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

WRIT PETITION NO.3327 OF 2019

Reserve Bank Officers co-operative Credit
Society Ltd.
3rd floor, Amar Building, Sir P. M. Road,
Mumbai-400 001 ...Petitioner

Vs.

1. The Income Tax Officer- 17 (3) (1)
Room No.125, 1st Floor, Kautilya Bhavan,
C-41 to C-43, G Block, Bandra Kurla Complex,
Bandra (E), Mumbai- 400 051

2. The Jt. Commissioner of Income Tax-17 (3),
Kautilya Bhavan, Bandra Kurla Complex,
Bandra (E), Mumbai 400 051.

3. The Pr. Commissioner of Income Tax-17,
Aaykar Bhavan, M. K. Road, Mumbai-400 020

4. Union of India,
Aaykar Bhavan, Mumbai. ...Respondents

Mr. Mandar Vaidya for Petitioner.
Mr. P. C. Chhotaray for Respondent.

CORAM : K. R. SHRIRAM AND
AMIT B. BORKAR, JJ.

DATE : 23 November 2021.

<u>ORAL JUDGMENT</u> : (Per Amit B. Borkar, J.)

Rule. With the consent of both sides, Rule is made returnable forthwith.

2. By notice dated 31/3/2019, the Assessing Officer had sought to reopen the assessment under Section 147 of the Income Tax Act, 1961 (the Act) for Assessment Year 2013-2014. Objections that Petitioner submitted to reopen the assessment have been rejected by order dated 31/10/2019. Both the notice for reopening the assessment and the order disposing of the objections of Petitioner has been challenged in this petition under Article 226 of the Constitution of India.

3. Petitioner is a Co-operative Credit Society registered under the provisions of the Multi-State Co-operative Societies Act. Petitioner filed its return of income on 30/7/2013 for Assessment Year 2013-2014, declaring total income as 'Nil" after claiming deduction under Section 80P of the Act viz., deduction towards interest income received from co-operative Banks. Petitioner had received a sum of Rs.7,03,48,883/- as interest income from co-operative Banks in the relevant year. Petitioner in the said return had claimed deduction of Rs.3,38,41,724/- by confining the same to the gross total income as per Section 80P of the Act. Petitioner had also filed an audit

report in Form 3CA as contemplated by Section 44AB of the Act, which disclosed the amount of Rs. 3,38,41,724/- being eligible and admissible for deduction under Section 80P of the Act.

4. Petitioner's return was picked up for scrutiny by issuing notice dated 3/7/2015 under Section 142 of the Act. Petitioner was called upon to explain and justify the deductions claimed under Chapter VIA of the Act in which Section 80P falls. In response to the said notice, Petitioner filed a reply dated 5/8/2015 explaining eligibility for deduction under Section 80P of the Act.

5. Petitioner filed further detailed reply dated 8/1/2016 explaining the eligibility of Petitioner for deduction under Section 80P of the Act. Respondent No.1 on 27/1/2016 passed an assessment order under Section 143(3) of the Act accepting Petitioner's claim for deduction under Section 80P of the Act by not making any additions to the income of Petitioner.

6. On 31/3/2019, respondent No.1 issued a notice under Section 148 of the Act seeking to reopen the assessment of Petitioner for Assessment Year 2013-2014. At the request made by Petitioner, respondent No.1 supplied reasons for such reopening. Reasons supplied by respondent

No.1 disclosed that deduction under Section 80P is available only on income received from co-operative Society and not from a co-operative bank. Accordingly, respondent No.1 had reason to believe that the income to the extent of deduction allowed had escaped assessment. Upon receipt of the reasons, Petitioner submitted its objections to reopening of assessment by letter dated 15/10/2019. Petitioner stated in the objections that in the course of original assessment proceedings, the Assessing Officer had already examined the issue, which is the issue in reopening. Thereafter Assessing Officer accepted the claim of the Petitioner by not disallowing deduction towards Section 80P of the Act. Therefore, it was stated that the reopening of the assessment on the said issue amounted to a change of opinion. It was further stated that reopening of assessment was without any new material brought on record. Petitioner also stated, on merits, that the issue of deduction under Section 80P of the Act on income received from co-operative Bank was covered in favour of Petitioner by the decisions of various High Courts and Income Tax Appellate Tribunal.

7. Respondent No.1 vide order dated 31/10/2019 and served upon Petitioner on 4/11/2019 dismissed the objections. Therefore, the Petitioner has filed the present petition challenging a notice of reopening assessment and order of rejection of objections.

8. Mr. Vaidya, learned Advocate for Petitioner, submitted that

(i) The reopening of the assessment has taken place beyond a period of four years of the end of the relevant assessment year, and hence, the jurisdictional condition is that there must be a failure on the part of Petitioner to disclose truly and fully all material facts necessary for assessment for that assessment year.

(ii) The Assessing Officer had made an enquiry during the course of the assessment proceedings for Assessment Year 2013-14 in response to which Petitioner had submitted relevant information regarding the eligibility of Petitioner to claim a deduction under Section 80-P. Hence, the assessment cannot be reopened beyond a period of four years.

(iii) The issue of deduction of interest received from co-operative Banks under Section 80P of the Act was raised by respondent No.1 in the course of original assessment proceedings. After he was satisfied, he made no addition or disallowance in respect of the said issue.

(iv) Specific query was raised by respondent No.1 during original proceedings by issuing notice under section 142 of the Act to show cause as to why such deductions are not to be disallowed, which was replied by

Petitioner and the Assessing Officer had not dis-allowed the said deductions.

(v) If the stand of Revenue is to be accepted, the sanctity attached to proceedings under Section 143(3) would be done away with.

(vi) It is evident from the reasons supplied to Petitioner for reopening the assessment that no new material has been brought on record.

9. Mr. Chhotaray appearing on behalf of Revenue, submitted that

(i) Section 80P(2)(d) of the Act does not extend the benefit of the deduction for interest received from the investment made with co-operative Banks as co-operative Banks are not co-operative Society as defined under Section 2(19) of the Co-operative Societies Act.

(ii) From the tenor of the original assessment order, it is clear that the Assessing Officer had not applied his mind to the issue of eligibility of Petitioner to the deduction for interest received from the investment made with co-operative Banks.

(iii) The Assessing Officer was within his jurisdiction in reopening the assessment under Section 148 of the Act and had correctly rejected the objections preferred by Petitioner.

10. The rival submission now fall for determination. From the reasons supplied to Petitioner, it appears that assessment for the assessment year 2013-2014 is sought to be reopened principally on the ground that Petitioner claimed deduction under Section 80P (2) of the Act, which is clearly in contravention of the provisions of the Act and the income from Fixed Deposits was required to be shown under the head "income from other sources". Additionally, as per the provision of the Act, a co-operative Bank is an Urban Commercial Bank and does not fall under the term 'co-operative Society' referred to under Section 80P(2)(d) of the Act.

11. The reopening of the assessment in the present case under Section 148 has taken place beyond a period of four years of the end of the relevant assessment year. The jurisdictional requirement that must be fulfilled in such a case is that there must be a failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for that assessment year. It is also trite law that an assessment cannot be reopened on the basis of a mere change of opinion, and there

must be some tangible material before the Assessing Officer before proceeds to reopen an assessment. Beyond the period of four years, it must also be demonstrated that there was a failure on the part of the assessee to make a true and full disclosure of material facts necessary for the assessment. Reading the reasons of the Assessing Officer, it is evident that there is absolutely no tangible material based on which he could have reopened assessment for the assessment year 2013-2014. It is not in dispute that Petitioner is a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act. It is also not in dispute that the Assessing Officer raised a specific query during the original assessment proceedings by issuing notice under Section 142 of the Act calling upon Petitioner to show cause as to why deduction under Section 80P of the Act cannot be disallowed. Undisputedly, Petitioner filed a reply to the said notice, and the original assessment order was passed. It is also not in dispute that Petitioner, during the original assessment, had filed an audit report in Form 3CA as mandated by Section 44AB of the Act stating the amount of Rs.3,38,41,724/- admissible for deduction under Section 80P of the Act.

12. Mr. Chhotaray, learned Counsel appearing for Revenue placed reliance on the proposition of law laid down by the Supreme Court in the

three judgments viz., ***Sociedade De Formento Industrial P. Ltd. vs. Assistant Commissioner of Income-Tax and Another***[1]***, Raymond Woollen Mills Ltd. vs. Income Tax Officer and Others***[2]***, Income Tax Officer, Cuttack and Ors. vs. Biju Patnaik***[3] ***and Phool Chand Bajrang Lal and Another vs. Income-Tax Officer and Another***[4] ***and Income Tax Officer vs. Selected Dalurband Coal Co. Pvt. Ltd.***[5]

There cannot be a dispute about the proposition of law laid down in those judgments, but the judgments are distinguishable in the facts of the present case. Moreover, in the present case, the Assessing Officer raised a specific query in the original assessment proceedings, to which Petitioner replied. Therefore it is clear that Assessing Officer in the original assessment proceedings was conscious of the issue involved of the eligibility of Petitioner to claim deduction under Section 80P (2) of the Act.

13. The criteria for reopening assessment after a period of 4 years are no longer Res-Integra in view of the judgment of Division Bench of this Court in the case of **Ananta Landmark (P.) Ltd. vs Deputy Commissioner of Income Tax 1**[6]**,** wherein this Court held that where assessment was not sought to be reopened on reasonable belief that income had escaped

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1 *(2011) 339 ITR 595 (Bom)*
2 *(1999) 236 ITR 34 (SC)*
3 *(1991) 188 ITR 247 (SC)*
4 *(1993) 203 ITR 456 (SC)*
5 *(1996) 217 ITR 597 (SC)*
6 *(2021) 131 taxmann.com 52 (Bombay)*

assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but was a case wherein assessment was sought to be reopened on account of change of opinion of Assessing Officer about manner of computation of deduction under Section 57, reopening was not justified. It is also held that when the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled to a change of opinion for commencing proceedings for reassessment. It is also held that when considering the material on record, one view is conclusively taken by the Assessing Officer, it would not be open for the Assessing Officer to reopen the assessment based on the very same material and take another view.

For the aforesaid reasons, the Assessing Officer has acted in excess of the restraints on his jurisdiction to reopen an assessment in the exercise of the powers under section 147 read with section 148. Accordingly, Petitioner would be entitled to succeed in these proceedings.

14. We, therefore, pass the following order:

ORDER

The impugned notice dated 31/3/2019 issued under Section 148 of the Act and order of rejection of Petitioner's objections dated 31/10/2019 are quashed and set aside.

15. Rule is made absolute in the above terms.

(AMIT B. BORKAR, J) **(K. R. SHRIRAM, J.)**