IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEALS NO.3,4,5,6,7,8,9 & 11 OF 2015

Saraswat Co-operative Bank Ltd.
Samadevi Galli (TAN [BLRS18158A]),
Through its Managing Director,
Mr. Samir Kumar Banerji,
A/c Dept, Plot 953,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai 400025.
PAN : [AABAT4497Q] …. Appellant

V/s

1. Income Tax Officer,
   TDS Ward, Belgaum.

2. Union of India,
   Through the Secretary (Revenue),
   Ministry of Finance,
   North Block, New Delhi. …. Respondents

Ms. Vinita Palyekar, Advocate for the Appellant.
Ms. Amira Razaq, Junior Standing Counsel for the Respondents.

Coram:- ANOOP V. MOHTA &
C. V. BHADANG, JJ.

Date:- 7th March, 2017

ORAL JUDGMENT :(Per ANOOP V. MOHTA, J.)

Called out from final hearing Board. Heard finally by consent of the parties. Both the Counsel appearing for the respective parties have submitted that all the above tax appeals can be disposed off by a common order as common issues are involved. Therefore this common judgment. The Ministry of Finance, Government of India through

Explanatory Notes to the Provisions of the Finance Act, 2015 dated 27/11/2015 has clarified about the obligation of the Co-operative Bank from deduction of tax at source under Section 194A of the Income Tax Act (The Act). Reliance is also placed on a supporting judgment of Division Bench dated 16/12/2015 in ***ITA No.100001 of 2014*** in ***The Bailhongal Urban Cooperative Bank Ltd. V/s. The Commissioner of Income Tax & Anr.***

2. Impugned orders by the Income Tax Appellate Tribunal (the appellate tribunal) refer to the liability or the obligation of the assessment years 2010-11 to 2013-14, based upon the then existing position of law and the interpretation given to Section 194(v) and 194(va) of Section 194A(3) of the Act whereby it has been held that the appellant Co-operative Bank has to deduct TDS on income credited or paid in respect of deposit of described limit, except which falls under the provisions. The appeals therefore of the respective assessee/appellant were dismissed by the tribunal by the separate orders. Therefore the tax appeals.

3. This High Court on 9/04/2015 admitted the appeals on the following substantial questions of law:

> (I) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the appellant was not entitled to the benefit of S.194A(3)(v) of the Income Tax Act, 1961?
>
> (II) Whether the ITAT was justified in dismissing the appellant's appeal without at all addressing the alternative contentions taken before it, despite such contentions being specifically urged before it?

4. Reference to the Explanatory Note makes the position of relevant law clear specifically para 42.5 which is reproduced as under:

> "42.5 In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. <u>As this amendment is effective from the prospective date of 1st June, 2015</u>, the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015. <u>Hence, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st</u>

June, 2015."

(emphasis added)

5. The Division Bench in ***The Bailhongal Urban Cooperative Bank Ltd.*** (supra) based upon the Explanatory Notes in question has allowed the appeal in following terms :

> "3. In the light of the aforesaid circular, the view of the Tribunal holding that Co-operative bank was required to deduct tax is not sustainable. Hence, this appeal merits consideration.
>
> 4. In the result, the appeal stands allowed. The substantial question of law raised by the Assessee is answered in its favour. The judgment of the Tribunal in ITA No.85/PNJ/2013 is set aside. No costs."

6. Therefore, taking overall view of the matter and according to the Counsel appearing for the parties it also goes to the root of the issues so raised, we are inclined to allow the appeals. The Explanatory Notes has made the position of law clear that such Co-operative Banks are not liable to deduct any amount from the TDS, prior to the effective date 1/06/2015. The appellant Co-operative Bank was not under obligation to deduct the amount from the TDS, for the assessment years prior to 1/06/2015 i.e. from 2010-11 to 2013-14. There is substance in the submission of the Counsel appearing for the parties.

7. Therefore following order:

O R D E R

(a) All appeals are allowed.

(b) The substantial question of law by the assesse is answered in its favour.

(c) The impugned judgments of the respective Tribunals are set aside.

(d) No costs.

C. V. BHADANG, J. **ANOOP V. MOHTA, J.**

NH