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

\+ **ITA 230/2018**

THE MANTOLA CO-OPERATIVE THRIFT & CREDIT SOCIETY LTD ..... Appellant

Through: Mr.Aniket D.Agrawal, Advocate.

versus

ITO, WARD-38(4), NEW DELHI ..... Respondent

Through: Mr.Raghvendra K.Singh, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 19.08.2019

1. There are two issues sought to be urged by the Assessee in this appeal against the impugned order dated 10th October, 2017 passed by the ITAT in ITA No.2829/Del/2015 for the Assessment Year ('AY') 2011-12. The said two issues read as under:

> "(i) Whether on the facts and circumstances of the case, the Tribunal erred in law in not deleting the disallowance of deduction under section 80P(2)(a)(i) of the Act claimed by the appellant on interest income earned from investments made in fixed deposits with commercial/ co-operative banks?
>
> (ii) Without prejudice to the above, whether on the facts and circumstances of the case, the Tribunal erred in law in not adjudicating upon the allowability of alternate claim of deduction under section 80P(2)(d) of the Act qua interest income earned from investments with co-operative banks/societies?"

2. As far as the question (i) is concerned, learned counsel for the Assessee fairly states that it stands covered against the Assessee by the judgment of this Court dated 27th August, 2014 read with the order dated 29th September, 2014 dismissing the Assessee's appeal, being ITA No. 569 of 2013 for the Assessment Year ('AY') 2008-09. Consequently, this Court is not inclined to frame a question on this issue.

3. As far as the second issue is concerned it will no longer survive, since the Appellant in the meanwhile filed an application before the ITAT under Section 254 (2) of the Act which has since been disposed of by the ITAT by an order dated 28th February, 2019. In particular in para 9 of the said order it was held as under:

> "9. With respect to the 2nd issue in the additional ground raised by the assessee with respect to its claim under section 80 P (2) (d), that on the facts and circumstances of the case, the CIT(A) erred in law in upholding the finding of the assessing officer that the appellant was not engaged in the business of banking and that the aforesaid interest income was assessable under the head income from other sources and not business income, and further netting of common expenses against interest income has been decided by the honourable Delhi High Court in favour of the appellant by the order dated 7/3/2017 in appellant's own case in ITA number 1 to 8 – 134/2017 allowing the appeal of the appellant against the order of the tribunal for assessment year 2004-05 to 2010-11. Accordingly, the second ground raised by the assessee is allowed. "

4. In that view of the matter, counsel for the Appellant states that he is not pressing the second question.

5. The appeal is accordingly disposed of.

S.MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 19, 2019

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