IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NOS. 25 & 26 OF 2016

The Pr. Commissioner of Income Tax,
having office at Aayakar Bhavan,
Panaji Goa. ... Appellant

V e r s u s

The Goa Shipyard Employees
Cooperative Credit Society Ltd.,
Canteen Building, Goa Shipyard Ltd.,
Vasco-da-Gama, Goa.
PAN: AAAAT 9557 G . ... Respondent

Ms. Asha A. Desai, Advocate for the appellant.

Mr. Yamane D'Souza and Ms. Sharon Lobo, Advocates for the respondent.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 4th October, 2016

P.C.

Heard Ms. A. Desai, learned counsel appearing for the appellant and Mr. Y. D'Souza, learned counsel appearing for the respondent.

2. The above appeals challenge the order passed by the Income Tax Appellate Tribunal dated 08/09.06.2015 whereby the appeals

preferred by the Assessee were allowed by setting aside the order passed by the Commissioner of Income Tax dated 26.12.2012 under Section 263 of the Income Tax Act. The learned counsel appearing for the appellant has pointed out that the learned Tribunal was not justified to pass the impugned order as it has not examined the fact that the original assessment was without an inquiry conducted to verify whether the respondent- society was carrying out the banking business and consequently, the amendment to Section 80P(4) of the Income Tax Act was not examined to avail of the deduction. The learned counsel further pointed out that no inquiry was conducted by the Assessing Officer while passing the impugned order for the Assessment Years 2007-2008 and 2009-2010 and as such, the learned Tribunal was not justified to allow the appeals preferred by the Assessee. The learned counsel has taken us through the provisions of Section 80P as well as Section 80P(4) of the Income Tax Act to point out that the learned Commissioner was justified to direct the recourse to the provisions of Section 263 of the Income Tax Act for the assessment of the respondent. The learned counsel further pointed out that the learned Tribunal has failed to examine the relevant provisions while passing the impugned order which call for interference by this Court in the present appeals.

3. On the other hand, the learned counsel appearing for the respondent has submitted that the respondent is a Co-operative society carrying out credit facilities only to the members and not carrying out any banking activities. The learned counsel further pointed out that to come within the scope of banking business, the institution has to obtain a licence from the Reserve Bank of India which admittedly the respondent do not possess. The learned counsel as such points out that the learned Tribunal was justified to pass the impugned order by quashing and setting aside the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act.

4. We have considered the submissions of the learned counsel and we have also gone through the records. The records reveal that the respondent is a Co-operative Society and not a bank. In this context, the learned Tribunal while passing the impugned order has relied upon the judgment of Karnataka High Court wherein it has been observed in very similar circumstances at para 8 thus :

> "**8**. In the assessment order, the Assessing authority has clearly stated that the assessee is a Co- operative society and has not obtained

any banking license. The business of the assessee is to provide credit facilities to its members. Since the assessee cannot carry on any banking business, the interest on investment is taxable as income from other source. Therefore, the aforesaid facts, which is not in dispute clearly establishes that it is not a Co-operative Bank. Infact, the Revisional Authority also in its order has categorically stated that the assessee is a Co-operative society, which provides credit facilities. Section 80P of the Act deals with the deduction of income of a society. In the case of any assessee being a Co-operative society, the whole of the amounts of profits and gains of business attributable to any of other activities referred to sub-section (2) of Section 80P shall be deducted in computing the total income of the assessee. In other words, the said income is not taxable. It is a benefit given to the Co-operative society. Section 80P(4) was introduced by Finance Act, 2006 with effect from 01.04.2007 excluding the said benefit to a Co-operative Bank. The said provision reads as under:-

"(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.............

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

Therefore, the intention of the Legislature is clear. If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co- operative bank carrying on exclusively banking business and as it does not possess a licence from the Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority. The said order was not prejudicial to the interest of the Revenue. The condition precedent for the commissioner to invoke the power under Section 263 is that the twin conditions should be satisfied. The order should be erroneous and it should be prejudicial to the interest of the revenue."

5. Looking into the observations in the said judgment, we find that as there is no material to suggest that the respondent is carrying out banking business but is only a Co-operative society, the learned Tribunal has not committed any error while passing the impugned order. Consequently, there are no substantial questions of law which arise in the present appeals for consideration. The appeals stand accordingly rejected.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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