

\$~2-8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 128/2017, 129/2017, 130/2017, 131/2017, 132/2017,
133/2017 & 134/2017

MANTOLA CO-OPERATIVE THRIFT & CREDIT
SOCIETY LTD.

.... Appellant

Through: Mr. Gautam Jain, Adv.

versus

PRINCIPAL COMMISSIONER OF
INCOME- TAX- 21,

..... Respondent

Through: Ms. Vibhooti Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

07.03.2017

CM 4908/2017 (condonation of delay) in ITA 128/2017

CM 4909/2017 (condonation of delay) in ITA 129/2017

CM 4911/2017 (condonation of delay) in ITA 130/2017

CM 4913/2017 (condonation of delay) in ITA 131/2017

CM 4915/2017 (condonation of delay) in ITA 132/2017

CM 4917/2017 (condonation of delay) in ITA 133/2017

CM 4919/2017 (condonation of delay) in ITA 134/2017

1. Issue notice.

2. Ms. Vibhooti Malhotra accepts notice for the respondent. For the reasons given therein, the applications are allowed and the delay is condoned. The applications stand disposed off.

ITA Nos. 128/2017, 129/2017, 130/2017, 131/2017, 132/2017, 133/2017 & 134/2017

3. Issue notice.

4. Ms. Vibhooti Malhotra accepts notice for the respondents.
5. The question urged by the assessee is whether the impugned order of the ITAT to the extent it disallowed the deduction claimed by the assessee towards interest income earned on deposits made in commercial banks and interest earned on deposits made in co-operative banks, are not eligible for deduction under Section 80P of the Income Tax Act, 1961 (in short the Act).
6. As far as treatment under Section 80P is concerned i.e. vis-a-vis the interest from commercial banks, the previous judgments of this Court in ITA No. 569/2013 and connected cases (*Mantola Co-operative Thrift & Credit Society Ltd. vs CIT* decided on 27.08.2014) could govern the issue. However, with respect to the treatment of interest the ITAT has held as follows:

“...8. Applying the legal provision u/s 80P to the gross total income earned as enumerated in the chart, we hold that the Assessing officer was right in allowing the deduction u/s 80P only to the extent of interest earned from members who availed the credit facility. Further from the column of interest earned from investments with Co-operative Banks/ Societies, the assessee has neither been able to establish before us nor before the authorities below that interest has been earned exclusively from investment with other cooperative banks.

8.1 Accordingly ground No.3 for assessment year 2004-05 to 2007-08, 2009-10, 2010-11 and ground No. 1 for assessment year 2008-09 stands dismissed.....”

7. We notice at the outset that the ITAT had in the course of its impugned order – in the immediately preceding paragraph i.e. para 7,

applying the ratio in ITA No. 839/2009 (*CIT vs National Agricultural Co-operative Marketing Federation of India Ltd.*, decided on 03.05.2011), held that the assessee was eligible to deduction under Section 80P(2)(d) in respect of interest earned from investments made by the Society in other co-operative banks. In these circumstances, the ITAT's findings in this regard are unsustainable. The matter is remitted for appropriate tax treatment to the authorities having regard to the material placed before the Revenue which is broadly reflected in the chart produced in para 7.1 of the impugned order.

8. The Revenue had sought to contend that as far as the expenditure goes, this Court in a previous order dated 15.02.2017 in ITA No. 148/2017 (*PR. CIT-21 vs The Mantola Co-operative Thrift & Credit Society Ltd.*) had not made a distinction between two types of expenditure attributable to the income derived i.e. expenditure towards interest earned from deposits in commercial banks on the one hand and expenditure towards interest earned from deposits made in co-operative banks on the other. Para 4 and 6 of this Court's order clearly noted the two different streams of income and also held that the proportionate expenditure could be allowed, the only rider being that in case the AO felt that the expenditure claimed was "extraordinary or seemingly disproportionate", he could pass appropriate orders.

9. In these circumstances, it is held that the assessee is entitled to claim proportionate or suitable expenditure with respect to the income earned out of the non-exempt income i.e. interest earned from

commercial banks. The AO shall carry out the necessary consequential exercise. The appeals are allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 07, 2017/kk