

IN THE HIGH COURT OF BOMBAY AT GOA**TAX APPEAL NO.14 OF 2017**

The Pr. Commissioner of Income Tax,
having office at Aayakar Bhavan,
Patto-Plaza,
Panaji Goa. ... Appellant

Versus

The Goa State Cooperative Bank Ltd.,
Dayanand Smriti Bldg.,
Dr. A. B. Road,
Panaji Goa.
PAN : AAAAT3364R ... Respondent

Ms. Susan Linhares, Standing Counsel for the Appellant.
Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar, Advocate
for the Respondent.

**Coram:- M. S. SONAK &
DAMA SESHADRI NAIDU, JJ.**

Date:- 7th January, 2021

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Ms. Susan Linhares, learned Standing Counsel for
the Appellant and Mr. S. R. Rivankar, learned Senior Advocate with
Mr. Rama Rivankar for the Respondent.

2. The learned counsel for the parties submit that this matter is required to be detagged from the connected matters because the issue in this matter is not common with the issue involved in the connected matters. Accordingly, we have detagged this matter from the connected matters.

3. This appeal was admitted on 26th February, 2018 on four substantial questions of law which are set out in the said order. However, the learned counsel for the parties point out that none of these questions arise in the present appeal and such questions were framed, on account of incorrect tagging of this matter along with other matters which were presumed to be connected to this matter.

4. Ms. Linhares, learned counsel for the Appellant submits that the substantial question of law which arises in this appeal is the one set out in paragraph 5 (c) of the appeal memo and the same reads as follows:-

“Whether the Id. ITAT has erred in not appreciating that there is nothing in 194A(3)(i)(b) or 194A(3)(vii)(b) to restrict their application to only non members particular when the legislature has not so intended and the explanatory memorandum to these clauses also does not bring out any such restricted interpretation.”

5. Mr. Rivankar, learned Senior Advocate for the Respondent also agrees that the issue involved in the present appeal is the one set out

at paragraph 5(c) of the appeal memo. He however submits that this very issue had been decided in favour of Respondent – Assessee in relation to Assessment Year 2013-2014 and 2014-2015, *inter alia* by the Income Tax Appellate Tribunal (ITAT). He submits that as against the decisions of the ITAT, the Appellant-Revenue had in fact instituted the appeals before this Court. However, on 11th April, 2016 such appeals were withdrawn by the Revenue. He therefore submits that there ought not to be any inconsistent decision in so far as the Assessment Year 2012-2013 is concerned and therefore, this appeal may be dismissed on this ground alone.

6. Ms. Linhares points out that the appeals pertaining to the Assessment Years 2013-2014 and 2014-2015 were withdrawn by the Revenue on the ground that the tax effect involved in the said appeals was less than that prescribed by the CBDT Circular. In any case, she submits that in such matters the principle of *res judicata* is not attracted and therefore there can be no bar to maintainability of the present appeal.

7. Accordingly, we proceed to frame the aforesaid question as set out in paragraph 5(c) of the appeal memo as substantial question of law in the present appeal and proceed to decide the same.

8. In this case, the Respondent – Assessee filed his return of income

for Assessment Year 2012-2013 declaring total income of ₹88,83,130/-. This was followed by a revised return declaring a loss of ₹6,91,77,785/-. The case was selected for scrutiny and due notice under Section 143(2) of the Income Tax Act, 1961 (IT Act) was issued to the Assessee. In the context of substantial question of law now framed, suffice to state that the Assessing Officer disallowed the interest of ₹27,09,30,388/- paid to various members of the Society (where individual interest amount exceeded ₹10,000/-) in terms of Section 40(a)(ia) on the ground that the Assessee failed to deduct tax at source on the said amount and deposit the same in the Government treasury on or before the due date. For this purpose, the Assessing Officer relied upon the provisions of Section 194A(3)(i)(b) of the IT Act.

9. The Assessee appealed the Assessment Order dated 27th February, 2015, and the Commissioner of Income Tax (Appeals) reversed the Assessment order. The CIT (Appeals) relied on the provisions of Section 194A(3)(v) of the IT Act as they obtained during the Assessment Year 2012-2013 to hold that the provisions of Section 194A(1) were not at all applicable to the income credited or paid by a co-operative society to its members. The CIT (Appeals) also made a reference to the decision of ITAT, Panaji Bench in the case of Goa State Co-operative Bank, which is incidentally the Respondent – Assessee in the present matter as well (ITA Nos. 123 to 137/PNJ/2015) as well as Circular No. 9/2002 issued by the CBDT which had clarified that the

provisions of TDS are not enforceable in respect of interest paid by the Co-operative Society/Bank to its members but tax has to be deducted from the interest paid to the non-members.

10. The Revenue appealed to the ITAT, which has by order dated 20th January, 2016 dismissed the appeal of the Revenue and confirmed the view taken by the CIT (Appeals). Hence, the present appeal.

11. The liability to deduct tax at source arises from the provisions of Section 194A(1) of the IT Act. However, 194A(3) provides that the provisions of sub-section (1) of Section 194A will not apply in certain contingencies. One of the contingencies is provided in sub clause (v). This contingency relates to income credited or paid by a co-operative society to a member thereof. There is no dispute that this was the position for the Assessment Year 2012-2013 and therefore, we feel that the CIT (Appeals) as well as the ITAT were quite right in reversing the Assessing Officer's order and holding that there was no liability for deducting tax at source in respect of amount of interest paid by the co-operative society to its members, even though such amount may have exceeded ₹10,000/-.

12. No doubt, by the Finance Act, 2015 which entered into force with effect from 01.06.2015, clause (v) of Section 194A(3) came

to be amended and the exemption from application of provisions of sub-section (1) of Section 194A was restricted to co-operative society other than a co-operative bank. This subsequent amendment, will however not apply for the Assessment Year 2012-2013 with which we are concerned in the present case. Further, the very fact that the Legislature had to step in and specifically exclude the co-operative banks with effect from 01.06.2015, indicates that prior to the said date the benefits of exemption were very much available to the co-operative banks like the Assessee as well.

13. For the aforesaid reasons, we see no error whatsoever in the view taken by the CIT (Appeals) and the ITAT in this matter. The substantial question of law as now framed is therefore required to be answered against the Revenue and in favour of the Assessee.

14. As a result, we dismiss this appeal. There shall be no order as to costs.

DAMA SESHADRI NAIDU, J.

M. S. SONAK, J

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