

Commissioner of Income Tax, Bangalore

Vs

Bangalore Distt. Coop., Central Bank Ltd.

Civil Appeals Nos. 1300-1302 of 1993

(Sujata V. Manohar, M. Srinivasan JJ)

24.07.1998

JUDGMENT

M. SRINIVASAN, J. –

1. The respondent hereinafter referred to as "the assessee" is a cooperative society engaged in banking business. For the Assessment Years 1977-78, 1978-79 and 1979-80, the assessee claimed deduction under Section 80-P(2)(a)(i) of the Income Tax Act, 1961 on the income by way of interest on government securities and dividends on shares of the Industrial Financial Corporation. The Income Tax Officer held that the investments were made out of reserves and disallowed the claim. On appeal, the Appellate Assistant Commissioner observed in his order that the reserve fund of the assessee was about Rs. 33 lakhs and the circulating capital was about Rs. 22 lakhs and held that the investment was out of the reserve fund. Consequently, he confirmed the order of the ITO.

2. On further appeal, the Tribunal accepted the contention of the assessee that interest income was attributable to the assessee's business income. The Tribunal followed its earlier order in ITAs Nos. 665 to 668/Bang./1981 dated 30-7-1982. Consequently the appeal was allowed and the matter was remitted to the ITO to determine the deduction available to the assessee under Section 80-P(2)(a)(i). On a reference under Section 256(2), the High Court of Karnataka agreed with the Tribunal and answered the question in favour of the assessee. The aggrieved Revenue has preferred this appeal.

3. Sections 80-P(1) and (2)(a)(i) are in the following terms :

"80-P. (1) Where, in the case of an assessee being a cooperative 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 assessee.

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

(a) in the case of a cooperative society engaged in -

(i) carrying on the business of banking or providing credit facilities to its members,
or

##(ii)-(vii) * * *##

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

4. There is no dispute that the assessee is a cooperative society carrying on the business of banking. If the income in question is attributable to the said activity, there is no doubt that the same is to be deducted from the gross total income. The Tribunal has found in this case that the interest income is attributable to the business of the assessee. That finding has not been challenged on factual basis by the Revenue. No materials have been placed before us to upset the factual conclusion of the Tribunal.

5. Learned counsel for the appellant places reliance on the decision of this Court in *M. P. Coop. Bank Ltd. v. CIT* ((1996) 2 SCC 541 : (1996) 218 ITR 438) wherein the decision of the Madhya Pradesh High Court in *M. P. State Coop. Bank Ltd. v. CIT* ((1979) 119 ITR 327 (MP)) was affirmed. The Bench held that circulating capital was that which was put into circulation or turned over to earn profits and government securities coming out of the reserve fund which could not be easily encashed and which could be utilised only when contingencies arose could not be considered to be circulating capital or stock-in-trade. It was therefore held that interest on government securities placed with the State Bank of India or the Reserve Bank of India could not qualify for exemption under Section 81 (now Section 80-P) of the Income Tax Act. The decision was rendered on the facts of that case and it is not applicable in the present case in view of the finding of the Tribunal that the income in question is attributable to the business of the assessee.

6. Learned counsel for the assessee has invited our attention to Sections 24 and 56 of the Banking Regulation Act, 1949 as well as Section 57(2) of the Karnataka Cooperative Societies Act, 1959 and Rule 23(3) of the Karnataka Cooperative Societies Rules, 1960 in support of his contention that the investments have been made by the assessee in compliance with the statutory provisions and in order to carry on the business of banking, the same was necessary and consequently such investments were part of the business activities falling within the scope of Section 80-P(2)(a)(i).

7. He has also referred to the rulings in *Bihar State Coop. Bank Ltd., v. CIT* (AIR 1960 SC 789 : (1960) 39 ITR 114) and *Cambay Electric Supply Industrial Co. Ltd. v. CIT* ((1978) 2 SCC 644 : (1978) 113 ITR 84) in support of his contentions that the expression "attributable to" is of a very wide import. It is unnecessary in this case to consider the same in detail.

8. On the fact situation of the case, we do not find any justification to interfere with the conclusion of the High Court. The appeals suffer dismissal. There will be no order as to costs.