IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Income-tax Appeal No.32 of 2008 alongwith
ITA No. 39 and 40 of 2008

Date of decision: 4.10.2012

ITA No. 32 of 2008
Commissioner of Income-tax, Shimla …*Appellant.*

Versus

The Kangra Central Cooperative Bank Ltd., Dharamshala.
…*Respondent.*

ITA No.39 of 2008
Commissioner of Income-tax, Shimla …*Appellant.*

Versus

The Jogindra Central Co-op Bank Ltd, The Mall Solan.
…*Respondent.*

ITA No. 40 of 2008
Commissioner of Income-tax, Shimla …*Appellant.*

Versus

The Jogindra Central Co-op Bank Ltd, The Mall Solan. …*Respondent.*

Appeals u/s 260-A of the Income-tax Act, 1961.

Coram

The Hon'ble Mr.Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? No.

For the appellant: **Mr. Vinay Kuthiala, Sr. Advocate. with**
(in all the appeals) **Ms. Vandana Kuthiala, Advocate.**

For the respondent(s): **Mr. Vishal Mohan, Mr. Rohan Thakur & Mr. Goverdhan Sharma, Advocates.**

Per Deepak Gupta, *J.(oral)*

1. These aforesaid Income-tax Appeals are being disposed of by a common judgement since the following identical questions of law are involved in all these cases:-

1. Whether on the facts and in the circumstances of the case the Hon'ble ITAT was right in law in holding that the assessee bank was entitled to deduction under Section 80P(2)(a)(i) in respect of interest earned on deposits made even out of the non-SLR funds whereas the income so earned cannot be said to be earned from the normal banking business/activities.
2. Whether the ITAT was correct in law in holding that the issue regarding allowability of deduction u/s 80P(2)(a)(i) of the IT Act in respect of such income had been settled by the Hon'ble Supreme court in the case of Nawanshaher Central Co-op Bank, whereas that judgement related to income from investment of statutory reserves only.

2. To appreciate the rival contentions of the parties, it would be appropriate to quote the relevant provisions of Section 80P(2)(a)(i) of the Income-tax Act, 1961 (here-in-after referred to as the Act, which reads as follows:-

> "**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.
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> **(2)** The sums referred to in sub-section (1) shall be the following, namely:-
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> **(a)** in the case of a co-operative society engaged in-
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> **(i)** carrying on the business of banking or providing credit facilities to its members, or
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> xxx… xxx… xxx…
> xxx… xxx… xxx…
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> xxx… xxx… xxx…

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

3. The facts necessary for determination of the case are that the assessee is a Cooperative Society carrying on banking business. It is registered under the H.P.Cooperative Societies Act and is governed by the Banking Regulation Act, 1949. The assessee in terms of the provisions of the Cooperative Societies Act and the Banking Regulation Act is bound to invest certain amounts in the manner prescribed under the aforesaid Acts. These are known as statutory reserves (SLR). The Bank has also made certain investments out of its reserves funds not on the basis of any statutory directions but as investment per-se. These are termed as non SLR investments. The question that arises is whether the interest earned on deposits made out of non SLR funds can be said to be attributable to normal banking business/activities and therefore eligible for deduction under Section 80P(2)(a)(i) referred to above.

4. The Apex Court in **Cambay Electric Supply Industrial Co. Ltd. vs. Commissioner of Income-tax, *Gujarat-II, (1978) 113 ITR 84,*** dealt with the import of the word attributable. In the case before the Apex Court the assessee was carrying on the business of generation and distribution of electricity. It sold out some of its machinery and building. The question which arose was whether the amount earned from the sale of the machines and buildings was attributable to the business of the Industry. The Apex court held as follows:

> "As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor general relied, it will be pertinent to observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression 'derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General it has used the expression "derived from", as for instance in S. 80-J. In our view, since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

5. Shri Vinay Kuthiala, learned senior counsel for the revenue has placed reliance on the judgement of the Apex Court in **Commissioner of Income-tax vs. Karnataka State Co-operative Apex Bank, *(2001) Vol.251 ITR 194,*** wherein the Apex Court after dealing with conflicting judgements delivered by two learned Judges in Madhya Pradesh Co-operative Bank Ltd, vs. Addl. CIT (1996) 218 ITR 438 (SC) and CIT vs. Bangalore District Co-operative Central Bank Ltd. (1998) 233 ITR 282 SC, held as follows:-

> "There is no doubt and it is not disputed that the assessee-co-operative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India

to enable it to carry on its banking business. This being so, any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of section 80P(2)(a)(i), to pay income-tax thereon. The placement of such funds being imperative for the purposes of carrying on the banking business, the income derived therefrom would be income from the assessee's business. We are unable to take the view that found favour with the Bench that decided the case of Madhya Pradesh Co-operative Bank Ltd. (1996) 218 ITR 438 (SC) that only income derived from circulating or working capital would fall within section 80P(2)(a)(i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital.

In the premises, we take the view that the decision of this Court in the case of Madhya Pradesh Co-operative Bank Ltd. (1996) 218 ITR 438 (SC) does not set down the correct law and that the law is as we have put it above. The question, accordingly, is answered in the affirmative and in favour of the assessee."

6. However, this judgement only covers the question relating to reserves invested by the bank pursuant to the statutory directions. Shri Vinay Kuthiala, learned senior counsel for the revenue has also placed reliance on the following portion of the observation made by the Apex Court in **Mehsana District Central Co-operative Bank Ltd. vs. Income-tax Officer,** ***(2001) Vol.251 ITR 522.***

"Now, as to the second question, we have heard learned counsel and been referred to various decisions including the decision of this court in Bihar State Co-operative Bank Limited vs. CIT (1960) 39 ITR 114. To be able to answer the question, it is necessary to ascertain, as a fact, whether the income derived by the assessee from the investment of its voluntary reserves has been utilized by it in the course of its ordinary banking business.

> Though the assessee placed before the assessing authority its books of account and balance sheets, the fact aforesated was not considered at any stage, for one or other reason on which it is not necessary for us to dilate. We think that it is in the interest of justice that the assessee should have the opportunity to lead evidence before the Commissioner (Appeals) to establish as a fact what is stated above. So far as the second question is concerned, therefore, the matter is stand restored to the Commissioner (Appeals) for being decided afresh. He shall also decide any consequential issue that may arise."

7. On the basis of the aforesaid observation of the Apex Court it is contended that we should remand the matter to the Revenue Authorities to permit the Bank to establish the fact that the interest was earned on account of banking activities and utilized for such activities. We are not inclined to accept this argument. In the case before the Apex Court, the Bank had lost throughout before the revenue authorities as well as the High Court. None of the authorities had considered the question whether the income from interest of Non-SLR reserves was attributable to normal banking activities. It was in these circumstances that the Supreme Court directed that the matter be remanded to the Commissioner (Appeals). In the present case the Tribunal has already decided this issue in favour of the bank.

8. Any banking institution, carrying on banking business will not keep its reserves uninvested where they earn no income. The question which arises is whether the income earned on account of interest on deposits made out of the non SLR funds can be said to be attributable to the

banking activities of the bank. There can be no dispute with the preposition that the word attributable is much wider in scope than derived. The Legislature has used the words "attributable to" in conjunction with the phrase "any one or more of such activities".

9. The words used by the legislature are very important. The first word used is attributable, which is much wider in scope than the word derived. The second phrase used is any one or more of such activities. Any banking business providing credit facilities to its members and investing the sums deposited by the members of the society is part of banking business.

10. We are, therefore, of the considered view that the investment of the funds by the banks including the non reserves were part of the banking activities since no bank would like its reserve funds to remain idle and not earn any interest. This is not only prudent business management but is also a part of the activity of banking. Therefore, the interest earned on such deposits is directly attributable to the business of banking. Both the questions are accordingly answered in favour of the assessee and against the revenue. The Appeals are accordingly rejected.

(Deepak Gupta), *J.*

4th October, 2012 **(Rajiv Sharma), *J.***

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