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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 74/2023

ISPAT EMPLOYEES COOPERATIVE THRIFT AND CREDIT SOCIETY LTD. ..... Appellant

Through: Mr Salil Kapoor, Mr. Sumit Lalchandani and Mr. Tarun Chanana, Advs.

Versus

PR. COMMISSIONER OF INCOME TAX-18 NEW DELHI ..... Respondent

Through: Mr. Sanjay Kumar, Sr. SC with Ms. Easha Kadian and Ms. Hemlata Rawat, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **27.02.2024**

1. The assessee seeks to assail the order rendered by the Income Tax Appellate Tribunal [“**ITAT**”] dated 15 July 2021 and proposes the following questions for our consideration:

> “A. Whether in view of the facts and in the circumstances of the case, ITAT has erred in not allowing deduction of amount of interest earned on savings and Fixed Deposit Receipt [“**FDR**”] under Section 80P(2)(a)(i) of the Income Tax Act, 1961 [“**Act**”]?

B. Whether in view of the facts and in the circumstances of the case, ITAT has erred in not appreciating that interest earned on amount invested by appellant in nationalized/commercial was directly attributable to the main activity of banking or providing credit facilities to its members and hence, eligible for exemption under Section 80P(2)(a)(i) of the Act?

C. Whether in view of the facts and in the circumstances of the case, the ITAT has erred in not reading the Act harmoniously with the Delhi Co-operative Act, 2003 whereby the interest income from reserves to be maintained statutorily were considered as Income from Other Sources?

D. Whether in view of the facts and circumstances of the case, order passed by the ITAT is perverse on merits?

2. We note that the questions as they are raised stand conclusively answered against the assessee by our own Court in **Mantola Co-Operative Thrift & Credit Society Ltd. v. Income Tax,** [2014 SCC OnLine Del 4383]. While dealing with an identical issue of "*income generated from FDRs*" and whether it would qualify for the purposes of "*deduction*" under Section 80P(2)(a) of the Act, the Court had held thus:

> "6. No doubt, the term "attributable" is much wider than the term "derived from", but the question still remains, whether the interest income earned from the FDRs out of surplus funds, which were not to be made available and given as credit to the members, can be treated as income attributable to providing credit facilities to members. We need not dilate on the said question as the issue was considered and stands answered by the Supreme Court in the case of *Totgars' Co-operative Sale Society Ltd.* v. *Income Tax Officer,*

Karnataka, [2010] 322 ITR 283. In the said case, the assessee, a cooperative credit society, had provided credit facilities to its members and was also marketing agricultural produce of its members. It had surplus funds, which were invested in short-term deposits and securities, like in the present case where the surplus funds were invested in FDRs for an average period of 500 days. The Supreme Court examined the issue whether the interest income from the said surplus funds was eligible for exemption under Section 80P(2)(a)(i) as income attributable to profit and gains of business. It was observed that interest received from members for providing credit facilities to them was exempt. Further, anything attributable to the said income would also be covered under Section 80P. It was highlighted that exemption is partial and not complete, i.e. the whole income of the cooperative society does not get exemption. In the facts of the said case, it was observed that the deduction being in respect of certain incomes, the interest income earned out of surplus fund, would not qualify for deduction as it was assessable under the head "income from other sources.

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8. The present case is of surplus funds, which were not required for carrying on business of providing credit facilities to members. Half of the funds mobilised/collected from the members could be used for providing credit to the members. The balance amount had to be retained and used for specified purpose, other than providing credit facilities to members. This amount was deposited in FDRs for an average period of 500 days. Bye-laws of the appellant cooperative society prescribed that 50% of the amount mobilised/collected would not be given on credit to the members. These constituted surplus funds as has been held by the Assessing Officer and by the Tribunal. It is on these funds that the interest was earned. The interest earned from the aforesaid funds as held by the Supreme Court in *Totgars' Cooperative Sale Society Ltd.* (supra), would fall under Section 56 and would be taxable under the head "income from other sources".

9. Another contention raised by the appellant-assessee is that the assessee was engaged or carrying on business of banking. He submits that wide interpretation should be given to the "banking" and grant of thrift and credit should be construed as banking. It is not possible to accept the said contention and give this extended and broad meaning to the term "banking". The appellant-assessee is a cooperative thrift society and not a banking company and the expression "business of banking" cannot be given a spacious meaning to unrealistically expand the term beyond acceptable limits. Business of banking connotes and is different from activities undertaken by the appellant. The aforesaid wide meaning, as

suggested, would also be contrary to the dicta and the ratio of the decision in *Totgars' Cooperative Sale Society Ltd.* (supra)

10. As far as principle of mutuality is concerned, this would not have any application in view of sub-section (24), sub-clause (viia) to Section 2 of the Act. Thus, if we accept that the appellant-assessee was a cooperative society and providing credit facilities to its members, clause (viia) to sub-section (24) to Section 2 would be applicable. Even otherwise on the principle of mutuality, the Supreme Court in *Bangalore Club* v. *CIT*, (2013) 350 ITR 509 has held that the interest earned on FDRs with banks would not be covered by the principle of mutuality as the transactions were not between the contributors and the beneficiary, but were between the assessee and a third person.

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12. <u>Similarly, with regard to the claim for deduction under Section 80P(2)(i), we find that there was no discussion or finding by the Commissioner of Income Tax (Appeals), though this ground/issue was raised. This has happened because the Commissioner of Income Tax (Appeals), as noted above, had granted exemption to the entire income earned by the appellant-assessee under Section 80P(2)(i)(a).</u> Learned counsel for the respondent-Revenue submits that this issue could be examined by the Commissioner of Income Tax (Appeals) on merits. We take the statement on record.

The appeal is disposed of. No Costs."

3. In view of the aforesaid, we find no substantial questions of law which stands raised. The appeal thus fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 27, 2024/p