

Mehsana District Central Co-Operative ... vs Income-Tax Officer on 30 August, 2001

Equivalent citations: [2001]251ITR522(SC), AIRONLINE 2001 SC 157, 2009 (17) SCC 621, (2001) 251 ITR 522, (2001) 170 CUR TAX REP 169, (2001) 119 TAXMAN 785

Bench: S.P. Bharucha, Ashok Bhan

ORDER

Civil Appeals Nos. 292-298 of 2001 :

1. We are concerned in these appeals with the assessment years 1988-89 to 1994-95.

2. The High Court (see [2001] 250 ITR 229) reframed the questions that arise in these appeals thus (page 249):

"(1) Whether the Tribunal was right in law in disallowing the claim of the assessee-bank for deduction under Section 80P(2)(a)(i) in respect of income earned from utilization of its reserve funds being statutory reserves under Section 67(2) of the Gujarat Co-operative Societies Act, 1961?

(2) Whether the assessee-bank is entitled to claim deduction under Section 80P(2)(a)(i) in respect of income earned from utilization of its voluntary reserves other than the statutory reserves mentioned above ?

(3) Whether the Tribunal was right in law in holding that the locker rent is not deductible under Section 80P(2)(a)(i) ?"

3. In so far as the first question is concerned, it is covered against the Revenue by the judgment delivered by this court on August 22, 2001, in CIT v. Karnataka State Co-operative Apex Bank [2001] 251 ITR 194 (Civil Appeals Nos. 4646-4648 of 2000). The first question, therefore, is answered in the negative and in favour of the assessee.

4. In so far as the third question is concerned, it is clear that the provision of safe deposit vaults is part of the ordinary banking business of a bank ; this is shown by Section 6(1)(a) of the Banking Regulation Act, 1949. Therefore, the income derived by the assessee from the hiring out of safe deposit vaults is income from the business of banking and, therefore, deductible under Section 80P(2)(a)(i) of the Income-tax Act, 1961. Accordingly, the third question is answered in the negative and in favour of the assessee.

5. 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 v. 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 utilised 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 aforesaid 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 interests 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.

6. Order on the appeals accordingly.

7. No order as to cost.

Civil Appeals Nos. 7448 and 7449 of 2000 :

8. The only question in these appeals reads thus :

"Whether, in the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the assessee Ss not eligible for deduction under Section 80P in respect of interest income oh its total reserve, and in holding so, ignoring its own decision as also the judgments of the Rajasthan High Court and the Supreme Court ?"

9. In so far as the interest income upon statutory reserves is concerned, the question must be answered in favour of the assessee, in the light of the judgment delivered by us in CIT v. Karntilaka Stain Co-operative Apex Bank [2001] 251 ITR 194 (Civil Appeals Nos. 46464648 of 2000) As far as the interest income on non-statutory reserves is concerned, the matter is remanded to the Commissioner (Appeals) for being decided afresh in the light of the decision that we have just rendered in Civil Appeals Nos. 292-298 of 2001.

10. Accordingly, the civil appeals are allowed and the judgment under appeal is set aside.

11. No order as to costs.