IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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201 **Date of Decision: 17.02.2026**

1. CWP-10671-2006

PUNJAB STATE CO-OPERATIVE SUPPLY MARKETING FEDERATION LTD. ...Petitioner

Versus

CHIEF COMMISSIONER OF INCOME TAX AND ANR. ...Respondents

2. CWP-10822-2006

PUNJAB STATE CO-OPERATIVE SUPPLY MARKETING FEDERATION LTD. ...Petitioner

Versus

CHIEF COMMISSIONER OF INCOME TAX AND ANR. ...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present:- Ms. Radhika Suri, Sr. Advocate with
Mr. Abinav Narang, Advocate
for the petitioner(s)

Mr. Vaibhav Gupta, Standing Counsel
for respondent-Income Tax

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JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-10671-2006.**

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 20.02.2006 whereby respondent has rejected its application seeking waiver of interest under Section 234B of Income Tax Act, 1961 (for short '1961 Act').

3. The petitioner is a Cooperative Society, owned and controlled by State of Punjab. It is engaged in the activities of purchase and marketing of wheat, paddy and other agricultural produce. It derived income of Rs.35.67 crores during Assessment Year 1998-99. It claimed that aforesaid income should be exempted from tax under Section 80P(2) of 1961 Act. The Assessing Officer vide order dated 24.10.2000 denied exemption. The Assessing Officer further charged interest under Section 234B. The petitioner is not disputing liability of tax, however, claiming waiver of interest. It filed application before Chief Commissioner seeking waiver of interest in terms of Section 119 of 1961 Act who vide impugned order rejected the same.

4. Learned Senior Counsel for the petitioner submits that this Court in 1989 held that petitioner is entitled to exemption under Section 80P(2). A similar order was passed with respect to a society of State of Haryana. The respondent preferred appeal against order of this Court qua society of State of Haryana, however, no appeal was filed qua order in favour of petitioner passed by this Court. Hon'ble Supreme Court vide judgment dated 25.02.1993 in ***Assam Co-operative Apex Marketing Society Ltd. Vs. Additional Commissioner of Income Tax***, **(1993) 201 ITR 338 (SC)** held that marketing societies are not entitled to benefit of exemption under Section 80P(2). Hon'ble Supreme Court vide order dated 31.01.1994 doubted its decision in ***Assam Co-operative (supra)*** and referred the matter to a three Judge Bench. The petitioner moved intervening application before Hon'ble Supreme Court which vide judgment dated 13.05.1998 passed in ***Kerala State Co-operative Marketing Federation Ltd. & Ors. Etc. Vs. Commissioner of Income Tax,*** **(1998) 2321 ITR 814 (SC)** overruled its earlier decision in

Assam Co-operative (supra). The respondent by Amendment Act of 1998 retrospectively amended Section 80P(2) whereby benefit of exemption was denied to Marketing Societies. The amendment was made w.e.f. 01.04.1968. The petitioner filed return for Assessment Year 1998-99 on 24.10.2000. In the return, exemption was claimed. The Assessing Authority denied exemption. The petitioner at this stage started claiming waiver of interest. The petitioner is entitled to waiver of interest in view of Central Board of Direct Taxes (for short 'CBDT') Circular dated 23.05.1996 read with Circular dated 30.01.1997.

5. *Per contra*, learned counsel for respondent submits that Supreme Court vide judgment dated 25.02.1993 held that Marketing Societies are not entitled to exemption. The said view was overruled vide judgment dated 13.05.1998, meaning thereby, view of February' 1993 remained in force till 12.05.1998. The period in question is prior to 12.05.1998, thus, petitioner was liable to make deposit of tax in advance and in case of failure liable to pay interest under Section 234B. The petitioner cannot claim benefit of circular because judgment of this Court was impliedly overruled by Supreme Court in 1993.

6. Heard the arguments and perused the record.

7. From the perusal of record, it is evident that this Court in 1989 in references filed by respondent held that Marketing Societies are entitled to exemption under Section 80P(2). The view was formed qua Haryana State Cooperative Society as well as Punjab State Cooperative Society. The respondent preferred appeal qua judgment of Haryana State Cooperative Society, however, decision of this Court qua petitioner was accepted. Supreme Court in **Assam Co-operative (supra)** formed an opinion that

Marketing Societies are not entitled to benefit of exemption under Section 80P(2). The said judgment was delivered on 25.02.1993 and Supreme Court doubted its judgment on 31.01.1994. The matter was referred to a three Judge Bench. The Supreme Court finally vide judgment dated 13.05.1998 held that Marketing Societies are entitled to exemption under Section 80P(2). The respondent amended Section 80P(2) by Amendment Act of 1998 with effect from 01.04.1968.

8. The CBDT vide circular dated 23.05.1996 read with circular dated 30.01.1997 has clarified that if tax is not paid on account of judgment of jurisdictional High Court and said judgment is either overruled by Supreme Court or retrospective amendment is made in the law, the Chief Commissioner may waive interest under Section 234B. The respondent has rejected petitioner's application seeking waiver of interest on the ground that during February' 1993 to May' 1998 judgment of Supreme Court in **Assam Co-operative (supra*)*** was in vogue. The petitioner was liable to deposit advance tax. It was not entitled to exemption under Section 80P(2). The petitioner did not discharge its liability of advance tax, thus was liable to pay interest on delayed payment of advance tax.

9. From the sequel of events, it is evident that there was judgment of this Court of 1989 in favour of the petitioner. The said judgment was never challenged by respondent. On 25.02.1993, Supreme Court formed an opinion contrary to opinion of this Court. Supreme Court in January' 1994 doubted its judgment of February' 1993 and referred the matter to a Larger Bench. It means legal position was not clear even after judgment of February' 1993. The matter remained pending before Supreme Court from January' 1994 to May' 1998. The period in question is in between January'

1994 to May' 1998. The issue was finally adjudicated in favour of assessee. The amendment in Section 80P(2) was made subsequent to period in question though it was retrospective. The petitioner did not deposit tax on account of lack of clarity on the issue involved. The amount of tax was not a meagre amount. We are not oblivious of the fact that petitioner is a Public Sector Undertaking, thus, there could be no *mala fide* intention to evade or avoid payment of tax. In such circumstances, the petitioner was entitled to waiver of interest payable under Section 234B. The CBDT Circular too supports cause of the petitioner.

10. In the wake of above discussions and findings, we are of the considered opinion that the instant petitions deserve to be allowed and accordingly allowed. The impugned orders are hereby set aside.

11. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

17.02.2026
Deepak DPA

Whether Speaking/reasoned: Yes/No
Whether Reportable: Yes/No