

Court No. - 3

Case :- INCOME TAX APPEAL No. - 130 of 2015

Appellant :- Principal Commissioner Of Income Tax-I Aayakar Bhawan
Lucknow

Respondent :- U.P.Co-Operative Federation Ltd.32 Station Road
Lucknow

Counsel for Appellant :- Ghanshyam Chaudhary

Counsel for Respondent :- Desh Deepak Chopra,S Kohli

Hon'ble Sudhir Agarwal,J.

Hon'ble Ravindra Nath Mishra-II,J.

1. Sri Ghanshyam Chaudhary, learned counsel for appellant and Sri D.D. Chopra, Advocate for respondent.
2. This appeal under Section 260A of Income Tax Act, 1961 (*hereinafter referred to as the "Act, 1961"*) has arisen from judgment and order dated 05.06.2015 passed by Income Tax Appellate Tribunal, Lucknow Bench 'A', Lucknow (*hereinafter referred to as the "Tribunal"*) in I.T.A. No. 883/LKW/2014 for Assessment Year 2010-11.
3. The appeal was admitted on following substantial questions of law:

"I. Whether under the facts and circumstances of the case, the Tribunal has erred in holding that additions made in case of Assessee claiming deduction u/s 80P is revenue neutral in all situations, which is not in consonance with the findings given by High Court in A.Y. 2009-10, wherein High Court confirmed findings of CIT(A) on disallowance to extent of Rs.4,08,64,000/- and also observed that addition where made to the incomes, specified incomes only would be tax neutral in accordance with law and not the entire income.

II. Whether on the facts and circumstances of the case Tribunal has erred in holding that Assessee is eligible for deduction u/s 80P(2) of Act, 1961 while relying on High Court's earlier order passed in A.Y. 2009-10."

4. However, after some argument of learned counsel for Revenue we find that actual issues raised by him relate to additions made by Assessing Authority (*hereinafter referred to as the "A.A."*) in respect of "payment of leave encashment" and "gratuity" to the employees on retirement and this addition has not been accepted by Tribunal.

5. Learned counsel for Revenue submits, since there was no approval under Section 36 of Act, 1961 with respect to "leave encashment" and "gratuity funds", therefore, deduction towards "leave encashment benefit" and "gratuity" could not have been accepted.

6. In that view of the matter, we add two more substantial questions of law, as under:

(III) Whether Tribunal was right in allowing deduction in respect of actual payment of certain amount, towards leave encashment benefits to the employees, by Assessee, rejecting argument of Revenue that there was no approval under Section 36(1)(v) or Section 40A(7)(b) of Act, 1961.

(IV) Whether Tribunal was right in allowing deduction in respect of actual payment of certain amount towards gratuity to the employees, by Assessee, rejecting argument of Revenue that there was no approval under Section 36(1)(v) or Section 40A(7)(b) of Act, 1961 since it was attracted.

7. Before answering aforesaid questions it would be appropriate to have a bird eye view of relevant facts, giving rise to present dispute.

8. Assessee is a Cooperative Society, engaged in various sections of activities, namely, General Section, Fertilizer Section, Marketing Section, Trading Section, Coal Section, Price support section, Agriculture Inputs Section, Levy Sugar Section, Seed Section, Godown

Section, Krishaksewa Kendra, Mumbai Showroom, Projects, Cold Storages etc. It filed return disclosing nil income on 01.10.2010 after claiming deduction of Rs. 9,21,47,967/- under Section 80P of Act, 1961. Case was processed under Section 143(1) and selected for scrutiny. Notice under Section 143(2) was issued on 02.09.2011 and thereafter notice under Section 142(1) was also issued. Assessee claimed that entire receipts in reference to various activities undertaken by Assessee qualifies for 100% deduction under Section 80P and details of same are as under:

"i) Net profit from seed section u/s 80P(2)(a)(iv)	-	Rs. 3,72,98,024/-
ii) Income from dividend from Co-operative societies us/ 80P(2)(d)	-	Rs. 1,22,90,950/-
iii) Income from letting of godowns u/s 80P(2)(e)	-	Rs. 4,25,58,993/-
	<i>Total</i>	- Rs. 9,21,47,967/-"

9. From other activities, Assessee claimed to have suffered net loss of Rs. 6,59,84,563/- and income from these activities is eligible for deduction under Section 80P(2)(c)(ii).

10. Assessee was required to furnish details of amount of contribution made towards gratuity fund and leave encashment fund, sectionwise. In reply dated 21.03.2013, Assessee said that total contribution towards gratuity fund was Rs. 20 crores and actual gratuity payment was Rs. 1,75,27,877/-. It results into net disallowable contribution of Rs. 18,24,72,122/-. Similarly towards leave encashment benefit, contribution was 20,75,00,000/- and actual payment was Rs. 2,24,88,687/- resulting in net disallowable contribution towards leave encashment benefit to Rs. 18,50,11,313/-. The total net contribution under both heads thus came to Rs. 36,74,83,435/-. A.A. disallowed aforesaid amount and computed income as under:

(A) Total Income qualifying for 100% deduction u/s 80P:

(i) New profit from seed section, godown letting section and income from dividend as shown by Rs.9,21,47,697/- the assessee in the return

(ii) Addition on account of disallowance of contribution towards gratuity and LEB funds as Rs.5,27,00,000/- discussed in para '6b' above

Gross total income eligible for 100% deduction Rs.14,48,47,967/-

(B) Total income qualifying for deduction of Rs. 50,000/- u/s 80P(2)(c)(ii)

(i) Net loss as per accounts enclosed with the Rs.(-)6,59,84,563/- return

(ii) Addition on account of contribution towards gratuity and LEB funds as discussed in para '6d' above. Rs.31,48,00,000/-

Gross total income qualifying for deduction of Rs. Rs.24,88,15,437/- 50,000/- u/s 80P(2)(c)(ii)

(C) Addition on account of disallowance Bad and Doubtful Debts as discussed above in para '5' Rs.1,00,00,000/-

(D) Gross total income (A+B+C) Rs.40,36,63,404/-

Less:deduction u/s 80P (14,48,47,967+50,000) Rs.14,48,97,967/-

(E) Assessed total income Rs.25,87,65,437/-

11. Aggrieved by aforesaid assessment order dated 26.03.2013, Assessee preferred appeal before Commissioner of Income Tax (Appeals), Lucknow (*hereinafter referred to as the "CIT(A)"*). This appeal was decided vide order dated 29.09.2014 but computation made by A.A. in respect of leave encashment benefit fund and gratuity fund was upheld. CIT(A) approved the view taken by A.A. that since both funds were not approved by Prescribed Authority, hence deduction of leave encashment benefit would be allowed as per Section 43B(f) and deduction towards payment of gratuity will be allowed as per Section 40A(vii)(b).

12. Assessee then carried matter in appeal to Tribunal being ITA No. 883/LKW/2014. Tribunal has decided appeal vide judgment dated

05.06.2015, impugned in this appeal. Tribunal has followed decision of this Court in ITA No. 21 of 2013, decided on 05.12.2013. It has deleted additions made by A.A. as well as CIT(A).

13. Learned counsel for Revenue contended that irrespective of what has been provided in Section 80P, if deduction is being claimed in respect of certain contribution relating to gratuity and leave encashment benefit funds, Section 43B(f) and 40A(vii)(b) will have to be complied with and if said contribution was not in an approved fund, no deduction is permissible.

14. Learned counsel for Assessee supported the judgment of Tribunal and said that Tribunal has rightly deleted additions and questions formulated above deserve to be answered in favour of Assessee.

15. We have heard learned counsel for the parties at length and perused the record as well as relevant provisions applicable for adjudication of the questions raised in this appeal.

16. Assessee claimed net income in respect of various activities which are referable to Sections 80P(2)(a)(iv), 80P(2)(d) and 80P(2)(e). A.A. held that sectionwise details having not been supplied, therefore, proportionate expenditure under the head "salary" and "wages". in two blocks, is being done. First block qualifies 100% deduction. A.A. applied this block to seed section and letting of godowns, i.e., Section 80P(2)(a)(iv) and 80P(2)(d). Second block of remaining twelve activities, It (A.A.) kept under Section 80P(2)(c)(ii). Accordingly it has also worked out the payments under 'salary' and 'wages' and worked out proportionate disallowance. This was also confirmed by CIT(A). The approach of A.A. and CIT(A), in our view, is patently erroneous.

17. Section 80P reads as under:

"80P.Deduction in respect of income of co-operative societies.- (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 agricultural produce grown by 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:

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or

corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;

(c) in the case of a **co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,—**

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) **in any other case, fifty thousand rupees.**

*Explanation.—*In this clause, “consumers’ co-operative society” means a society for the benefit of the consumers;

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers’ society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

*Explanation.—*For the purposes of this section, an “urban consumers’ co-operative society” means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80-IA or section 80J, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHB, section 80HHC, section 80HHD, section 80-I, section 80-IA, section 80J and section 80JJ.

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) “co-operative bank” and “primary agricultural credit society” shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) “primary co-operative agricultural and rural development bank” means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.” (Emphasis added)

18. Section 80P is part of Chapter VIA which deals with deductions to be made in computing total income. Section 80P is under part 'C', i.e. deductions in respect of certain incomes. Under sub-section (1) if gross total income includes income referred to in sub-section (2), sums specified in sub-section (2) are deductible in accordance with the said Section, i.e., 80P.

19. Sections dealing with seeds and letting out godowns admittedly comes under sub-sections (2)(a)(iv) and (2)(e). On this aspect learned counsel for Revenue has no dispute. Under sub-section (2)(a) whole of the amount of profit and gains of business attributable to one or more of activities under sub-section (2) are deductible. Similarly, under Section 80P(2)(e) whole of the income is deductible. Under Section 80P(2)(c)(ii) deduction is permissible to the extent of Rs. 50,000/- only. Letting of go-downs in fact comes in sub-section (2)(e) and here also whole of income is deductible.

20. Assessee's activities on its own were not referable to Section 80P(2)(c)(ii) which was taken by A.A. There was no reason to pick various sub-sections of Section 80P by A.A. in his own way. In fact, Section 80P is applicable in respect of a different kind of person, i.e., Cooperative Societies. If it permits the entire income deductible, how and in what manner profits and gains are further utilized or divided by Assessee, would not be relevant. It is for this reason, in our view, Sections 40A(vii)(b) and 43B(f) would not be attracted. Assessee did

not claim any deduction under the head of sum payable in lieu of any leave of credit of employees or in respect of any provision made for payment of gratuity to its employees on their retirement. Assessee claimed entire business income and profit under special provision i.e. under Section 80P, with reference to receipts to various heads referable to Section 80P. Thus there was no justification or occasion to look into any other provision under Chapter IVA, Part 'D'.

21. In **Cambay Electric Supply Industrial Co. Ltd. Vs. CIT, 1978(113) ITR 84 (SC)** Court had an occasion to consider Section 80-E of Act, 1961. This provision is also applicable in respect of specified industries where total income includes in profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule. In order to interpret aforesaid provision Court observed that Section 80-E has been enacted for the purpose of providing for certain special deduction to be made in computing the total income in the case of specified industries, over and above the general deduction contemplated by Act, therefore, it would be appropriate to read said provision itself rather than going to other provisions first. When we construe Section 80P in the light of above observations, we find that here also is a provision applicable to a particular class of persons, namely, cooperative societies. It talks of the gross total income of such society, if includes any income referred to in sub-section (2), in that case the sum specified in sub-section (2) in the manner provided in Section 80P, deduction of such sum shall be allowed in computing total income of Assessee. Here we have two words "gross total income" and "total income".

22. "Total income" is defined under Section 2(45) of Act, 1961 and reads as under:

"2(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act."

23. Section 5 contemplates total income of any previous year of a person who is resident, to include all income from whatever source derived, which is received or deemed to be received by or on behalf of such person or accrues or arise or is deemed to accrue or arise, in India or outside. Therefore, for Section 80P, it is the gross total income of cooperative society which has to be seen to attract Section 80P and if gross total income includes income referred to in sub-section (2) of Section 80P, deductions can be made. In order to apply deduction under Section 80P, therefore, there is no need to look into any other provision.

24. In **Kerala State Co-Operative Marketing Federation Ltd. and others Vs. Commissioner of Income Tax, 1998(231) ITR 814 (SC)** Court said, whenever a question arises as to whether any particular category of income of a co-operative society is exempt from tax, what has to be considered is, whether the income falls within one of the several heads of the exemption and if it falls within any one of the heads of the exemption, it would be free from taxes notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The relevant observations are noticed as under:

"We may notice that the provision is introduced with a view to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the government, the correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether the income fell within any of the several heads of

exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption."

25. In **Gorakhpur Kshetriya Gramin Bank Vs. Commissioner of Income Tax, 2007(292) ITR 205 (All)** certain amount was received by a Cooperative Bank from the staff who resigned and recovery therefrom of training cost and security forfeiture. Court referred to the fact that income is attributable to carry on business of Banking and exemption therefore, can be claimed by Assessee under Section 80P(2)(a) and exemption will be computed only with reference to Section 80P. Court relied on Supreme Court's decision in **Cambay Electric Supply Industrial Co. Ltd. Vs. CIT (supra)**; Bombay High Court's decision in **CIT Vs. Ahmednagar District Central Cooperative Bank Ltd., 2003(264) ITR 38**; and, Karnataka High Court's decision in **CIT Vs. Grain Merchants Co-operative Bank Ltd., 2004(267) ITR 742**.

26. In view thereof, we answer the aforesaid questions in favour of Assessee and against Revenue.

27. Appeal lacks merit. Dismissed.

Order Date :- 03.02.2017

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