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T.C.A.No. 1203 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A. No. 1203 of 2010

M/s.Chennai Central Co-operative Bank
Limited,
114/1, Prakasam Street,
Chennai 600 108.

..Appellant

Vs.

The Income Tax Officer,
Ward-VIII(2),
Chennai – 600 034.

..Respondent

Prayer: Tax Case Appeal as against the order dated 19.03.2010 passed
by the Income Tax Appellate Tribunal, "D" Bench, Chennai in ITA No.
1073/Mds/2009.

For Appellant :: Mr.R. Venkatanarayanan

For Respondent :: Mr.M. Swaminathan,
Senior Counsel and
Ms.V. Pushpa
Junior Counsel



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J U D G M E N T

S.VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.,

In this tax case appeal, the appellant had originally raised the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is not eligible for deduction under Section 80P of the Act in respect of the investments made in TIDCO and TNEB Bonds?

2. Whether on the facts and circumstances of the case, the Tribunal was justified in following the judgment of the Hon'ble Apex Court in the case of Totgar's Co-operative Sale Society Limited (vs) ITO 322 ITR 283 which is applicable only to credit society and not to a banking society?

3. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the income from investments should be assessed under the head ' income from other sources', as against head ' Profits and Gains from Business or Profession' as offered by the appellant, and hence not eligible for deduction under Section 80P of the Act?"



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2. Brief facts of the case are:

The appellant is a co-operative society engaged in carrying on the business of banking and returns were processed under Section 143(1) of The Income Tax Act, 1961 (in short, "the Act") and it was selected for scrutiny through CASS. Notice under Section 143(2) of the Act was issued to the assessee/appellant and an assessment order was made under Section 143(3) of the Act.

3. The short question that arises for consideration is whether the appellant is entitled to claim the benefit of deduction under Section 80P(2)(a)(i) of the Act in respect of investments made in TIDCO and TNEB Bonds.

4. While it is the case of the appellant that Section 80P(2)(a)(i) of the Act does not limit or confine the benefit of deduction only in respect of investments made in SLR, to the contrary, it is submitted by the learned counsel for the respondent that it is only SLR investment which would be



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entitled to the benefit of deduction under Section 80(P)(2)(a)(i). In other words, Non SLR investment would have to be tested on the basis of Section 80(2)(d).

5. Now, the question to be decided is whether deduction /benefit under Section 80(P)(2)(a)(i) would be applicable to Non SLR investment or otherwise.

6. The following facts are not in dispute:

- (a) The petitioner is a co-operative society engaged in banking;
- (b) The petitioner thereby falls under Section 80(P)(2)(a)(i);
- (c) The petitioner has made SLR and Non SLR investments in TIDCO and TNEB Bonds.

These investments were made on the basis of sanction/permission obtained by Reserve Bank of India and in compliance with the regulations under the RBI Act and Banking Regulations Act, 1969. These investments would thereby constitute banking business. The only issue at controversy is whether the benefit of Non SLR investments would fall within Section



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80(P)(2)(a)(i) or would it be covered by Section 80(2)(d). To resolve this controversy, it would be relevant to refer Section 80(P)(2)a(i) which reads as hereunder:

"Deduction in respect of income of co-operative societies

"80(P)(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in subsection (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in subsection (2), in computing the total income of the assessee.

[2] The sums referred to in sub-section (1) shall be the following, namely:-

[a] in the case of a co-operative society engaged in--

[i] carrying on the business of banking or providing credit facilities to its members, or

[ii]

[iii]

[iv]

[v]

[vi]

[vii]

the whole of the amount of profits and gains of business attributable to any one or more of such activities."



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.....

[d] in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

.....

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) -co-operative bank and -primary agricultural credit society shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) -primary co-operative agricultural and rural development bank means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.¹"

7. While it is the case of the assessee that once the sums referred to in sub-section(1) fall under any of the clauses (i) to (vii), in the case of a Co-operative Society engaged in carrying on the business of banking, it

¹ Inserted by the Finance Act 21 of 2006, s. 19 (w.e.f. 1-4-2007).



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would be entitled to the whole of the amount of profits and gains of business attributable to any one or more of such activities of Co-operative Society engaged in carrying on the business of banking. To the contrary, the case of the respondent is that the entitlement in respect of Non SLR investment would have to be decided on the basis of Section 80(2)(d) which confines to investment made in "any other co-operative society" and the appellant may not be entitled to the benefit on the investments in TNEB and TIDCO Bonds, in view of limitation under Section 80(2)(d). Reference was also made in this regard to Section 80P(4) to suggest that limitations were brought in the year 2007 with regard to the co-operative societies which should be entitled to the benefit.

8. Having heard both sides, we find it difficult to agree with the submissions made by the learned counsel for the appellant for the following reasons:

(a) It is trite law that any provision must be read as a whole and clauses in a section cannot be read in isolation. The different clauses in a provision must be construed with reference to other clauses so as to make a



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consistent enactment of the whole provision. The construction which would avoid inconsistency or repugnancy either within a Section or between a Section and other parts of the statute ought to be adopted. It is the duty of the Courts to avoid a head-on clash between clauses in the same provision, between provisions in the same enactment and to construe the clauses in a provision in a manner that they harmonise. In this regard, it may be relevant to refer to the following judgment:

Krishan Kumar v. State of Rajasthan, (1991) 4 SCC 258 at page 267:

“11. It is settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what the Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same. In Venkataramana Devaru v. State of Mysore [AIR 1958 SC 255, 268 : 1958 SCR 895] , this Court observed: (AIR p. 268)

"The rule of construction is well settled that when there



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are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction.”

The essence of harmonious construction is to give effect to both the provisions.....”

Keeping the above rule of construction in mind and if we examine Section 80P(2) by reading the provision as a whole, it leaves no room for any doubt that once an investment constitutes “Banking Business”, the benefit must be extended. Section 80(2)(d) would come into play only in respect of investments made by Co-operative Societies engaged in activities other than Banking Business which are set out under Section 80P(2)(a)(ii) to 80P(2)(a)(vii), which is unconnected with Banking Business. The above construction would avoid repugnancy and conflict between the various clauses of Section 80 P. On the other hand, if the submission of learned counsel for the respondent were to be accepted, it would give rise to a conflict between Section 80P(2)(a)(i) and 80(2)(d), which ought to be avoided.



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(b) Having found that the construction placed by the learned counsel for the Revenue insofar as Section 80P is concerned is unacceptable as it would result in conflict between different clauses of the said Section. We find that the question as to whether the benefit under Section 80P(2)(a)(i) is available only in respect of SLR investments and not to non-SLR investments has engaged the attention of various Courts on earlier occasions. It has been consistently held by various Courts that as long as it is Banking Business, the investment, whether it is SLR or non SLR may not make a difference. In this regard, it may be relevant to refer to the following judgments to make the above position clear:

(i) Commissioner of Income Tax V. Andhra Pradesh State Co-operative Bank Ltd reported in (2011) 336 ITR 0516:

"9. Sec. 80P of the Act grants deduction in respect of various categories of income of a co-operative society. If any co-operative society carries on the business of banking, the interest income received by a co-operative society on its investment/deposits is attributable to banking business. The provision does not make any distinction insofar as the interest earned by deposit in a bank and interest earned on the compulsive deposit which is made as required



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under the relevant statute. It is no doubt true that a co-operative society may be required to earmark some portion of its capital for exclusive deposit in Government prescribed securities or banks. A co-operative society may earn profits by way of interest by parking their funds in high-yielding deposits or may earn income by circulating its capital among its members in the course of their banking business. All the income from banking business which is referable to s.80P(2)(a)(i) of the Act would qualify for deduction under the Act.

10. 'The business of banking' is one of many expressions not defined in the Act. Which are the activities that can be considered attributable to the business of banking? Indisputably the assesseees, in these cases being co-operative banks, are subject to the regulations under the RBI Act, the BR Act and the Societies Act. There is also no dispute that all these assesseees, in these cases, obtained licences under the BR Act. They are bound to comply with all the orders, rules and regulations issued by the RBI while carrying on banking business. Sec.5(b) of the BR Act defines "banking" to mean, "accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise". As per s. 5(c) of the BR act " banking company" means " any company which transacts the business of banking in India". Sec.6 of the BR Act lists ' any one or more' of the forms of the



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business as enumerated in ss.6(1)(a) to (o) of the BR Act in addition to the business of banking. Sec.6(1)(a) of the BR Act enumerates every conceivable activity of banking including, ' the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities" and under s.6(1)(n) of the BR Act, the doing of all such other things as are incidental or conducive to the promotion or advancement of the business of the company. Thus reading of ss.5(b), (c) and s.6 of the BR Act along with s. 80P(2)(a) of the Act, it becomes clear that the income received by a co-operative bank from deposits, whether or not they are made in discharge of a statutory obligation or otherwise being income from banking business, would be eligible for exemption under the said provision.

11. Does s.80P(2)(a) of the Act make a distinction between income received by a co-operative bank from statutory deposits and the income from non-statutory deposit of surplus funds? The answer must be in the negative. The income earned by the co-operative bank either by deposit of the prescribed percentage of its reserves or by deposit of their surplus funds is exempted. The income from either category of the deposits is certainly attributable to the business of banking. Indeed as a prudent business practice, no banking company or no entity engaged in the business of banking would keep its amount idle. By parking the funds, immediately not



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required for the business in other banks, interest can be earned to the benefit of the co-operative society. Every co-operative society is expected to make profits for the benefit of its members. As long as the deposit of the surplus funds in the other banks for the purpose of earning interest is not unauthorized or not barred by any of the applicable statutes, the income is certainly attributable to the business of banking. There is no concept of voluntary or non-statutory reserves as urged by the Revenue. In so far as the profits and gains from the business of banking by deposit of surplus funds of the bank is concerned, there cannot be any distinction between SLR reserves and non-SLR reserves although the maintenance of cash reserve and SLR are obligatory under below referred provisions of the RBI Act and the BR Act.

(emphasis supplied)

(ii) Commissioner of Income Tax V. Muzaffar Nagar Kshetriya Gramin Bank Ltd., reported in 323 ITR 202 (All):

"7. We are of the opinion that the issue involved in the present case is no more res integra and is covered by the decision of the apex Court in the cases of CIT Vs. Karnataka State Co-operative Apex Bank (2001) 169 CTR (SC) 486; (2001) 251 ITR 194 (SC), Mehsana District Central Co-operative Bank Ltd. vs. ITO (2001) 170 CTR (SC) 169 : (2001) 251 ITR 522 (SC) and a recent decision of the apex Court in



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the case of CIT vs. Nawanshahar Central Co-operative Bank Ltd. (2007) 208 CTR (SC) 438: (2007) 289 ITR 6 (SC), wherein it has been held that where a co-operative bank carrying on business of banking is statutorily required to place a part of its funds in approved securities, the income attributable thereto is the business of banking and is deductible under s.80P(2)(a)(i) of the Act. In the present case, it is not the case of the Revenue that the assessee had carried on any other business other than banking business. The deposit exceeding SLR was also in relation to banking activity. Hence, the income accrued out of such deposit is also attributable to the banking business and deductible under s. 80P(2)(a)(i) of the Act. The issue involved in the present appeal is also covered by the decision of the apex Court (sic) in the case of Gorakhpur Kshetriya Gramin Bank vs.CIT 2007 UPTC 1466."

(emphasis supplied)

We are informed that there is no contrary view expressed in respect of the above issue.

(c) Yet another reason why we would think that the assessee must succeed is in view of the fact that Income Tax Act, being a Central Enactment, though normally, decisions rendered by other Courts would



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have persuasive value, in the case of Central Enactment, an attempt must be made not to depart from the view taken by other Courts unless there are sound and compelling reasons for consistency in taxing enactments is important. We do not find any compelling reason, for this Court to deviate from the views taken by other Courts.

(d) Further, the reference made to Section 80P(2)(4) by the learned counsel for the Revenue may not have any bearing for the assessment year 2005-06 and 2006-07 for the above provision was made effective only from 01.04.2007. It is a cardinal principle of construction that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation¹. This presumption of prospectivity of any law is articulated in the following legal maxim viz., *nova constitutio futuris formam imponere debet non praeteritis* (A new law ought to regulate what is to follow, not the past). The above maxim has been quoted with approval repeatedly by Indian Courts.

¹ Keshvan vs. State of Bombay, AIR 1951 SC 128, p.130:1951 SCR 228;



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9. We are of the view that the benefit under Section 80P(2)(a)(i) is available to both SLR and non-SLR investments as long as it constitutes "Banking Business". For all the above reasons, the Tax Case Appeal is allowed. No costs.

(S.V.N.J.) (M.S.Q.J.)

13.12.2022

nv

To:

The Income Tax Officer,
Ward-VIII(2), Chennai – 600 034.

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