SUPREME COURT OF INDIA

Totgar's Co-Op.Sale Sty.Ltd.

Vs.

Income-Tax Officer,Karnataka

C.A.No.1622 of 2010

(S.H. Kapadia and Aftab Alam JJ.)

08.02.2010

JUDGEMENT

S.H. Kapadia,J.

1. Heard learned counsel on both sides.

2. Leave granted.

3. Assessee(s) is a cooperative credit society. During the relevant assessment years in question, it had surplus funds which the assessee(s) invested in short-term deposits with the Banks and in Government securities. On such investments, interests accrued to the assessee(s).

4. Assessee(s) provides credit facilities to its members and also markets the agricultural produce of its members. The substantial question of law which arises in this batch of civil appeals is - Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961? According to the impugned judgement, which affirms the decision of the Income Tax Appellate Tribunal [`Tribunal', for short], such interest income would fall under the Head

> "Income from other sources" under Section 56 and not under Section 28 of the Income Tax Act, 1961 [`Act', for short], and, consequently, the assessee- Society would not be entitled to deduction under Section 80P(2)(a)(i) of the Act.
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> The bunch of civil appeals filed by the assessee-Society concerns Assessment Years 1991-1992 to 1999-2000 [excluding Assessment Year 1995-1996]; however, the lead matter is civil appeal arising out of S.L.P. (C) No.7572 of 2009 which relates to Assessment Year 1991- 1992.

The assessee-Society was assessed to tax as a cooperative society. The assessee is the appellant in all eight civil appeals. For all the above Assessment Years 1991-1992 to 1999-2000 [except Assessment Year 1995- 1996], assessee(s) filed its Returns disclosing income from business, i.e., marketing of agricultural produce of its members and providing credit facilities to them.

Assessee(s) also filed its Profits and Loss Accounts and its balance-sheets along with its Returns. In respect of above-mentioned interest income, assessee(s) claimed deduction under Section 80P(2)(a)(i) of the Act. The assessment(s) for the afore-stated period stood re-opened by issue of notice(s) under Section 148 of the Act. In this case, we are only concerned with interest income on short-term Bank deposits and securities. On the basis of the balance-sheets for the relevant assessment years, under instructions from the Assessing Officer, assessee(s) submitted a chart to the Assessing Officer giving break-up of assets and liabilities. We re-produce hereinbelow the said chart [See Annexure `B' under the caption `Liabilities']:

LIABILITIES Asstt. Capital Asami A/c + Deposits, Other Total (3), (4) & Year Reserve Fund + Purchasers A/c Loans, Interest Liabilities & (5) Other Funds + Payable Expenditure Profits 1 2 3 4 5 6 1991-92 79,200,553.00 39,341,647.00 45,772,398.00 3,948,442.00 89,176,115.00 1992-93 97,769,923.00 41,684,890.00 59,071,490.00 902,856.00 101,659,132.00 1993-94 116,354,655.00 37,674,924.00 68,927,247.00 2,893,519.00 109,494,694.00 1994-95 133,817,620.00 42,882,786.00 86,462,118.00 1,440,446.00 142,886,414.00 1995-96 156,948,290.00 46,898,160.00 107,201,490.00 4,189,923.00 158,289,580.00 1996-97 180,468,526.00 53,274,684.00 125,289,995.00 3,568,644.00 182,133,326.00 1997-98 211,686,266.00 52,510,175.00 142,529,130.00 46,694,814.00 241,734,125.00 1998-99 253,295,055.00 66,074,107.00 175,757,230.00 17,342,956.00 259,174,281.00 1999-00 269,520,510.00 124,571,325.00 209,202,203.00 25,199,555.00 358,973,088.00 The Assessing Officer held, on the facts and circumstances of these cases, that the interest income which the assessee(s) had disclosed under the Head "Income from business' was liable to be taxed under the Head "Income from other sources". In this connection, the Assessing Officer held that the assessee-Society had invested the surplus funds as, and by way of, investment by an ordinary investor, hence, interest on such investment has got to be taxed under the Head "Income from other sources". Before the Assessing officer, it was argued by the assessee(s) that it had invested the funds on short-term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under Section 28 and not under Section 56 of the Act, and, consequently, the assessee(s) was entitled to deduction under Section 80P(2)(a)(i) of the Act. This argument was rejected by the Assessing Officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s).

It was the case of the assessee(s) before us that the assessee(s) is a cooperative credit society.

It's business is to provide credit facilities to its members and to market the agricultural produce of its members. According to the assessee(s), it's activity constituted "eligible activity" under Section 80P(2)(a)(i) of the Act, hence, it was entitled to the benefit of deduction from its gross total income. In this connection, it was urged that, under Section 80P(2) of the Act, the whole of the amount of "business profits"

attributable to any one of the enumerated activities is entitled to deduction. According to the assessee(s), one need not go by the source/head of such interest income because no sooner interest income accrued to the assessee(s) on above- mentioned specified deposits/securities, it became business income attributable to the activity carried on by the assessee(s) by providing credit facilities to its members or marketing of agricultural produce of its members and no sooner such interest income falls under the head "business profits" attributable to one or more of such eligible activities, such interest income became eligible for deduction under the said section. The assessee(s) further contended, before us, that, under Regulations 23 and 28 read with Sections 57 and 58 of the Karnataka Cooperative Societies Act, 1959, a statutory obligation was imposed on cooperative credit societies to invest its surplus funds in specified securities and, in view of such statutory obligation, the above-mentioned interest income derived from short-term deposits and securities must be considered as income derived by the assessee(s) from its business activities. In the alternative, it was submitted that, even assuming for the sake of argument that such interest income is held to be covered by Section 56 of the Act under the head "Income from other sources", even then the assessee-Society was entitled to the benefit of Section 80P(2)(a)(i) of the Act. In this connection, learned counsel for the assessee(s) submitted, placing reliance on numerous judgements, that the source or head of income was irrelevant for deciding the question as to whether a given item is eligible for deduction under Section 80P of the Act. According to the assessee(s), once interest income accrues on specified investments, particularly when a local enactment makes it statutorily incumbent on the society to invest in specified investments, the interest income is automatically eligible for deduction irrespective of the source or head under which such income would fall. In this connection, learned counsel for the assessee(s) submitted that one needs to compare the language of Section 80P(2)(a)(i) and (iii) of the Act with Explanation (baa) to Section 80HHC, the language used in Section 80HHD(3) and the words used in Section 80HHE(5) of the Act. In this connection, it was urged that there is a wide contrast in the language between Section 80P(2)(a) on one hand and the language used in Section 80HHC read with Explanation (baa), Section 80HHD(3) and Section 80HHE(5) as also the language used in Sections 72 and 32AB of the Act. According to the assessee(s), if one keeps this contrast in mind, it is clear that the concept of head of income or source of income will not apply to the provisions of Section 80P(2) of the Act because wherever Parliament intended to emphasise the applicability of such concept, it has

expressly so stated in the relevant section. According to the assessee(s), by way of illustration, under Explanation (baa) to Section 80HHC or under Section 80HHD(3) or under Section 80HHE(5), etc., the words used are, "`profits of the business' means the profits of the business as computed under the head "Profits and gains of business". Therefore, according to the assessee(s), when such words do not find place in Section 80P(2) of the Act, it is clear that the concept of source of income or head of income is not inbuilt in Section 80P(2) of the Act and, consequently, such a concept cannot be read into the said section. As stated above, according to the assessee(s), no sooner surplus funds are invested in specified securities, interest income from such investment is automatically eligible for deduction under Section 80P(2)of the Act."

5. In order to determine the issue involved in these civil appeals, we need to re-produce hereinbelow the relevant provision of Section 80P of the Act, as it stood at the material time. It reads thus:

"Deduction in respect of income of co- operative societies.

80P.(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 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-- [i] carrying on the business of banking or providing credit facilities to its members, or [ii] a cottage industry, or [iii] the marketing of the agricultural produce of its members, or [iv] the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or [v] the processing, without the aid of power, of the agricultural produce of its members, or [vi] the collective disposal of the labour of its members, or [vii] fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities."

6. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short- term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such

deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the Assessing Officer. In this connection, we may analyze Section 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain Incomes". The Headnote to Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies.

7. Section 80P(1), inter alia, states that where the gross total income of a cooperative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains.

> “This sub-section is an inclusive provision. The Parliament has included specifically "business profits"
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> into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80P(2) of the Act. In the present case, as stated above, assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members.”

8. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side.

9. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

10. An alternative submission was advanced by the assessee(s) stating that, if interest income in question is held to be covered by Section 56 of the Act, even then, the assessee-Society is entitled to the benefit of Section 80P(2)(a)(i) of the Act in respect of such interest income. We find no merit in this submission.

11. Section 80P(2)(a)(i) of the Act cannot be placed at par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section 80HHE(5) of the Act. Each of the said sections has to be interpreted in the context of its subject-matter. For example, Section 80HHC of the Act, at the relevant time, dealt with deduction in respect of profits retained for export business. The scope of Section 80HHC is, therefore, different from the scope of Section 80P of the Act, which deals with deduction in respect of income of cooperative Societies. Even Explanation (baa) to Section 80HHC was added to restrict the deduction in respect of profits retained for export business. The words used in Explanation (baa) to Section 80HHC, therefore, cannot be compared with the words used in Section 80P of the Act which grants deduction in respect of "the whole of the amount of profits and gains of business". A number of judgements were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80P of the Act. We find no merit because all the judgements cited were cases relating to Cooperative Banks and assessee-Society is not carrying on Banking business.

12. We are confining this judgement to the facts of the present case. To say that the source of income is not relevant for deciding the applicability of Section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act.

13. Apart from the substantial question of law which we have answered, assessee-Society has challenged the re-opening of assessment under Section 148 of the Act.

14. In this connection, it was urged on behalf of the assessee(s) that, for the relevant assessment years in question, the Assessing Officer was required to obtain prior approval of the Joint Commissioner of Income Tax before issuance of notice under Section 148 of the Act.

15. According to the assessee(s), the proposal for re-opening was made on 31st May, 2001, it was not sent through fax to the office of the Additional Commissioner of Income Tax,

Panaji, and the fax report indicates the time of 5.18 p.m., which establishes the fact that service of notice on 31st May, 2001, on the assessee(s) was done prior to the sending of fax for approval. According to the assessee(s), the approval was given by the Additional Commissioner of Income Tax on 8th June, 2001. The notice under Section 148 of the Act was served on 31st May, 2001, i.e., prior to the approval of the Additional Commissioner of Income Tax. In the circumstances, it was urged that the notice under Section 148 of the Act was invalid and consequential re-assessment under Section 147 read with Section 144A of the Act was bad in law. We find no merit in this argument. At the outset, we may state that the point raised on validity of the notice under Section 148 of the Act essentially concerns factual aspect. The Tribunal is the final fact finding Authority under the Income Tax Act. It has given a finding of fact that, though the written communication of the sanction, which has no prescribed format, was received by the Assessing Officer on 8th June, 2001, yet, it cannot be said that sanction was not accorded prior to 31st May, 2001.

16. The Tribunal has recorded a finding of fact that there was a detailed correspondence between the concerned officers prior to 31st May, 2001, in the context of re-opening of assessment. It may also be mentioned that there is a vital difference between grant of sanction and communication of such sanction. As stated by the Tribunal, no particular form has been prescribed in the matter of grant of sanction. For the afore-stated reason, the Tribunal came to the conclusion that approval/sanction for re-opening of assessment in terms of Section 148 of the Act read with Section 151 existed even prior to 31st May, 2001. We see no reason to interfere with this finding of fact given by the Tribunal.

17. In this matter, one question advanced by the assessee(s) before the Authorities below has remained un-answered. That question is as follows:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax under section 56 under the head `Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses under section 57?"

18. The above question requires an answer. It involves interpretation of Section 56 and Section 57 of the Act. It also involves applicability of the said sections to the facts of the present case. We, accordingly, remit the said question to the High Court for consideration in accordance with law.

19. Subject to what is stated above, these civil appeals filed by the assessee(s) are dismissed with no order as to costs.