

O-37 & 46

ITA/63/2008
IA No.GA/1/2008 (Old No.GA/332/2008)
And
ITA/837/2008

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
BURDWAN

-Versus-

M/S. BURDWAN CENTRAL CO-
OPERATIVE BANK LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th March, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for the appellant in ITA/63/2008.

Ms. Smita Das De, Adv.
...for the appellant in ITA/837/2008..

Mr. J. P. Khaitan, Sr. Adv.
Mr. Siddharth Das, Adv.
Ms. Swapna Das, Adv.
...for the respondent.

The Court : This appeal (ITA/63/2008) filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 27th June, 2007 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.1279 & 1280/Kol/2007 years 2003-04 and 2004-05.

ITA/837/2008 also filed by the revenue under Section 260A of the Act, is directed against the order dated 30th April, 2008 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.394/Kol/2008 year 2005-06.

The revenue has raised the following substantial question of law for consideration:

- (i) *Whether on the facts and in the circumstances of the case the Learned Tribunal erred in deleting the addition made by Assessing Officer on account of disallowance under section 80(P)(2)(a)(i) ?*

We have heard Mr. Soumen Bhattacharjee, and Ms. Smita Das De, learned standing counsels appearing for the appellant/revenue and Mr. J. P. Khaitan, learner Senior Counsel assisted by Mr. Siddharth Das and Ms. Swapna Das, learned Advocates for the respondent/assessee.

The Tribunal while allowing the appeal filed by the assessee had followed the order passed by the Tribunal dated 24th February, 2005 in the assessee's own case for the assessment year 1995-96 to 1998-99. The Tribunal in the said order held as follows:

"We also observe that the Hon'ble Supreme Court in the case of Mehasana District Central Co-operative Bank Ltd. Vs. ITO (supra) had held that whether income derived by the assessee co-operative bank from the investment of its voluntary reserve other than statutory reserves ex

except u/s 80(P)(2)(a)(i) depended upon whether the voluntary reserves were utilized in the course of its ordinary banking business. Therefore, the A.O. was not justified in disallowing the claim for deduction u/s. 80(P)(2)(a)(i) relying on the said judgment of the Supreme Court. Secondly, we also find from the order of the CIT(A) that the learned CIT, Burdwan vide order passed u/s. 264 dated 18.3.2002 has held that voluntary reserves have been invested by the assessee co-operative bank in NABARD, IFCI, WBFC and Central Warehousing Corporation Ltd. as well as in West Bengal Co-operative Ltd. and in the same were made in pursuance of the provisions of section 24 read with section 56 of the Banking Regulation Act, 1949 and placement of such funds being imperative for the purpose of carrying on banking business and are eligible for deduction u/s. 80(P)(2)(a)(i). We observe that the A.O. has passed the order u/s. 147/143(3) on 31.3.03 in all the assessment years under appeal. Therefore, we agree with the observations of the learned CIT(A) that the A.O. was not justified to take a different view in the same years in the case of the assessee merely by invoking the provisions of section 147 of the Income-tax Act as because the finding given by the CIT, Burdwan u/s. 264 dated 18.3.2002 is binding on the A.O. We are of the opinion that if the revenue had any grievance against the said order of the CIT, the same could have been rectified by the CIT by passing appropriate order. The A.O. being an authority subordinate to CIT in the hierarchy of the officers of the Income-tax Department was not justified in taking a contrary view against the view taken by the CIT in its order passed u/s. 264 dated 18.3.2004. Therefore, we do not find any infirmity in the order of the learned

CIT(A) which calls for our interference and the grounds of appeal of the revenue being devoid of any merit are rejected.

In the result, the appeals of the revenue are dismissed".

It has not been shown before us by the revenue that any appeal had been preferred against the order of the Tribunal for the assessment year 1995-96 to 1998-99.

Thus, in the light of the said fact, we find no error in the order passed by the Tribunal in the following decision for the earlier assessment years. That apart, consistent approach has to be maintained in such matters unless and until the revenue is able to establish that there are distinguishing features to make a departure.

In the light of the above, the appeals are dismissed and the substantial question of law is answered against the revenue.

Consequently, the connected application (IA No.GA/1/2008) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)