

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.416 of 2015

Date of decision: December 14, 2015

**The Punjab State Cooperative Milk Producers Federation Limited,
SCO No.153-155, Sector 34A, Chandigarh**

.....Petitioner

**Commissioner of Income Tax II, Aaykar Bhawan, Sector 17,
Chandigarh and another**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. M.R.Sharma, Advocate for the petitioner.

Ajay Kumar Mittal, J.

1. This order shall dispose of ITA Nos.416 and 426 of 2015 as according to the learned counsel for the petitioner, the issues involved in both the appeals are identical. However, the facts are being extracted from ITA No.416 of 2015.

2. ITA No.416 of 2015 has been filed by the appellant-

assessee under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 10.4.2015 passed by the Income Tax Appellate Tribunal, Chandigarh (in short, “the Tribunal”) in Income Tax Appeal No.97/Chandi/2015 for the assessment year 2011-12, claiming following substantial questions of law:-

- “i) Whether in the facts and circumstances of the case, the orders (Annexure A.1), (Annexure A.2) and (Annexure A.3) are legally sustainable?
- ii) Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that disallowance under Section 14A can be made against the income which is not specifically exempt under the Act?
- iii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was correct in holding that the provision of section 14A is applicable even in respect of income which has been claimed as a deduction under Chapter VIA and more specifically under Section 80P(2)(d) of the Income Tax Act, 1961?
- iv) Whether in the facts and in the circumstances of the case, the order of the ITAT holding that the provisions of section 14A are applicable even to the deductions under Section 80P(2)(d) are legally sustainable in law more so when there is a decision of the Hon'ble Delhi High Court in the case of Commissioner of Income tax vs. Kribhco in ITA No.444 of 2011 in favour of the appellant against which the SLP filed has also been dismissed?

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.416 of 2015 may be noticed. The

assessee is a cooperative society duly registered under the Punjab Cooperative Societies Act, 1961. It is engaged in marketing of milk products of the member societies as well as manufacturing for sale of milk products and cattle feed etc. As per its bye-laws, the appellant is also authorised to make investments in the form of loans and advances for business purposes to the member cooperative societies in the State of Punjab within the meaning of Section 80P(2)(a)(i) of the Act. The assessee filed its return of income for the financial year relevant to the assessment year 2011-12 declaring ₹ 1,08,64,430/- as net taxable income besides agriculture income at ₹ 64,28,394/- on 30.9.2011. A revised return was filed on 8.3.2012. The assessment under section 143 (1) of the Act was completed and the net income as returned was accepted. The assessee claimed deduction under Section 80P(2)(d) of the Act amounting to ₹ 7,16,47,331/-. The assessee had business income to the extent of ₹ 52,98,061/- as computed in the chart reproduced in the order of assessment and interest income from other member cooperative societies amounting to ₹ 7,16,47,331/-. Income from sale of seed was ₹ 2,11,27,895/- and from long term capital gain at ₹ 56,16,373/-. The total income came to ₹ 1,08,64,434/- besides agriculture income at ₹ 64,28,394/-. Assessment was completed vide order dated 26.3.2014, Annexure A.1 and net taxable income had been assessed at ₹ 5,62,25,540/-. While completing the assessment, respondent No.2 had not allowed the deduction of ₹ 7,16,47,331/- under Section 80P(2)(d) of the Act as claimed and allowed ₹

2,10,38,169/- as deduction under Section 80P(2)(d) of the Act inspite of the fact that the Assessing Officer had admitted that the income amounting to ₹ 7,16,47,331/- had been received from the member cooperative societies. During the course of assessment proceedings, the assessee was asked to file various details by respondent No.2 which were duly filed by the assessee. According to the appellant, while completing the assessment, respondent No.2 has referred to the amended provision of section 14A of the Act but has wrongly held that this provision is applicable in the case of the appellant because that provision is applicable where income is exempt under section 10 of the Act whereas in the present case, the income has not been claimed as exempt but it is a case of deduction. One of the activity of the assessee is to provide funds for working capital to the member cooperative societies yet the Assessing Officer has not allowed the deduction as admissible to the assessee under under Section 80P(2)(a)(i) of the Act i.e. interest income received from providing of credit facilities to the members. The assessee filed appeal against the order dated 26.3.2014 before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 17.11.2014, Annexure A.2, the appeal was dismissed. Aggrieved by the order, the appellant filed appeal before the Tribunal. Vide order dated 10.4.2015, Annexure A.3, the Tribunal partly allowed the appeal upholding the order of the Assessing officer with regard to deduction under Section 80P(2)(d) of the Act reducing the deduction by applying the provisions of section 14A of the Act disallowing

expenses claimed by the assessee. The Tribunal has however directed respondent No.2 to recompute the disallowance of the expenses in view of Rule 8D of the Income Tax Rules, 1962. Thus, the Tribunal has upheld the application of section 14A of the Act for the purpose of computing the allowable deduction under section 80P(2)(d) of the Act. Hence the instant appeals by the appellant-assessee.

4. We have heard learned counsel for the appellant.

5. Learned counsel for the appellant submitted that this court has already decided the issue against the appellant in ITA No.530 of 2006 (*The Punjab State Cooperative Milk Producers Federation Limited vs. Commissioner of Income Tax II and another*) decided on 28.3.2011. However, it was urged that the Delhi High Court in *Commissioner of Income Tax vs. M/s Kribhco*, Income Tax Appeal No.444 of 2011 decided on 18.7.2012 has taken a contrary view and Special Leave Petition against the said judgment was dismissed vide order dated 15.2.2013 in *CIT vs. Kribhco*, SLP(C) No.3604 of 2013, Annexure A.7.

6. The matter is no longer res integra. This Court in ITA No.530 of 2006 (supra) after considering the relevant statutory provisions and the case law decided the identical issue against the assessee. It was recorded thus:

“11. We have given our thoughtful consideration to the submissions made by the counsel for the parties and find force in the contention raised on behalf of the revenue.

12. The assessee is entitled to deduction under Section 80P(2)

(d) of the Act after excluding the expenditure attributable to the earning of such income. The Apex Court in *Sabarkantha Zilla Kharid Vechan Sangh Ltd's* case (supra) [(1993) 203 ITR 1027] where the High Court while rejecting the claim of the assessee had held that the assessee who was engaged in the purchase of agricultural implements, seeds, live stocks etc. was entitled to deduction under section 81 of the Act from tax only in relation to net profit and not gross profits. It was held as under:-

“7. The said provision, as seen therefrom, undoubtedly exempts an assessee - co-operative society, which carries on the business envisaged therein, from payment of income-tax on profits and gains of such business. But the controversy which relates to the said provision is, whether the income-tax not payable thereunder, calls to be calculated either with reference to the full amount of profits and gains of the co-operative society's business as contended on behalf of the assessee or with reference to the net amount of profits and gains of the co-operative society's business, as otherwise computable under the provisions of the [I.T. Act](#) for the purpose of charging income-tax thereon, as contended on behalf of the Revenue. If the relevant provisions of the [I.T. Act](#) providing for charging a person including a co-operative society with income-tax on "profits and gains" of such person's business show that it is the net profits and gains, i.e., income of such business computed in accordance with the provisions of the [I.T. Act](#), which is includible in such person's total income liable to charge of income-tax, it must flow therefrom, as a necessary corollary thereof that the "profits and gains" for which exemption of income-tax is envisaged under [Section 81\(i\)\(d\)](#) of the I.T. Act, ought to be net profits and gains, i.e., income of business computed in accordance with the provisions of the [I.T. Act](#) which is includible in such person's total income for charging

income-tax thereon.”

13. It may be noticed that Section 80P was inserted in place of Section 81 which was simultaneously deleted by Finance (No.2) Act, 1967, with effect from 1st April 1968.

14. Further, Section 14A was inserted in the Act by Finance Act, 23001 with effect from 1.4.1962. The said section provides that any expenses incurred by the assessee for earning income which does not form part of total income under the Act shall not be an allowable expenditure. The Apex Court in *Walfort Share and Stock Brokers'* case (supra), [(2010) 41 DTR Judgments 233] defining the scope of section 14A of the Act, incorporated retrospectively from 1.4.1962 had laid down as under:-

“The insertion of [Section 14A](#) with retrospective effect is the serious attempt on the part of the Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001 dated 22.11.2001). In other words, [Section 14A](#) clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of [Section 14A](#), the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of [Section 14A](#) is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The basic reason for insertion of

[Section 14A](#) is that certain incomes are not includible while computing total income as these are exempt under certain provisions of the Act. In the past, there have been cases in which deduction has been sought in respect of such incomes which in effect would mean that tax incentives to certain incomes was being used to reduce the tax payable on the non-exempt income by debiting the expenses, incurred to earn the exempt income, against taxable income. The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of [Section 14A](#). In [Section 14A](#), the first phrase is "for the purposes of computing the total income under this Chapter" which makes it clear that various heads of income as prescribed under Chapter IV would fall within [Section 14A](#). The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of [Section 14A](#). Further, [Section 14](#) specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. [Sections 15 to 59](#) lay down the rules for computing income for the purpose of chargeability to tax under those heads. [Sections 15 to 59](#) quantify the total income chargeable to tax. The permissible deductions enumerated in [Sections 15 to 59](#) are now to be allowed only with reference to income which is brought under one of the above heads and is chargeable to tax. If an income like dividend income is not a part of the total income, the

expenditure/ deduction though of the nature specified in [Sections 15 to 59](#) but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under [Section 14A](#). Reading [Section 14](#) in juxtaposition with [Sections 15 to 59](#), it is clear that the words "expenditure incurred" in [Section 14A](#) refers to expenditure on rent, taxes, salaries, interest, etc. in respect of which allowances are provided for (see [Sections 30 to 37](#)).

15. Adverting to the judgments relied upon by the learned counsel for the assessee, the same do not advance its case. Suffice it to notice that the *Doaba Cooperative Sugar Mills's* case (supra) [(1998) 230 ITR 774] was a case prior to insertion of Section 14A by Finance Act, 2001 retrospectively from 1.4.1962 and would thus be of no assistance to the assessee. Further, this court in *King Export's* case (supra), [(2009) 318 ITR 100] on consideration of facts involved therein had concluded that there was no expenditure which had been incurred by the assessee for earning the income and the same did not form part of total income. That is not the situation in the present case.

16. In view of the above, the substantial questions of law are answered against the assessee and in favour of the revenue.

The appeals are accordingly dismissed.”

However, the Delhi High Court has taken a contrary view and the Special Leave Petition against the judgment has been dismissed by the Apex Court in limine which does not mean that any law has been laid down by the Apex Court. Consequently, in view of the binding decision

of this Court in ITA No.530 of 2006 to which one of us (Ajay Kumar Mittal,J.) was a member, no substantial question of law arises in the present appeals which stand dismissed.

(Ajay Kumar Mittal)
Judge

December 14, 2015
'gs'

(Ramendra Jain)
Judge