

\$~60, 63-65 & 67-70

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 148/2017 & CM Nos.5880-81/2017, ITA 151/2017 & CM Nos.5882-83/2017, ITA 152/2017 & CM Nos.5884-85/2017, ITA 153/2017 & CM Nos.5886-87/2017, ITA 155/2017 & CM Nos.5889-90/2017, ITA 156/2017 & CM Nos.5891-92/2017, ITA 157/2017 & CM Nos.5893-94/2017 & ITA 158/2017 & CM Nos.6031-32/2017

PR. CIT-21

..... Appellant

Versus

THE MANTOLA COOPERATIVE THRIFT & CRADIT
SOCIETY LTD.

..... Respondent

Through: Mr. P. Roy Choudhuri and Ms. Vibhooti
Malhotra, Advocates for Revenue.
Mr. Gaurav Jain, Advocate for Respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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15.02.2017

CM Nos.5880, 5882, 5884, 5886, 5889, 5891, 5893 & 6031 of 2017 (for exemption)

1. Allowed, subject to all just exceptions.
2. The applications are disposed off.

ITA Nos. 148/2017 & CM No.5881/2017, ITA 151/2017 & CM No.5883/2017, ITA 152/2017 & CM No.5885/2017, ITA 153/2017 & CM Nos.5887/2017, ITA 155/2017 & CM No.5890/2017, ITA 156/2017 & CM No.5892/2017, ITA 157/2017 & CM No.5894/2017 & ITA 158/2017 & CM No.6032/2017

3. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal ('ITAT') whereby it granted relief to the respondent, a Cooperative Thrift and Credit Society. It urges that the ITAT fell into error in holding

ITA 148/2017 & other connected appeals

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that despite the assessee's inability to earmark accurately any expenditure incurred in earning income under Section 56 of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'), the assessee was entitled to claim deduction. The assessee is a Thrift and Credit Society, which mobilises savings from its members.

4. The issue arose in 2008-09 and 2009-10. In 2008-09, it reported Rs.1,44,04,060/- as gross income to claim benefit of Section 80 P of the Act. It is not in dispute that the income derived by the assessee was eligible for deduction under Section 80P(2)(d) of the Act as it arose from investment in respect of income derived from investment in other Cooperative Societies. The assessee also had, in the normal course of its activities, deposited amounts in short term fixed deposits scheduled in other Banks which resulted in accrual of income. It is not in dispute that this income was assessed under Section 56 of the Act. However, the AO, and later the CIT (A), disallowed the expenditure claim, on the ground that no specific amounts could be attributed or shown by the assessee. Before the ITAT, it was contended that the respondent as a Thrift and Credit Society was engaged in dual business, which involved accepting deposits and saving them and at the same time investing them in different kinds of securities. Hence, the assessee could claim deduction in respect of that part of the income which was derived from other sources which, as in this case, all its expenditure incurred for deriving an income vis-a-vis investing in Cooperative Societies (i.e. which resulted in the income deductible under Section 80P). The ITAT after considering the rival submissions held as follows:-

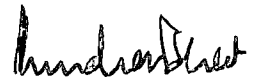
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"11. We have perused the orders passed by the authorities below and the judgment relied upon by the assessee. It is not in dispute that the source of such income was due to the investment of surplus funds which the assessee did not require for its business activities. It is logical that when Revenue is permitted to assess the interest income u/s.56 of the Act by treating the income earned by way of interest as income from other sources, the assessee should be entitled for proportionate expenses incurred in mobilizing the deposits placed with banks/cooperative societies. What can be taxed is only the net income earned after deducting the expenditure attributable to such earning. We accordingly direct the Ld. A.O. to allow the allocation of expenses as per the method of calculation arrived by the assessee."

5. The Revenue contends that in the absence of any specific expenditure that could be attributed to the income derived from other sources; no expenditure could be allowed at all.

6. This Court is of the opinion that the ITAT's reasoning cannot be faulted. Concededly the nature of the activities i.e. that which resulted in income under Section 80P and that which resulted in income from other sources are identical. This involves the collection, deposits and management of funds from the assessee's subscribers/members. In other words, the source is inextricable to the nature of the expenditure. In the circumstances, all that the AO could have possibly done was to scrutinize the returns to find whether, having regard to the income derived under Section 56, the expenses claimed were extraordinary or seemingly disproportionate. In the present case, the very nature of the expenditure i.e. inextricability would, in the absence of any factual inquiry, lend credence to the assessee's claim.

7. For these reasons, the ITAT's reasoning is sound and does not call any interference. The appeals alongwith pending applications are dismissed. Accordingly, the AO may give appropriate tax effect.


S. RAVINDRA BHAT, J.


NAJMI WAZIRI, J.

FEBRUARY 15, 2017

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