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

INCOME TAX APPEAL NO. 1574 OF 2017

The Pr. Commissioner of Income Tax - 17 … Appellant
V/s.
Annasaheb Patil Mathadi Kamgar Sahakari
Patpedhi Maryadit Ltd. ... Respondent

Mr. Suresh Kumar for the Appellant
Mr. Divyesh Fotaria i/b. Ms. Namrata S. Kasale for the Respondent

CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.

DATE : 09 JANUARY 2020.

***P.C.* :-**

Heard learned Counsel for the parties.

2. This Appeal under Section 260A of the Income Tax Act, 1961 challenges the order of the Income Tax Appellate Tribunal (Tribunal) dated 23 September 2016. The Appeal pertains to the Assessment Year 2009-10.

3. The Appellant - Revenue has framed following questions as substantial questions of law :-

> *" (i) Whether on the facts and circumstances of the case, and in law, the Hon'ble ITAT was right in law in relying upon its order for earlier assessment year of 2010-11 to*

hold that the order u/s. 263 of the Act is not liable to be sustainable in the eyes of law, because the order is not erroneous or prejudicial to the interest of Revenue; without appreciating the fact that the said appellate order for A.Y. 2010-11 was not accepted by the Department and appeal u/s. 260A of the Act was preferred against the said order vide Lodging No. ITXAL 2372017 ?

(ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in holding that the order u/s. 263 of the Act denying the assessee the deduction u/s. 80P(2)(a)(i) of the Act is not liable to be sustainable in the eyes of law, because the order is not erroneous or prejudicial to the interest of Revenue; without appreciating the fact that in akin circumstances on the issue of deduction u/s. 80P(2)(a)(i), the Hon'ble Apex Court has granted SLP to the Department in the cases of Pr. CIT vs. Goa PWD Staff Co-operative Credit, as reported in 73 taxmann.com 400(SC) and CIT vs. Sri Biluru Gurubasava Pattina Sahakari Sangh Niyamitha Bagalkot, as reported in 62 taxmann.com 216 (SC) ?

(iii) Whether on the facts and circumstance of the case, the Hon'ble ITAT was right in law in holding that the order u/s. 263 of the Act denying the assessee the deduction u/s. 80P(2)(d) of the Act is not liable to be sustainable in the eyes of law, because the order is not erroneous or prejudicial to the interests of Revenue; without appreciating the fact that the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd., 229 CTR 209, has decided the very issue in favour of Revenue and furthermore, the Hon'ble Apex Court in the case of Quepem Urban Co-operative Credit Society, as reported in 63 taxmann.com 300; has granted SLP to the Department on the said issue ?"

4. The learned Counsel for the Respondent places on record an order passed in ITXA No. 933 of 2017 by this Court in respect of the Respondent – Assessee for the Assessment Year 2010-11. The order reads thus :-

> *"1. This appeal under Section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 20th May, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). This appeal relates to Assessment Year 2010-11.*
>
> *2. The Revenue urges the following two questions of law for our consideration :-*
>
> *(a) Whether on the facts and circumstances of the case and in law, the Tribunal is correct in holding that assessee is entitled to deduction u/s 80P(2)(a) and (d) of the IT Act, 1961?*
>
> *(b) Whether on the facts and circumstances of the case and in law, the Tribunal is right to allow the relief to the assessee by holding that the assessee being Co-operative Credit Society is not a Co-operative Bank hence entitled for deduction u/s 80P(4) of the I.T. Act despite the fact that the assessee is carrying on the banking business and has been categorized as Co-operative Bank / other Bank ?*
>
> *3. Regarding question (a)*
>
> *(a) It has not been shown to us that the respondent has in any manner breached Section 80P(2)(a) and (d) of the Act.*
>
> *(b) Thus, no substantial question of law arises for our consideration. Thus, not entertained.*

4. Regarding question (b) :-

(a) We find that the issue raised herein was a subject matter of consideration by this Court in Commissioner of Income Tax Vs. Shri Kulswami Co-op. Credit Society Ltd. (Income Tax Appeal No.1682 of 2014, decided on 20 th March, 2017) wherein identical issues raised by the Revenue were not entertained. This as it did not give rise to any substantial question of law.

(b) It is pertinent to note that the impugned order of the Tribunal dismissed the Revenue's appeal before it by relying upon the decision of its co-ordinate bench in the case of Kulswami Co-operative Society (ITA Nos. 3223/ Mum/2011 for Assessment Year 2007-08 and ITA No.505/Mum/2012 for Assessment Year 2008-09).

(c) Thus, the for the reasons indicated in our order dated 20th March, 2017, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. The appeal is dismissed."

5. Thus, the question of law nos. (ii) and (iii) have already answered against the Revenue. As far as question of law No. (i) is concerned, since on merits the issue is held in favour of the Respondent – Assessee, the question of improper exercise of Commissioner in Revision under Section 263 of the Act is rendered academic.

6. The Appeal is accordingly dismissed.

M.S. KARNIK, J. NITIN JAMDAR, J.

Jyoti P. Pawar

Digitally signed by Jyoti P. Pawar
Date: 2020.01.15 16:19:34 +0530