

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/21/2010
COMMISSIONER OF INCOME TAX, KOLKATA-XXI
VS.

NADIA GRAMIN BANK (presently merged with BANGIYA GRAMIN VIKASH BANK)

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 16th September, 2022

Appearance :
Mr. Prithu Dudhuria, Adv.
....for appellant

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Soumitra Chowdhury, Adv.
Mr. Avra Majumder, Adv.
Mr. K. Roy, Adv.
... for respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 12th August, 2009, passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata, in I.T.A Nos. 1097 and 1098 (Kol) of 2009 for the assessment years 2005-06 and 2006-07.

The appeal was admitted on 10th February, 2010 on the following substantial question of law :-

- i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in allowing deduction under section 80P of the Income Tax Act, 1961 in respect of income from Government Securities, non-SLR and excess SLR which were

outside the activities of the Bank as per the preamble to the Reserve Bank of India Act, 1976 according to which the assessee Bank has to function ?”

We have heard Mr. Prithu Dudhuria, learned standing Counsel appearing for the appellant/revenue and Mr. Abhratosh Majumder, learned senior Counsel, assisted by Mr. Soumitra Chowdhury and Mr. Avra Majumder, learned Advocates appearing for the respondent/assessee.

It is not disputed before us that the above question has been answered against the revenue in the case of *Commissioner of Income Tax, Kolkata-XXI, Kolkata vs. Gour Gramin Bank, ITAT 127 of 2014, dated 20.11.2014*. The said judgment reads as follows :-

“From the facts it is not in dispute that Gour Gramin Bank, the assessee is a regional rural bank constituted in the Regional Rural Bankings Act, 1976. Sections 18 and 22 of the said Act provide as follows :

“18.(1) Every Regional Rural Bank shall carry on and transact the business of banking as defined in clause (b) of section 5 of the Banking Regulation Act, 1949, and may engage in one or more forms of business specified in sub-section (1) of section 6 of that Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), every Regional Rural Bank may, in particular, undertake the following types of business, namely :-

(a) the granting of loans and advances, particularly to small and marginal farmers and agricultural labourers, whether individually or in groups, and to co-operative societies, including agricultural marketing societies, agricultural processing societies, co-operative farming societies, primary agricultural credit societies or farmers’ service societies, for agricultural purposes or agricultural operations or for other purposes connected therewith;

(b) the granting of loans and advances, particularly to artisans, small entrepreneurs and persons of small means engaged in trade, commerce or industry or other productive activities, within the notified area in relation to the Regional Rural Bank.

..22. For the purpose of the Income-tax Act, 1961, or any other enactment for the time being in force relating to any tax on income, profits or gains, a Regional Rural Bank shall be deemed to be a co-operative society”

Section 6(1)(a) of the Banking Regulations Act, 1949 provides that a bank to which the said Act applies may engage in addition to the business of banking, inter alia, in the business of dealing in debentures and bonds.

Mr.Bhowmik relied on the judgements delivered in Totgar’s Co-operative Sale Society Ltd. v. ITO : 322 ITR 283 (SC) and Gujrat State Co-operative Bank Ltd v. CIT : 119 Taxman 160(Guj.) in support of his submission that such income was not deductible. Mr. Majumdar, on the other hand, relied on several decisions of the Supreme Court of India being Mehsana District Central Co-operative Bank Ltd. v. Income Tax Officer : 119 Taxman 785 (SC), CIT v. Ramanathapuram. District Cooperative Central Bank Ltd. : 255 ITR 423, CIT v. Nawanshahar Central Cooperative Bank Ltd.: 289 ITR 6 (SC), and CIT v. Nawanshahar Central Co-operative Bank Ltd. : (2012) 349 ITR 689(SC).

In Nawanshahar Central Co-operative Bank Ltd : (2012) 349 ITR 689 (SC) the Hon’ble Supreme Court had the occasion to dismiss the Special Leave Petition before it seeking to raise the following questions of law for determination:

“(a) Whether the High Court was justified in holding that the respondent-assessee was entitled for deduction under section 80P(2)(a)(i) of the Income-tax Act, 1961, in respect of income from underwriting commission and interest on PSEB Bonds and IDBI Bonds ?

b) Whether the High Court was justified in affirming the decision of the Tribunal that the income earned by the assessee which was derived from underwriting the issue of bonds and investments in PSEB Bonds was in the nature of income from banking business and hence qualified for deduction under section 80P(2)(a)(I) of the Income-tax Act, 1961 ?”

So far as Totgar's Co-operative Sale Society Ltd.(supra) is concerned we notice the distinction that the appellant therein was not a bank carrying on business within the meaning of the Banking Regulation Act, 1949. In the case before us the assessee is a regional rural bank entitled to engage in addition to the business of banking, inter alia, the business of dealing in debentures and bonds and for the purpose of the Income Tax Act, 1961 be deemed to be a Cooperative Society.

Therefore, we answer the questions formulated in the positive in favour of the assessee and against the revenue."

Thus, following the above decision, the above appeal filed by the revenue stands dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)