

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.113 of 2012

***Cuttack Central Co-operative Bank Appellant
Ltd.***

Mr. Jagabandhu Sahu, Senior Advocate with
Ms. Kajal Sahoo, Advocate
Mr. S.Ku. Sarangi, Senior Advocate

-versus-

***Asst. Commissioner of Income Tax & Respondents
Another***

Mr. T.K. Satapathy, Senior Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

**ORDER
09.01.2023**

Order No.

26. 1. While admitting the present appeal that arises from an order dated 14th September, 2012 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No. 182/CTK/2012 for the Assessment Year 2009-10, on 5th March, 2013, the following questions were framed for consideration by this Court:

“I. Whether on the facts and in the circumstances of the case, the learned ITAT was justified in confirming the order of CIT appeal where the order of CIT appeal where the deductions has been disallowed and @7.5% has been allowed on the bad and doubtful debts/accounts?

II. Whether on the facts and in the circumstances of the case, whether the learned ITAT is justified in making further classification while interpreting the Section 80P (4) by treating it to be different then the primary agriculture rural development bank/Co-operative societies?”

2. As far as first question is concerned, the issue appears to be no longer *res integra* in view the orders of the ITAT as regards the subsequent AYs i.e. AY 2010-11 and 2012-13 and one earlier AY i.e. 2007-08 all of which stand covered by the order dated 12th July, 2017 of the ITAT in ITA Nos.394 to 396/CTK/2015 involving the very same of the assessee. The ITAT has in the above order noted that the Assessee bank was entitled to additional 10% deduction along with the 7.5% calculated by the Assessing Officer (AO) under Section 36(1)(vii)(viii) of the Income Tax Act, 1961 (Act). By the said order for the aforementioned AYs, the matter was remanded to the AO by the ITAT and additionally a direction was issue to the AO to grant deduction under Section 36(1)(vii-a) of the Act in accordance with law.

3. On remand the AO passed a fresh order on 31st August, 2017 allowing the deduction as claimed in full. A similar order has already been passed in relation to AYs 2013-14 and 2014-15. The present appeal is concerned with AY 2009-10.

4. Accordingly Question No. I is answered in negative, i.e. in favour of the Assessee and against the Department. The deduction as

claimed by the Assessee is allowed. The demand will now be recalculated by the AO by giving appeal effect to the above order.

5. As far as Question No. II is concerned, the issue is no longer *res integra* after the decision of the Supreme Court of India in ***Mavilayi Service Cooperative Bank Ltd. v. Commissioner of Income Tax, Calicut (2021) 75CC 90*** where in para-45, it has been held as under:

“To sum up, therefore, the ratio decidendi of *Citizen Cooperative Society Ltd. (supra)*, must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word “agriculture” into Section 80P(2)(a)(i) when it is not there. Further, Section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of *Citizen Cooperative Society Ltd. (supra)*. Clearly, therefore, once Section 80P (4) is out of harm’s way, all the Assesseees in the present case are entitled to the benefit of the deduction contained in Section 80P (2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.”

6. To the same effect is the judgment of the Gujarat High Court dated 15th January, 2014 in Tax Appeal Nos. 442, 443 and 863 of 2013 (*Commissioner of Income Tax, Gandhinagar v. Jafari Momin Vikas Co-operative Credit Society Ltd.*).

7. In that view of the matter, Question No. II is answered in the negative. i.e. in favour of the Assessee against the Department and it is held that the Appellant-Assessee would be entitled to the benefit of the deduction under Section 80P(4) of the Act since it is a Cooperative Society involved in the business of banking. It is open to the Assessee after appeal effect is given on the basis of the present order, to apply for refund in accordance with law.

8. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Aks