

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 17 of 2016 (O&M)

Date of Decision: 10.5.2016

The Punjab State Cooperative Federation of House Building Societies
Ltd., Chandigarh

....Appellant.

Versus

Commissioner of Income Tax-II, Chandigarh and another

...Respondents.

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

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. M.R. Sharma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 28.4.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA Nos. 847/Chd/2013 and 810/Chd/2013 for the assessment year 2010-11, claiming the following substantial questions of law:-

- i) Whether in the facts and circumstances of the case, the orders (Annexure A-1), (Annexure A-

- 3) and partly (Annexure A-2) are legally sustainable?
- ii) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal is right in law in holding that the income earned from banks other than cooperative banks as interest on its bank accounts as income from other sources being attributable to its business income and thereby not allowing deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961?
- iii) Whether in the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal is correct in law in upholding the expenses of 1% of income attributable to the earning of interest income under the provision of Section 57(iii) of the Income Tax Act, 1961?
- iv) Whether in the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has grossly erred in upholding the order of the Assessing Officer and reversing Commissioner of Income Tax (Appeals) Chandigarh with regard to the interest income of ₹ 27,19,241/- received by the appellant as interest on the loans advanced to the employees for housing and conveyance as a condition precedent more so when it has been

treated as business income in the earlier years?

- v) Whether in the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal grossly erred in upholding the order of the Assessing Officer and reversing the order of the Commissioner of Income Tax (Appeals) and also not following its own earlier decision is perverse more so when the earlier order of the Tribunal was a reasoned order and has not been even distinguished?
- vi) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was right in law in holding that the income by way of interest on loans advanced to its employees and the deposits held with schedule banks was chargeable to tax u/s 56 under the head income from other sources without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses u/s 57?

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee filed its return of income for the assessment year 2010-11 on 14.10.2010 declaring the income at 'nil' after claiming deduction of ₹ 22,16,98,658/- under Section 80P of the Act. Along with the return, the assessee filed a computation chart (Annexure A-4) of its income. The Assessing Officer vide order dated 28.2.2013 (Annexure A-1) framed the assessment at ₹ 37,73,963/-

(rounded off ₹ 37,73,960/-) as net taxable income by levying income tax on the said income and disallowed various claims under Section 80P(2)(a)(i) of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 22.5.2013 (Annexure A-2) partly allowed the appeal upholding the certain disallowance made by the Assessing Officer and the addition made on account of interest received from commercial banks amounting to ₹ 10,54,722/- after deducting the expenses at the rate of 1% out of the gross income at ₹ 10,65,376/-. The assessee as well as the revenue assailed the order, Annexure A-2, in appeal before the Tribunal. The Tribunal vide a consolidated order dated 28.4.2015 (Annexure A-3) dismissed the appeal of the assessee upholding the order of the Assessing Officer. The Tribunal allowed the appeal of the revenue by reversing the order of the CIT(A) with regard to the disallowance of ₹ 27,19,241/- under Section 80P(2)(a)(i) of the Act being amount of interest received by the assessee on various loans advanced to its employees as a condition of service of its employees holding the income as 'income from other sources' and not 'income from business'. Hence, the present appeal by the assessee.

3. We have heard learned counsel for the appellant-assessee.
4. The assessee has filed one appeal against the consolidated order dated 28.4.2015 (Annexure A-3) passed by the Tribunal where the appeal of the assessee was dismissed and that of the revenue was allowed.
5. Question No. (i) being general in nature cannot be termed to be substantial question of law.
6. Question No. (ii) relating to deduction under Section 80P(2)

(a)(i) of the Act stands concluded by the decision dated 10.5.2011 (Annexure A-5) passed by this Court in **ITA No. 643 of 2010 (Commissioner of Income Tax-II, Chandigarh v. M/s Punjab State Cooperative Federation of Housing Building Societies Ltd.)** whereby the question has been decided in favour of the revenue. Accordingly, question No. (ii) cannot be held to be a substantial question of law.

7. Question Nos. (iii) and (vi) as have been sought to be raised now do not arise from the order of the Tribunal as no such plea was argued before the Tribunal. Thus, no substantial question of law emanates from the order of the Tribunal and, therefore, do not arise for consideration of this Court.

8. Adverting to question Nos. (iv) and (v) as reproduced above which have been claimed to be arising from the order of the Tribunal on the appeal of the revenue which was allowed, the issue relates to disallowance of ₹ 27,19,241/- under Section 80P(2)(a)(i) of the Act as deduction in respect of interest received from employees who are not the members of the assessee-Society. The Tribunal while accepting the appeal of the revenue and adjudicating the issue against the assessee had clearly noticed that the benefit under Section 80P(2)(a)(i) of the Act is available to the assessee where the interest is earned from the core activity of the assessee-Society and the interest earned from employees would not fall for such deduction under Section 80P(2)(a)(i) of the Act. The relevant observations of the Tribunal read thus:-

“17. After considering the rival submissions we find that the Hon'ble Supreme Court has clearly held that deduction u/s 80P(2)(a)(i) of the Act is available only in respect of core activities of the Society and interest

earned from other banks cannot be said to be the core activity. In fact, in this regard it has been observed as under:-

“The interest income arising to a co-operative society carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members, on the surplus, which is not required immediately for business purposes, from investment in short-term deposits and securities, has to be taxed as income from other sources under Section 56 of the Income Tax Act, 1961. Such interest cannot be said to be attributable to the activities of the society, viz. carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. Interest income of such society from amounts retained by it cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) or Section 80P(2)(a)(iii) of the Act.

Section 80P(2)(a)(i) cannot be placed on a par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section 80HHE(5).”

18. On the basis of above observation it can easily be said that on same analogy even the interest earned from employees cannot be said to be core

activity of the society and, therefore, in our opinion, interest earned from employees is not eligible for deduction u/s 80P(2)(a)(i), therefore, we set aside the order of Ld. CIT(A) and restore that of Assessing Officer.”

9. Nothing was demonstrated that the approach of the Tribunal was erroneous or perverse in any manner.

10. In view of the above, no substantial question of law arises in this appeal. Consequently, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 10, 2016
gbs

(RAJ RAHUL GARG)
JUDGE