IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 859 of 2017

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PRINCIPAL COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

EKTA CO-OP CREDIT SOCIETY LTD....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 23/01/2018

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. The appellant-revenue in this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has called in question the order dated 5.5.2017 made by the Income Tax Appellate Tribunal, Ahmedabad "A" Bench, Ahmedabad (hereinafter referred to as "the Tribunal") in ITA No.112/Ahd/2014 by proposing the following question, stated to be a substantial question of law:-

> "*Whether the Appellate Tribunal has erred in law and on facts of the case in allowing deduction u/s. 80P(2)(a)(i) to assessee's society even though same is covered u/s. 80P(4) r.w.s. 2(24)(viia) being income from providing credit facilities carried on by a co-operative society with its members?*"

2. The assessee filed its return of income for assessment year 2010-11 showing 'nil' income after claiming deduction of Rs.16,96,744/- under section 80P(2)(a)(i) of the Act. The Assessing Officer was of the view that the deduction claimed by the assessee under Chapter VI-A was not an allowable deduction for the reason that the society was engaged in the business of providing credit facility to members and banking business. Under section 80P(2)(a) of the Act, in case of cooperative society providing credit facilities to its members, the whole of the amount of profit and gains from such business are deductible. However as per sub-section (4) of section 80P of the Act, which came to be inserted by Finance Act, 2006 with effect from assessment year 2007-08, deduction under section 80P will not be available to any co-operative bank or primary cooperative agricultural and rural development bank with the principal object of providing long term credit for agricultural and rural development activities. Being of the view that the assessee was a cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the Assessing Officer held that the provisions of sub-section (4) of section 80P of the Act would be applicable to the assessee and disallowed the deduction claimed under section 80P of the Act. The assessee carried the matter in appeal before the Commissioner (Appeals), who allowed the said ground of appeal and deleted the disallowance under section 80P of the Act. The revenue carried the matter in appeal before the Tribunal, but did not succeed.

3. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant, assailed the impugned order on the grounds set out

in the memorandum of appeal and on the reasons recorded by the Assessing Officer in the assessment order.

4. As can be seen from the order passed by the Commissioner (Appeals), he has recorded that the provisions of sub-section (4) of section 80P of the Act would be attracted in case of a cooperative bank other than primary agricultural credit society or a primary cooperative agricultural and rural bank. In terms of clause (a) of the Explanation to section 80P(4), cooperative bank and primary agricultural credit society shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949. The Commissioner (Appeals) has recorded that the assessee society being a cooperative credit society limited is not a bank as contemplated under the Banking Regulation Act and hence, the provisions of sub-section (4) of section 80P of the Act would not be applicable to it.

5. The Tribunal has concurred with the view adopted by the Commissioner (Appeals). The above view of the Tribunal is fortified by a decision of this court in the case of ***Commissioner of Income-tax-II v. Surat Vankar Sahakari Sangh Limited,*** *(2014) 225 Taxman 162 (Gujarat),* wherein the court has repelled the contention of the revenue that section 80P(4) would exclude not only the cooperative banks other than those fulfilling description contained therein but also credit societies, which are not cooperative banks. In the facts of the said case, the assessee was a credit cooperative society and not a cooperative bank. The court held that the exclusion clause of sub-section (4) of section 80P of the Act would, therefore, not apply. The above decision would be

squarely applicable to the facts of the present case.

6. The impugned order passed by the Tribunal being in consonance with the view adopted by this court in the above decision, does not suffer from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is, accordingly, summarily dismissed.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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