ORDER SHEET

ITAT 329 OF 2018
GA 3531 OF 2018
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-12, KOLKATA
Versus
ELECTRO URBAN CO-OPERATIVE CREDIT SOCIETY LTD.

BEFORE:
The Hon'ble JUSTICE ARINDAM SINHA
AND
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date : 5th March, 2020.

Mr. P.K. Bhowmik, advocate for appellant
Mr. Abhratosh Mazumdar, sr. advocate, Mr. Soumitra Mukherjee,
Mr. Avra Mazumder, advocates for respondent

The Court : Revenue has appealed against order dated 17th November, 2017 passed by Income Tax Appellate Tribunal "D" Bench, Kolkata in ITA 144/Kol/2016 pertaining to assessment year 2012-13. The substantial question of law, on which the appeal was admitted, is set out below:-

*"Was **Totgar's** (supra) made applicable to Co-operative Societies carrying on the business of banking or providing credit facilities to its members, by **South Eastern Railway Employees Co-operative Credit Society Ltd.** (supra)?"*

Mr. Bhowmick, learned advocate appears on behalf of appellant-revenue and submits, declaration of law in **Totgar's Co-operative Sale Society Ltd. vs ITO** reported in **(2010) 322 ITR 283 (SC**) was on the question whether interest on deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of Income Tax Act, 1961? Supreme Court said, 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. In that connection section 80P was analyzed and appellant, being a co-operative sale society, was held against as follows:

> *"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, the 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 liabilities-side. 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."

He submits, **Totgar's** (supra) was made applicable to an assessee such as respondent by a Division Bench of this Court, to which one of us was party (Arindam Sinha, J.), in **CIT vs. South Eastern Railways Employees Cooperative Credit Society Limited** reported in **[2017]390 ITR 524 (Cal).** Appeal of revenue is covered by the decision and the question should be answered accordingly.

Mr. Majumder, learned senior advocate, Additional Advocate-General appears on behalf of assessee-respondent. He submits, his client is an existing cooperative society, on whom deeming provision in section 6 of West Bengal Co-operative Societies Act, 2006 operates. He relies on sections 79 and 82 therein for provisions relating to firstly, investment of funds by his client and secondly, on mandate to transfer, in every cooperative year, not less than 10% of its net profit to a reserve fund. Corresponding enabling procedure is as per rule 119 in West Bengal Co-operative Societies Rules, 2011. His client made investments as permitted by the Act, Rules and its existing bye-laws, the latter not being inconsistent with the provisions in the Act of 2006. Interest on

these investments are profits and gains of his client, being a cooperative society, carrying on business of banking and providing credit facilities to its members. As such, the whole amount of profits and gains achieved from interest earnings on such investments, is to be deducted in computing the total income.

Furthermore, he draws attention to the assessment order dated 25th February, 2015. He submits, the Assessing Officer appears to have disallowed major part of the interest income from being deducted, going on the nature of investments. This would be apparent from the deduction allowed by him. He relies on following in the assessment order to make his point.

> *"However, as per section 80P(2)(d) any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society will be allowed as deduction. Hence, interest received only from co-operative bank amounting to Rs.90,21,660.91 is allowed as deduction u/s 80P(2)(d) and remaining interest received of Rs.* ***2,43,97,796.35*** *is added to the total income of the assessee under the head Income from Other Source."*

He submits in fairness, the Tribunal upheld the order of CIT (Appeal) upon reliance of a case, which could not be tracked on the reference given in impugned order. Without prejudice to above contentions Mr. Majumder submits further, if Court answers the question in favour of revenue, then directions made in **South**

Eastern Railways Employees Co-operative Credit Society Limited (supra) must necessarily be made in this appeal as well.

In **South Eastern Railways Employees Co-operative Credit Society Limited** (supra), one contention advanced on behalf of assessee therein was that it being a multi-State cooperative society, duly registered, was bound by mandate in section 63 of Multi-State Co-operative Societies Act, 2002, regarding disposal of net profits. 25% thereof in any year is to be transferred to the reserve fund. Investment of funds is permitted under section 64. The reserve fund was invested and interest income on the fund therefore must be taken to be as profit and gain of business attributable to banking and providing credit facilities to its members. The Division Bench took note of this argument in holding that the entire interest income, therefore, could not be disallowed. The question in that appeal is reproduced below:-

> *"Whether in the facts and circumstances of the case, the Income-tax appellate Tribunal by allowing deduction on income earned by the assessee from investment in banks and other financial institutions has rendered the provisions of section 80P(2)(a)(i) nugatory as the said section of the Act allows deduction to a co-operative society engaged in carrying on business of banking or providing credit facilities to its members?"*

The question was answered in the affirmative and in favour of revenue in the manner as will appear below.

> *"In that view of the matter, the question raised for decision is answered in the affirmative and in favour of the Revenue to the extent as indicated above. The appeal is allowed. The matter is, however, remanded to the Assessing Officer (a) to work out the interest earned under sections 63 and 64 of the Multi-State Co-operative Societies Act, 2002 and to allow benefit under section 80P and (b) to ascertain the interest paid to the members for the purpose of earning the sums of Rs. 99 lakhs and 1.2 crores on account of interest from investments. Such interest shall be deducted from the expenses of eligible business. Consequent increased amount of profits of eligible business as discussed above shall be the amount of deduction available to the assessee under section 80P."*

We find that revenue's case is covered by **South Eastern Railways Employees Co-operative Credit Society Limited** (supra). The Act of 2006 and Rules thereunder mandate 10% of net profit in every cooperative year to be transferred to a reserve fund. Interest income on rest of the net profit of respondent appears to be similar income or to be similarly treated as interest income on investment of sale of agricultural produce of the assessee in **Totgar's** (supra), that assessee being one coming within sub-clause (a)(iv) under sub-section (2) in section 80P. Assessee being a credit society similar to assessee

South Eastern Railways Employees Co-operative Credit Society Limited, **Totgar's** (supra) would apply to its such income. It follows that the question in this appeal is to be answered in the affirmative, in favour of revenue and we so answer it.

Substantial question of law was formulated and answered in **South Eastern Railways Employees Co-operative Credit Society Limited** (supra). Substantial question of law, on which this appeal was admitted, has been answered. That does not automatically require same directions, as made in **South Eastern Railways Employees Co-operative Credit Society Limited** (supra), to be made here as well. Sub-section (7) in section 260A of the Income Tax Act, 1961 makes applicable provisions of Code of Civil Procedure, 1908, relating to appeals to the High Court, as far as may be, applied in the case of appeals under the section. Rule 33 in Order 41 provides for appellate Court's power to pass any decree and make any order as the case may require. The directions were made in **South Eastern Railways Employees Co-operative Credit Society Limited** (supra) and directions to be made here, are in exercise of such power.

Having answered the question as we have, we direct the matter be remanded to the Assessing Officer, to work out interest earned on the reserve fund, if invested and allow deduction therefor in addition to the deduction already allowed in applying section 80P(2)(d), as in the assessment order. Said deduction was correctly allowed and allowing of

only it cannot be taken to imply, reason to have disallowed the other income was by going on manner of such investments.

The appeal is disposed of.

(Arindam Sinha, J.)

(Shekhar B. Saraf, J.)

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