IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/8/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Tax Case Appeal No.5 of 2015

Commissioner of Income Tax
Salem. ...Appellant/Respondent

Vs

The Salem Agricultural Producers
Co-operative Marketing Society Ltd
305 Suramangalam Main Road
Salem 636 009. ...Respondent/Petitioner

Prayer: Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 30/6/2014 in ITA No.732/Mds/2014 against the order of the Commissioner of Income-Tax (Appeals) NO.3 Gandhi Road, Salem-7, dated 18.02.2014 in PAN/GIR NO.AAAA73150D; and

against the order of the Income Tax Officer, Ward III (1) Salem dated 28.02.2013 in PAN/GIR NO.AAAA73150D

For appellant ... Mr.J.Narayanasamy
Senior Standing Counsel
for Income Tax.

For respondent ... No appearance.

J U D G M E N T
(Judgment of the Court was made by S.Manikumar,J)

Challenge in this Tax Appeal, is to an order passed by the Income Tax Appellate Tribunal in I.T.A.No.732/Mds/2014, dated 30/6/2014, for the assessment year 2010 - 2011.

2. In the instant Tax Case Appeal, the appellant has raised the following substantial questions of law:-

"1. 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 80 P (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?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the Class B members of the assessee society can be treated as the member of the Society for the purpose of Section 80 P (2) (a) (i) when Class B members do not have the right to participate in the voting and meetings of the board of the society and were not recognised by the assessee itself for audit purposes?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering the fact that the assessee was lending monies for non-agricultural purpose without considering the provisions of Section 80 P (4) and 2 (24) (viia)?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest earned from the Salem District Central Co-operative Bank is entitled for deduction under Section 80 P (2) (d)?"

3. The first three questions of law have already been answered against the appellant in T.C.A.Nos.3 and 4 of 2015, dated 9/8/2016, and that therefore, we are not inclined to advert to the same.

4. Though the assessee had contended that the income by way of interest and dividend covered by the assessee/Society from the investment made in Salem District Central Co-operative Bank, which is also a Co-operative Society and therefore, the assessee is entitled for reduction under Section 80 P (2) (d) of the Income Tax Act, the assessing Officer has disallowed the same. CIT (Appeals) has confirmed before the Tribunal.

5. Placing reliance on the decision of Himachal Pradesh High Court in COMMISSIONER OF INCOME TAX Vs. KANGRA CO-OPERATIVE BANK LTD., reported in {(2009) 309 ITR 106 (HP)}, before the Tribunal, the respondent/assessee has reiterated deduction under Section 80 P (2) (a) (i) of the Income Tax Act, whereas, the appellant has relied on the orders of the authorities.

6. Addressing the said issue, at paragraph No.8, in I.T.A.No.732/MDS/2014 dated 30/6/2014, the Tribunal has ordered as hereunder:-

> “The case of the assessee is that the income by way of interest and dividend earned by the assessee Society are from investments made in Salem District Central Co-operative Bank, which is also admittedly, a co-operative society and are allowable deduction. The Assessing Officer has held that the assessee has made only with Salem District Central Co-operative Bank and therefore, the income from investment with the Bank is not entitled for deduction under Section 80 P (2) (d) of the Act. On appeal, the Id.CIT (Appeals confirmed the order passed by the Id.CIT (Appeals). We find that in the case of CIT Vs. Kangra Co-operative Bank Ltd. [2009] 309 ITR 106 (HP), the Hon'ble Himachal Pradesh High Court has considered Section 80 P (2) (d) of the Act. The interest earned by the assessee co-operative bank on fixed deposits with Himachal Pradesh State Co-operative Bank in compliance with the provisions of Section 57 of the Himachal Pradesh Co-operative Societies Act, 1968, the income derived from banking business is eligible for deduction under Section 80 P (2) (a) (i) of the Act. Exemption is also available under Section 80 P (2) (d) of the Act. In the present case, the assessee is an Agricultural Producers Co-operative Marketing Society Ltd., registered under Tamil Nadu Co-operative Societies Act and established for the benefit of the Agricultural producers and the interest or dividend earned by the assessee will be beneficial to the members alone. Therefore, keeping in view of the decision, in the case of CIT Vs. Kangra Co-operative

Bank Ltd., (supra), we hold that the assessee is eligible for benefit under Section 80 P (2) (d) of the Act and also this being a beneficial section to the co-operative Societies.”

7. Let us consider the decision in KANGRA CO-OPERATIVE BANK LTD'S case referred to by the tribunal. The question of law framed therein is as follows:-

> “Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the interest income earned by the assessee on deposits made with H.P.State Co-operative Bank in the shape of F.D.Rs. is income derived from banking business and therefore, eligible for deduction under Section 80 P (2) (a) (i) of the Income Tax Act?”

8. After considering the decisions in CIT Vs. Karnataka State Co-operative Apex Bank reported in [2001] 251 ITR 194, CIT Vs. Ramanathapuram District Co-operative Central Bank Ltd reported in [2002] 255 ITR 423 (SC), a Division Bench of the Himachal Pradesh High Court, at paragraph Nos.10 and 11 held thus:-

> “The Karnataka High Court in CIT Vs. Sri Ram Sahakari Bank Ltd., [2004] 266 ITR 632, held that the interest on investments and short-term fixed deposits in banks was entitled to be deducted under Section 80 P (2) (a) (i) of the Act. In fact, in CIT Vs. Nawanshahar Central Co-operative Bank Ltd., [2007] 289 ITR 6, the Apex Court has held that where under the provisions of the Co-operative Societies Act, the co-operative bank is statutorily required to place part of its funds in approved securities, the income attributable thereto is not taxable under Section 80 P (2) (a) (i) of the Income-tax Act, 1961.
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> In the present case, we have noted above that under Section 57, every co-operative Society including the assessee is required by law to keep a percentage of its profits in reserve funds. These reserve funds can only be invested or deposited in a certain manner. Applying the ration of the judgment in Nawanshahar

Central Co-operative Bank Ltd's case [2007] 289 ITR 6, it is apparent that any interest on such investments is required to be deducted under Section 80 P (2) (a) (i) of the Act."

At para 12 of the judgment, further reiterated that

"…. Furthermore, the investments have been made in the H.P.State Co-operative Bank which is also a co-operative Society and, therefore, even under Section 80 P (2) (d) of the Act, interest income from investments made in any co-operative Society would also be entitled for deduction."

9. Though Mr.J.Narayanasamy, learned Senior Standing Counsel for Income Tax Department submitted that the Tribunal was not right in holding that the interest earned from the Salem Agricultural Producers Co-operative Marketing Society Ltd., for reduction under Section 80 P (2(a) (i) of the Income Tax Act, we are not inclined to accept the said contentions. For the reason that a District Central Co-operative Bank, is also a Society, in which event, the income by way of interest and dividend earned by the assessee/respondent Society from the investments made in Salem District Central Co-operative Bank, which is also a Co-operative Society is entitled for deduction under Section 80 P (2) (a) (i) of the Income Tax Act. Decision relied on by the assessee and considered by the Tribunal squarely applies to the facts on hand. Question of law, figuring as 4, is negatived as against the appellant.

10. In the result, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Assistant Registrar,
III Floor, Rajaji Bhava,
Besant Nagar Income Tax Appellate Tribunal,
Madras 'D' Bench, Chennai 600 090.

2. The Commissioner of Income Tax
Appeals NO.3 Gandhi Road, Salem-7.

3. The Income Tax Officer, Ward III (1) Salem.

+ 1 cc to M/s. J. Narayanaswamy, Advocate SR.46530

UG(CO)
Eu 09.09.16