IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1732 OF 2014

The Commissioner of Income Tax-IV .. Appellant

v/s.
Solapur Zilla Madhyamik Shikshak Vs
Sevak Sahakari Patsanstha Maryadit,
Solapur .. Respondent

Mr. Tejveer Singh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 20th MARCH, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. The Revenue urges the following substantial question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case, the claim of deduction under Chapter VIA of the I.T. Act 1961 not*

made in the original return of income can be allowed as deduction otherwise than by revised return of income?

3. The respondent assessee is a Co-operative Credit Society formed by the Secondary Teachers' in Zilla Parishad schools and is engaged in providing the credit facility to its members. The respondent assessee filed its return of income for the subject assessment year both in hard copy as well as online. The Assessing Officer assessed the return of income and passed an order on 18th December, 2009 under Section 143(3) of the Act accepting the return of income as Nil after allowing exemption under Section 80P of the Act.

4. Subsequently, the Commissioner of Income Tax exercised its powers under Section 263 of the Act and revised the order of assessment dated 18th December, 2009. The revision was on account of the fact that even when the respondent had not claimed deduction under Chapter VIA of the Act particularly under Section 80P of the Act, yet it was granted in the face of the decision of the Apex Court in ***Goetze (India) Ltd. Vs. Commissioner of Income Tax, 284 ITR 323 (SC)***. Further, the Assessing Officer while allowing the deduction did not make enquiries with regard to entitlement on merits to deduction

under Section 80P of the Act. In the above view, by order dated 29th December, 2011, the Commissioner of Income Tax set aside the assessment order dated 18th December, 2009 and restored the issue for fresh consideration.

5. Being aggrieved, the respondent assessee agitated the issue in appeal before the Tribunal. By the impugned order dated 28th February, 2014, the appeal of the respondent assessee was allowed. The impugned order renders a finding that the respondent assessee had filed its return of income in Form ITR-V online and also in hard copy its return of income with the Assessing Officer and duly obtained the acknowledgement thereto. This acknowledgement given by the Assessing Officer clearly reflects / shows that the deduction under Chapter VIA of the Act has been claimed. In respect of the online return of income, the impugned order holds that due to an error attributable to the software of the appellant Revenue, the deduction claimed by the respondent assessee was not reflected as deduction from the total income. This error was particularly evident from the fact that the total liability worked out by the software was Nil, indicating no taxable income. Besides, the impugned order holds that the reasons recorded to select the return of income of the respondent assessee for

scrutiny assessment was deduction claimed under Chapter VIA of the Act being in excess of Rs.25 lakhs. Besides, it holds that the assessment order dated 18th December, 2009 of the Assessing Officer also reflects the consideration of the respondent assessee's claim for deduction under Section 80P of the Act. In the aforesaid circumstances, the impugned order of the Tribunal holds that the benefit of deduction under Section 80P of the Act was claimed in the return of income and consequently, the Assessing Officer did consider in his order dated 18th December, 2009 the merits of the respondent assessee's claim for deduction under Section 80P of the Act.

6. The grievance of the Revenue before us is that the electronically uploaded return of income did not reflect the claim for deduction under Section 80P of the Act. Therefore, according to Mr. Tejveer Singh, in view of the decision of the Apex Court in *Goetze (India) Ltd.* (supra), the claim could not have been considered by the Assessing Officer. Thus, the impugned order of the Tribunal should not have interferred with the exercise of revisionary powers by the Commissioner of Income Tax.

7. We find that the impugned order of the Tribunal has clearly

recorded a finding of fact that the hard copy of the return of income was filed with the Assessing Officer and an acknowledgement of the same was also given by the Assessing Officer. This acknowledgement did indicate the respondent assessee's claim for deduction under Section 80P of the Act was claimed in the return of income. The impugned order also records the fact that there was a mal-functioning of the software as the tax liability could not have been 'Nil' in the absence of the deduction under Section 80P of the Act being taken into account as the income declared by the respondent assessee is Rs.1.26 crores before deduction under Section 80 of the Act. In the aforesaid facts, the decision of the Apex Court in Goetze (India) Ltd. (supra) would have no application as the return of income as evidenced by the hard copy of the return of income had claimed deduction under Section 80P of the Act. Further, the mal-functioning of the software under which the return of income was electronically uploaded is also not disputed before us, nor is it shown that the finding of the Tribunal on the above account is in any manner perverse. So far as the non-consideration by the Assessing Officer of the merits of the claim for deduction under Section 80P of the Act is concerned, we find that the Assessing Officer had considered the claim for deduction under Section 80P of the Act. The Revenue has neither before the Tribunal nor before us demonstrated how and in what manner the consideration of the claim under Section 80P of the Act as reflected in order is erroneous so as to enable him to exercise his powers under Section 263 of the Act. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. Therefore, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**