

Punjab-Haryana High Court

Commissioner Of Income-Tax vs Nawanshahar Central ... on 6 January, 2003

Equivalent citations: (2004) 186 CTR P H 459, 2003 263 ITR 320 P H

Author: N Sud

Bench: N Sud, N Sodhi

JUDGMENT N.K. Sud, J.

1. This order shall dispose of two Income-tax Appeals Nos. 154 and 155 of 2002 involving common questions of law and facts. For the sake of convenience, the facts are being taken from Income-tax Appeal No.155 of 2002 pertaining to the assessment year 1994-95.
2. The assessee is a co-operative bank engaged in the banking business. It is registered with the Registrar of Firms and Societies, Chandigarh.
3. The only dispute in the present appeals is as to whether the assessee is, entitled to deduction under Section 80P(2)(a)(i) of the Income-tax Act, 1961 (for short "the Act"), in respect of the income from the investment of rupees two crores in the purchase of 13.5 per cent. PSEB Bonds, 2003 First Series (for short the "Bonds") on September 20, 1993.
4. As per the provisions of Section 80P(2)(a)(i) of the Act, a co-operative society engaged in the business of banking or providing credit facilities to its members is entitled to deduction out of its taxable income of the whole of the amount of profits and gains of business attributable to the aforesaid activities.
5. In the present case, the Assessing Officer held that the investment in the bonds had been made out of surplus funds lying in the bank and not out of stock-in-trade, and, therefore, the interest income from these bonds could not be treated to be income attributable to the banking business. He further observed that the money invested in the bonds was blocked for a period of ten years and was not readily available and, therefore, it could not form part of the circulating capital. He, therefore, disallowed the claim of the assessee for deduction under Section 80P(2)(a)(i) in respect of the interest income pertaining to the aforesaid bonds.
6. The assessee filed an appeal before the Commissioner of Income-tax (Appeals), who upheld the disallowance.
7. On further appeal by the assessee, the Income-tax Appellate Tribunal (for short "the Tribunal") reversed the findings of the authorities below and allowed the claim of the assessee. The Tribunal has referred to the prospectus pertaining to the issue of the aforesaid bonds and has found that the same are easily transferable by endorsement and delivery. Thus the objection of the authorities below that it was a long term investment blocking the funds of the assessee for ten years has been found to be without any merit. The Tribunal has further held that the investment in the bonds being in the nature of a specified security under Section 20 of the Indian Trusts Act, 1882, is in accordance with the mandatory provisions of Section 44 of the Punjab Co-operative Societies Act, 1961. Thus it was held that the case of the assessee was fully covered by the decision of the Supreme Court in CIT

v. Karnataka State Cooperative Apex Bank [2001] 251 ITR 194.

8. Mr. N. L. Sharda, appearing on behalf of the appellant, contended that in a subsequent decision in *Mehsana District Central Co-operative Bank Ltd. v. ITO* [2001] 251 ITR 522, the Supreme Court has held that the question whether income derived by a co-operative bank from the investment of its voluntary reserves other than statutory reserves is exempt under Section 80P(2)(a)(i) depended upon whether the voluntary reserves were utilised in the course of its ordinary banking business. He, therefore, pleaded that the matter needs to be decided afresh in the light of the observations of the Supreme Court in that case.

9. We have heard counsel for the appellant and have gone through the orders of the authorities below. Learned counsel has not been able to contravert the factual position that the investment in the PSEB bonds was in the nature of security specified under Section 20 of the Indian Trusts Act, 1882, and, therefore, was an investment in accordance with the mandatory provisions of section 44 of the Punjab Co-operative Societies Act, 1961. This being so, it is clearly a statutory investment and as per the law laid down by the apex court in *Karnataka State Co-operative Apex Bank's case* [2001] 251 ITR 194, the interest on this investment was eligible for deduction under Section 80P(2)(a)(i) of the Act. The Supreme Court while upholding the claim of the assessee has clearly observed that there is nothing in the phraseology of that section which makes it applicable only to income derived from working or circulating capital. Thus the question as to whether investment made in the statutory reserves had come out of working or circulating capital or out of surplus funds is of no consequence. In fact in *Mehsana District Central Co-operative Bank Ltd.'s case* [2001] 251 ITR 522 also, the apex court has followed its earlier decision in *Karnataka State Co-operative Apex Bank's case* [2001] 251 ITR 194, in respect of interest earned from the funds utilised for the statutory reserves. The observations of the Supreme Court in *Mehsana District Central Co-operative Bank Ltd. 's case* [2001] 251 ITR 522, relied upon by counsel for the appellant pertain only to the "voluntary reserves other than statutory reserves." It is only in respect of the voluntary reserves that it is necessary to find as to whether the investment had been made in the ordinary course of banking business. This is not the position in the case in hand. It has been found as a fact that the investment in PSEB bonds is towards statutory reserves and, therefore, the claim of the assessee for deduction under Section 80P(2)(a)(i) in respect of the income derived from the aforesaid bonds is clearly admissible in view of the decisions of the apex court in *Karnataka State Co-operative Apex Bank's case* [2001] 251 ITR 194 and *Mehsana District Central Co-operative Bank Ltd.'s case* [2001] 251 ITR 522.

10. In view of the above, there is no merit in the present appeals which are, accordingly, dismissed in limine.