consideration before the Tribunal. On the basis of the above said application, this Tribunal called for the comments of the Assessing Officer. The Assessing Officer filed his report dated 26.02.2018 through the Ld. Departmental Representative.

3. We have carefully gone through the report filed by the Assessing Officer. The first question of law pending before the High Court appears to be the claim made by the assessee under Section

80P(2)(b)(i) of the Act. The question Nos.5 & 6 are apparently on the reopening of assessment. Referring to the report, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the validity of the reopening of assessment is not arising for consideration in the present appeals pending before the Tribunal. Therefore, according to the Ld. D.R., it is not necessary to keep the matter pending till the High Court decides the matter. According to the Ld. D.R., since the earlier Bench of this Tribunal has found that the assessee is not eligible for deduction under Section 80P(2)(b) of the Act, the same is binding on this Bench, therefore, these appeals deserve to be dismissed.

4. On the contrary, Shri T.S. Subramanian, the Ld. representative for the assessee, submitted that even though the issue of reopening of assessment under Section 147 of the Act is also one of the issues, which arise for consideration for the assessment years 1989-90, 1992-93, 1993-94 and 1997-98, the substantial issue raised before the Madras High Court is with regard to claim of deduction under Section 80P(2)(b) of the Act. The Ld. representative further submitted that since the issue is identical, which is pending before the Madras High Court and the assessee

has also filed the undertaking in a prescribed form as provided under Section 158A of the Act, the issue needs to be kept in abeyance till the Madras High Court decides the appeals of the assessee.

5. We heard the Ld. representative for the assessee and the Ld. Departmental Representative and we have also carefully gone through the provisions of Section 158A of the Act. The provisions of Section 158A of the Act reads as follows:-

**PROCEDURE WHEN ASSESSEE CLAIMS IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURT OR SUPREME COURT.**

(1) Notwithstanding anything contained in this Act, where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court (such case being hereafter in this section referred to as the other case), he may furnish to the Assessing Officer or the appellate authority, as the case may be, a declaration in the prescribed form and verified in the prescribed manner, that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case in appeal before any appellate authority or in appeal before the High Court under

section 260A or in appeal before the Supreme Court under section 261.

(2) Where a declaration under sub-section (1) is furnished to any appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim made by the assessee and, where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard in the matter, the appellate authority shall allow him such opportunity.

(3) The Assessing Officer or the appellate authority, as the case may be, may, by order in writing,--

(i) admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or

(ii) reject the claim if he or it is not so satisfied.

(4) Where a claim is admitted under sub-section (3),--

(a) the Assessing Officer or, as the case may be, the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and

(b) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

(5) When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority, as the case may be, shall, if necessary, amend the order referred to in clause (a) of sub-section (4) conformably to such decision.

(6) An order under sub-section (3) shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision under this Act.

*Explanation* In this section,--  
(a) "appellate authority" means the Deputy Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal;  
(b) "case", in relation to an assessee, means any proceeding under this Act for the assessment of the total income of the assessee or for the imposition of any penalty or fine on him.

6. We have also carefully gone through the question of law which is admitted by the Madras High Court on the appeals of the assessee for the assessment years 1989-90, 1992-93, 1993-94 and 1997-98. For those years, the Tribunal found that the assessee is not eligible for deduction under Section 80P(2)(b) of the Act. Subsequently, the assessee filed appeals before the Madras High Court and the High Court admitted the appeals filed by the assessee and framed questions of law, which need to be adjudicated *prima facie*, on the basis of the judgment of Apex Court in Kerala state Co-Operative Marketing Federation Ltd. And Others v. CIT (1998) 231 ITR 814. After going through the questions of law framed by the High Court and the issue arises for consideration before this Tribunal in respect of the present appeals, we are satisfied that the issue arising before this Tribunal in the present appeals are identical with the questions of law, which are pending before the High Court for adjudication for the assessment years

1989-90, 1992-93, 1993-94 and 1997-98. Since the assessee filed the declaration agreeing not to raise the questions of law before any other appellate authority and apply the decision that may be rendered by the Madras High Court, this Tribunal is of the considered opinion that the issue raised by the assessee before this Tribunal needs to be kept in abeyance till the disposal of the appeals by the High Court.

7. The very object of the introduction of Section 158A of the Act is to avoid multiplicity of proceedings and to avoid conflicting judicial opinions. Therefore, by accepting the declaration filed by the assessee in Form 8 under Section 158A of the Act, the orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall apply the judgment of Madras High Court that may be rendered in the appeals pending for the assessment years 1989-90, 1992-93, 1993-94 and 1997-98 and shall dispose of the issue in conformity with the judgment of Madras High Court.

8. With regard to apprehension made by the Ld. Departmental Representative that the issue of validity of reopening of assessment is not an issue in these appeals, this Tribunal is of the considered opinion that the substantial issue of deduction claimed by the assessee under Section 80P(2)(b) of the Act is identical to that of the issue arises for consideration, therefore, when the questions of law pending before the Madras High Court attains finality, it shall be applied to the assessment years under consideration.

9. In view of the above, the orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall pass an order after the judgment of Madras High Court for the assessment years 1989-90, 1992-93, 1993-94 and 1997-98 in the assessee's own case, in conformity with the judgment of Madras High Court. It is made clear that when the Assessing Officer passes an order in conformity with the judgment of Madras High Court or the judgment that may be passed by the Apex Court for the assessment years 1989-90, 1992-93, 1993-94 and 1997-98, the assessee shall not be entitled to file appeals against the order of the Assessing Officer for these years.



10. With the above observation, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 9<sup>th</sup> March, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 9<sup>th</sup> March, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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