IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14292 of 2002 (O&M)

Reserved on : 21.09.2024
Date of Pronouncement : 06.11.2024

The Haryana State Co-operative Supply & Marketing Federation Limited (HAFED) …Petitioner

Versus

Chief Commissioner of Income Tax and another …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rajesh Garg, Senior Advocate assisted by Ms. Neha Matharoo, Mr. Mandeep Singh and Ms. Latika Garg, Advocates, for the petitioner.

Mr. Saurabh Kapoor, Senior Standing Counsel and Ms. Pridhi Sandhu, Junior Standing Counsel, for the respondents.

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SANJEEV PRAKASH SHARMA, J.

The present petition has been filed seeking direction to the respondents to allow the waiver petition of the petitioner and quashing/ setting aside the order dated 15.07.2002, whereby the petition filed for waiver of interest under Sections 234-B and 234-C of the Income Tax Act, 1961 (for short, 'the Act') for assessment years 1996-97, 1997-98 and 1998-99 was rejected.

2. Petitioner is a cooperative society registered under the Haryana Cooperative Societies Act, 1984. Purpose for formation of this society is for making arrangements for procuring, marketing/ trading, processing/ manufacturing of agricultural products as well as by-products of its affiliated members within and outside the country and to find out and adopt latest technology and supply of goods on cooperative basis and to act as agent to its constituents and other persons and institutions approved by the Registrar, Cooperative Societies, Punjab and also to make arrangements for

distribution of agricultural inputs in retail to members and non-members and to run warehouses and to arrange for construction of buildings necessary for business of the Federation. It had been availing exemption under Section 80(P)(2)(a)(iii) of the Act since its inception.

3. It is stated that exemption was being allowed in terms of Division Bench judgment of this Court in ***C.I.T. vs Punjab State Co-operative Supply & Marketing Federation Limited*** 182 ITR 53. The judgment of this Court was approved by the Supreme Court in ***Kerala State Cooperative Marketing Federation Limited vs Commissioner of Income Tax*** 231 ITR 814.

4. Unamended provision of Section 80(P)(2)(a)(iii) of the Act reads as under:-

> *"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 sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assesse.*
>
> *(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*
>
> *(iii) the marketing of agricultural produce of its members"*

The Amended Section 80(P)(2)(a)(iii) of the Act after the 2nd Amendment in 1998, which was brought into force with effect from 01.04.1968 reads as under:-

> "*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 sub-section (2), there shall be deducted, in accordance with and subject to provisions of*

this section. the sums specified in sub-section (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—

(iii) the marketing of the agricultural produce grown by its members."

Accordingly for the AY 1998-99, the Assessing Officer disallowed the deduction claimed by the petitioner in terms of the aforesaid amended Section 80(P)(2)(a)(iii) of the Act and further charged interest on the disallowed amount, in terms of Sections 234(B) and 234(C) of the Act for the assessment years 1996-97, 1997-98 and 1998-99 as the amendment had been made applicable retrospectively.

5. Learned senior counsel for the petitioner submitted that the petitioner was wrongfully charged interest merely because the law was amended with retrospective effect and reliance was placed on the circular issued by the Central Board of Direct Taxes dated 23.05.1996 under Section 119 of the Act which provides that if any income which was not chargeable to the income tax on the basis of any order passed in the case of assessee by the jurisdictional High Court subsequently, in consequence of any retrospective amendment of law or decision of the Hon'ble Supreme Court, the assessee becomes liable to pay advance tax or advance tax paid is less and the assessee becomes liable to pay interest u/s 234-B and 234-C, then it would be a fit case for waiver of such interest.

6. Learned senior counsel for the petitioner further submitted that earlier the petitioner had preferred CWP No.10547 of 1997 - ***The Haryana State Co-operative Supply & Marketing Federation Limited (Hafed), Chandigarh vs Chief Commissioner of Income Tax (North West Zone), Central Revenue Building, Sector-17, Chandigarh and another*** for waiver

of interest charged for the assessment years 1991-92, 1992-93 and 1993-94 under Section 234-B of the Act. This Court disposed of the writ petition on 09.09.1997 with direction to the respondents to pass a fresh reasoned order and the Chief Commissioner of Income Tax vide its order dated 31.03.1998 allowed the waiver of interest for the three years, as above. Therefore, there was no occasion to reject the waiver petitions for the previous three assessment years and submitted that the order dated 15.07.2002 deserves to be quashed and the interest ought not be imposed merely because of change of law with retrospective effect. It is submitted that it is on account of the High Court's order as approved by the Supreme Court that the exemption was claimed by the petitioner for payment of advance tax for the years accrued on 15.03.1996, 15.03.1997 and 15.03.1998.

7. Per contra, it is submitted by learned counsel for the respondents that exemption under Section 80(P)(2)(a)(iii) of the Act was disallowed to the petitioner on the basis of judgment of Hon'ble the Supreme Court in ***Assam Cooperative Apex Marketing Society Limited vs Commissioner of Income-Tax (Addl.)*** 201 ITR 338 which impliedly overruled the judgment passed by this Court wherein it was held that the exemption under Section 80(P)(2)(a)(iii) of the Act is not available to the Apex Society but only to primary society, whose members are agriculturists. Later on in ***Kerala State Cooperative Marketing Federation Limited's*** case (supra), the judgment passed in ***Assam Cooperative Apex Marketing Society Limited***'s case (supra) was overruled. It was held that the exemption was also available as per the aforesaid section to Apex Cooperative Societies. Since the amendment has been made retrospectively with effect from 01.04.1968 in Section 80(P)(2)(a)(iii) of the Act, the apex society like the petitioner, would not be entitled to exemption for the assessment years 1996-

97 and 1997-98. The benefit was given till the judgment was in force. The benefit cannot be granted for the year 1996-97 onwards.

8. The Apex Court in ***Mavilayi Service Cooperative Bank Limited and others vs Commissioner of Income Tax, Calicut and another*** (2021) 7 SCC 90 after considering the law laid down in the case of ***Citizen Cooperative Society Limited vs CIT*** (2017) 9 SCC 364 culled out following principles:-

> *"24.1. That Section 80-P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the cooperative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;*
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> *24.2. That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of Section 80-P must be given by way of deduction;*
>
> *24.3. That this Court in Kerala State Coop. Mktg. Federation Ltd. has a construed Section 80-P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;*
>
> *24.4. This is for the reason that when the legislature wanted to restrict the deduction to a particular type of cooperative society, such as is evident from b Section 80-P(2)(b) qua milk cooperative societies, the legislature expressly says so which is not the case with Section 80-P(2)(a)(i);*
>
> *24.5. That Section 80-P(4) is in the nature of a proviso to the main provision contained in Sections 80-P(1) and (2).*

> *This proviso specifically excludes only cooperative banks, which are cooperative societies who must possess a licence from RBI to do banking business. Given the fact that the assessee in that case was not so licensed, the assessee would not fall within the mischief of Section 80-P(4)."*

9. We find that the impugned order has been passed rejecting petitions for waiver of interest on the ground that the petitioner should have paid advance tax for three assessment years on the basis of Supreme Court Judgment in ***Assam Cooperative Apex Marketing Society Limited***'s case (supra). Since the same stands overruled, the order dated 15.07.2002 passed by the respondents is not sustainable.

10. As on today, it is settled that the Cooperative Society like the petitioner would be exempted from payment of tax, and therefore, there was no occasion for depositing advance tax. Hence, the waiver of interest under Section 234-B and 234-C of the Act for the assessment years 1996-97, 1997-98 and 1998-99 was wrongly rejected. Accordingly, the order dated 15.07.2002 is quashed and set aside. The petitioner society is entitled to claim the waiver of interest for the aforesaid period.

11. The writ petition is accordingly allowed.

12. All pending applications stand disposed of.

13. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

06.11.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No