THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ITTA.NO.158 OF 2016

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is preferred by the revenue against the order passed by the Income Tax Appellate Tribunal, Hyderabad (Tribunal) in ITA.No.1689 of 2013 dated 12.08.2015 for the assessment year 2011-12.

The respondent-assessee is a society registered under the Andhra Pradesh Co-operative Societies Act, 1964. A survey, under Section 133 of the Act, was conducted on the assessee to verify whether tax was being deducted at source on interest payments. The assessing authority, on going through the bye-laws of the assessee-society, found a difference in the rights and privileges between regular members on the one hand, and associate and nominal members on the other. He came to the conclusion that exemption under Section 194A (3)(v) would apply only to regular members, and not to associate/nominal members. The assessee carried the matter in appeal and the Commissioner of Income Tax (Appeals), following the decision of the Bombay High Court in **Jalgaon District Cooperative Society Bank v. Union of India**[1], held that, since the CBDT circular No.9/2002 dated 11.09.2002 which made a distinction between regular members on the one hand and the associate/nominal members on the other for the purposes of deduction of tax at source on interest payment under Section 194A(3)(v) of the Act was quashed, the assessment order should be set aside. Aggrieved thereby, the revenue carried the matter in appeal to the Tribunal.

In the order under appeal before us, the Tribunal noticed that, during the relevant previous year, the assessee had paid interest to different categories of members, regular members, associate members and nominal members; Section 194A(3)(v) of the Act made no distinction between different categories of members, and merely used the word 'member'; the Bombay High Court, in **Jalgaon District Cooperative Society Bank**[1], had held that the exemption granted to a co-operative society, under Section 194A(3)(v) of the Act, could not be taken away by making a distinction between duly registered members and nominal members; the SLP preferred thereagainst was dismissed by the Supreme Court; the very same assessment order was subjected to revision under Section 263 of the Act; the assessee had carried the said order in appeal in ITA.No.1070 of 2014; the Tribunal had, by its order dated 29.04.2015, examined the judgment of the Bombay High Court and the CBDT Circular No.9 of 2002 dated 11.09.2002, and had set aside the revisional order passed by the Commissioner of Income Tax under Section 263 of the Act; and, in such circumstances, no interference was called for against the order passed by the Commissioner of Income Tax (Appeals).

Before us, Sri K.Raji Reddy, learned Senior Standing Counsel for Income Tax, while fairly stating that the revenue had not preferred any appeal against the order passed by the Tribunal in ITA.No.1070 of 2014 dated 29.04.2015, would, however, contend that the provisions of the Andhra Pradesh Co-operative Societies Act and the bye-laws of the society make a clear distinction between regular members on the one hand, and nominal and associate members on the other; while the obligation cast on the society, under Section 194A(1) of the Act, is to deduct tax on payment of interest, an exception is carved out under Section 194A(3) of the Act; an exemption provision must be strictly construed; clause (v) thereunder must be read in conjunction with the provisions of the Andhra Pradesh Co-operative Societies Act, and the bye-laws of the society; and as the provision, in effect, restricts exemption only to regular members, the Tribunal had erred in extending the benefit of exemption even to associate and nominal members.

We must express our inability to agree. As has been held by the Bombay High Court, in **Jalgaon District Cooperative Society Bank**[1], the rights and privileges of a registered member under the provisions of the State Co-operative Societies Act, and the obligations of a co-operative society under Section 194A(3)(v) of the Act are distinct and different; what is required to be examined is whether the exemption granted to a co-operative society under Section 194A(3)(v) of the Act can be taken away by creating a distinction between a duly registered member and a nominal member; the notification issued by the CBDT is in the form of a circular with regard to rights and privileges of a duly registered member; the CBDT could not usurp the power of Parliament while exercising jurisdiction under Section 119 of the Act; it could not exercise wider powers, than the powers vested in it; the CBDT circular was not legal; and the SLP preferred thereagainst by the revenue was not admitted by the Supreme Court in its order in SLP.Nos.12601 and 12602 of 2004 dated 07.07.2004.

While Section 194A(1) of the Act requires tax to be deducted at source at the time of credit of interest to the account of a payee, or at the time of payment thereof in cash, Section 194A(3) of the Act makes the provisions of Section 194A(1) of the Act inapplicable to certain categories. By clause (v) thereunder, the provisions of Section 194A(1) of the Act has been made inapplicable to interest payment by a co-operative society, other than a co-operative bank, to a member thereof. It is not in dispute that the respondent-assessee is a co-operative society, and is not a co-operative bank. The exemption granted under clause (v), from deducting tax at source, is for payment made by a co-operative society to a "***member***". The said provision makes no distinction between regular members on the one hand, and associate/nominal members on the other. Section 194A(1) of the Act is not attracted to payment of interest by a co-operative society to all its members, whatever be the category they may fall under. The CBDT circular, on which the revenue placed reliance upon, goes far beyond the scope of Section 194(A(3)(v) of the Act and has, in any event, already been quashed by the Bombay High Court. The revenue cannot, therefore, place reliance thereupon. What is required to be given effect to, by the authorities under the Act, are only the provisions of the Act. The benefit of exemption under the Act cannot be denied to an assessee placing reliance upon any other State enactment or the bye-laws of a co-operative society.

The order under appeal does not give rise to any substantial question of law necessitating interference in proceedings under Section 260A of the Act. The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

15th July 2016
RRB

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[1] **265 ITR 423**