

**(1994) 02 AHC CK 0039**

**Allahabad High Court**

**Case No:** Income Tax Application No's. 242, 243, 244 and 246 of 1993

Commissioner of Income Tax

APPELLANT

Vs

U.P. Rajya Sahkari Bhumi Vikas  
Bank Ltd.

RESPONDENT

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**Date of Decision:** Feb. 23, 1994

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(2), 80P(2)

**Citation:** (1994) 208 ITR 758 : (1994) 2 UPLBEC 721

**Hon'ble Judges:** R.K. Gulati, J; O.P. Jain, J

**Bench:** Division Bench

**Advocate:** Bharatji Agarwal, for the Appellant; K.B. Jindal, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

1. These are five applications filed u/s 256(2) of the Income Tax Act, 1961, by the Commissioner of Income Tax, Lucknow, and pertain to the assessment years 1981-82 to 1985-86. Two common questions have been proposed in these applications which are said to be questions of law arising out of a common order passed by the Income Tax Appellate Tribunal. The questions proposed are as under :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the shares of the Agricultural Refinance Corporation and the Unit Trust of India are held by the assessee-bank as its stock-in-trade?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the income earned in respect of the shares of the Agricultural Refinance Corporation and the Unit Trust of India is income from business carried on by the assessee and is exempt u/s 80P(2) of the Income Tax Act, 1961 ?"

2. The respondent-assessee is a co-operative society giving long-term finance to primary banks, co-operative farming societies, cultivators and land development banks on security by way of simple mortgage over land, etc. In other words, it is a co-operative society functioning as a bank for the purposes of providing finance to cultivators and co-operative societies, etc. It appears that the assessee held certain shares of the Agricultural Refinance Corporation as well as certain units of the Unit Trust of India. In the assessment years in question, the assessee put up a claim that the income received by way of dividend and interest, etc., attributable to the shares and units held by the assessee was liable to be deducted from its gross income u/s 80P(2) of the Income Tax Act, 1961 (for short "the Act"), in computing its taxable income. The Income Tax Officer, however, negated the claim and brought to tax the income in question under the head "Other sources". The claim of the assessee was, however, accepted by the appellate authorities, namely, the Commissioner of Income Tax (Appeals), Lucknow, and the Income Tax Appellate Tribunal, B-Bench, Allahabad. The Commissioner of Income Tax (Appeals) has observed in his order that the shares of Agricultural Refinance Corporation had been declared as Government securities u/s 7 of the Agricultural Finance Act and the same situation applied to the shares of the Unit Trust of India. He further held that while deciding the issue whether the shareholdings, etc., should be regarded as the business assets of an assessee, there must be material evidence indicating that the ownership of such holding is incidental to the business carried on by the assessee or that the holding is a business asset. In the ultimate analysis, the Commissioner held that the assessee was statutorily duty bound to make the investment and the shareholding as well as the investment in the Unit Trust of India was incidental to the business and the same had been made to safeguard the business itself. On these reasonings he further recorded a finding that the income in question received or accrued to the appellant was the income from business and the same was exempt from tax u/s 80P(2) of the Act, like the other income of the co-operative society. This view of the Commissioner of Income Tax (Appeals) was upheld by the Tribunal. The applications for reference moved u/s 256(1) of the Act having been dismissed, these applications have been made with a common prayer that the Income Tax Appellate Tribunal may be directed to refer the aforesaid questions for the opinion of this court.

3. We have heard learned counsel for the parties.

4. In so far as the first question is concerned, the learned standing counsel was unable to refer to us any material and did not advance any statable argument as a result of which it could be said that the findings recorded by the Income Tax Appellate Tribunal that the shares of the Agricultural Refinance Corporation and the units of the Unit Trust of India were not held by the assessee as its stock-in-trade. The Tribunal recorded its finding that the holdings in question were stock-in-trade on the basis of the material that was placed on record. The findings recorded by the Tribunal are pure findings of fact and are based on appreciation of evidence, which,

in our opinion, does not give rise to any question of law.

5. Coming to the second question, it could not be disputed by the standing counsel that somewhat identical facts involving the controversy contained in question No. 2 were the subject-matter of consideration before this court in Income Tax Application No. 257 of 1981 (CIT v. Zila-Sahkari Bank Ltd.) when an application u/s 256(2) of the Act was rejected by an order dated April 7, 1982. This court held as under:

"The point raised in this application relates to interest on Government securities earned by the assessee. Whether such interest is exempt was dealt with by the Supreme Court in [Commissioner of Income Tax, Bombay City II Vs. Bombay State Co-operative Bank Ltd.](#) . It was held that the interest received from Government securities held by a co-operative society as its stock-in-trade qualifies for exemption. In our opinion, no statable question of law arises on the facts found by the Tribunal. The application is accordingly rejected."

6. The decision of this court referred to above was followed by this court in Income Tax Application No. 131 of 1983--CIT v. Zila Sahakari Bank Ltd.--decided on March 29, 1984, when an application u/s 256(2) of the Act was rejected on a similar issue. It appears that the Revenue filed a SLP before the Supreme Court against the latter decision of this court which was dismissed by the Supreme Court by its order dated April 18, 1991, since reported as CIT v. Zila Sahakari Bank Ltd. [1991] 189 ITR 115.

7. Having regard to the above decisions, in our opinion, the second question proposed in the applications does not give rise to any statable question of law.

8. In the result, all the applications are rejected being devoid of any merit. There shall be no order as to costs.