

Karnataka High Court The Commissioner Of Income Tax vs Sri. Biluru Gurubasava Pattina on 5 February, 2014 Author: N.Kumar & C.R.Kumaraswamy :1:

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE C.R.KUMARASWAMY

INCOME TAX APPEAL NO.5006/2013

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX DR. B. R. AMBEDKAR  
ROAD BELGAUM
2. THE INCOME TAX OFFICER WARD I, BAGALKOT ... APPELLANTS

(BY SRI. Y. V. RAVIRAJ, ADVOCATE)

AND:

SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA  
BAGALKOT ... RESPONDENT

(BY SRI. A. SHANKAR, ADVOCATE) ———

THIS APPEAL IS FILED UNDER SECTION 260A

OF THE INCOME-TAX ACT, 1961 AGAINST THE ORDER PASSED IN  
ITA.NO.514/BANG./2012 DATED :2:

28.02.2013 ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL,  
BANGALORE BENCH 'B', BANGALORE, ALLOWING THE APPEAL  
FILED BY THE ASSESSEE'S FOR ASSESSMENT YEAR 2007-08.

THIS APPEAL COMING ON FOR ADMISSION THIS

DAY, N.KUMAR J., DELIVERED THE FOLLOWING:

#### JUDGMENT

The Revenue has preferred this appeal against the order passed by the Tribunal setting-aside the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). 2. The assessee is a Credit Co-operative Society engaged in providing credit facilities to its members. It has filed returns of the income for the assessment year 2007-08 claiming deduction under Section 80P(2)(a)(i) amounting to Rs.2,04,03,878/- (Rupees Two Crore Four Lakh Three Thousand Eight Hundred and Seventy Eight only). The Assessing Officer has passed assessment under Section 143(3) of the Act on 29.12.2009 disallowing to the tune of Rs.1,66,47,180/- (Rupees One Crore Sixty Six Lakh Forty Seven Thousand One Hundred and Eighty only) in respect of interest received from Gem Sugars Limited, Bilagi Sugars Limited and Nirani Cements Limited. However, the Assessing Officer allowed deduction under Section 80P(2)(a)(i) to the extent of Rs.1,93,73,000/- (Rupees One Crore Ninety Three Lakh Seventy Three Thousand only). 3. The Commissioner of Income Tax invoking his power under Section 263 of the Act, issued notice to the assessee calling upon him to show-cause as to why the order of assessment should not be set-aside in view of Section 80P(4) of the Act. After service of notice, the assessee entered appearance and brought to the notice of the authority that the assessee is not a Co-operative bank and therefore, Section 80P(4) has no application to the case of the assessee. However, the Revisional Authority was of the view that the assessing authority has not considered the application of Section 80P(4) which was inserted with effect from 01.04.2007 and therefore, he set-aside the order of assessment and remanded the matter back to the Assessing Authority to consider the applicability of the aforesaid provision. 4. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal. 5. The Tribunal held that as the assessee is not a Co-operative Bank, Section 80P(4) has no application. Moreover, the power under Section 263 of the Act could be invoked by the Revisional Authority only, if the order is erroneous and thereby is prejudicial to the interest of revenue. In the instant case, as the assessee is not a Co-operative Bank i.e. there is no error committed by the Assessing authority much less, the said order was prejudicial to the interest of revenue and therefore, the order passed by the Revisional Authority was set-aside. 6. Aggrieved by the said order, the Revenue has preferred this appeal. 7. The only substantial question of law which arises for our consideration in this appeal is:- In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being Co-operative bank was not there? 8. In the assessment order, the Assessing authority has clearly stated that the assessee is a Co-operative society and has not obtained any banking license. The business of the assessee is to provide credit facilities to its members. Since the assessee cannot carry on any banking business, the interest on investment is taxable as income from other

source. Therefore, the aforesaid facts, which is not in dispute clearly establishes that it is not a Co-operative Bank. Infact, the Revisional Authority also in its order has categorically stated that the assessee is a Co-operative society, which provides credit facilities. Section 80P of the Act deals with the deduction of income of a society. In the case of any assessee being a Co-operative society, the whole of the amounts of profits and gains of business attributable to any of other activities referred to sub-section (2) of Section 80P shall be deducted in computing the total income of the assessee. In other words, the said income is not taxable. It is a benefit given to the Co-operative society. Section 80P(4) was introduced by Finance Act, 2006 with effect from 01.04.2007 excluding the said benefit to a Co-operative Bank. The said provision reads as under:- "(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. (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." Therefore, the intention of the legislature is clear. If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority. The said order was not prejudicial to the interest of the Revenue. The condition precedent for the commissioner to invoke the power under Section 263 is that the twin condition should be satisfied. The order should be erroneous and it should be prejudicial to the interest of the revenue. 9. This Court had an occasion to consider Section 263 of the Act in the case of - COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LTD. [2013] 354 ITR 489 (Karn) where paragraph-18, it has held as under: "As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing

Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue."Prejudicial to the Revenue" means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise his jurisdiction under Section 263." In the instant case, when the status of the assessee is a Co-operative society and is not a Co- operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, the question of order being prejudicial would not arise. The Tribunal has rightly entertained the appeal and set- aside the order. Therefore, the said order is in accordance with law and cannot be found fault with. The substantial question of law is answered in favour of the assessee and against the revenue. SD/- JUDGE SD/- JUDGE LB