(2003) ILR (Kar) 4977 : (2004) 267 ITR 742

Karnataka High Court

Case No: Income Tax Appeal No"s. 149 to 151 of 2001

Commissioner of Income Tax and Another		APPELLANT
	Vs	
The Grain Merchants Co-op. Bank Ltd.		RESPONDENT

Date of Decision: Oct. 22, 2003

Acts Referred:

- Banking (Regulation) Act, 1949 - Section 6, 6 (1)
- Income Tax Act, 1961 - Section 22, 80 P (2) (a) (i)

Citation: (2003) ILR (Kar) 4977 : (2004) 267 ITR 742

Hon'ble Judges: P. Vishwanatha Shetty, J; Ajit J. Gunjal, J

Bench: Division Bench

Advocate: M.V. Sesachala, for the Appellant; K.R. Prasad, for the Respondent

Final Decision: Dismissed

Judgement

P. Vishwanatha Shetty, J.
In these appeals, the appellants have called in question the correctness of the order dated 15th January 201 made in ITAs No. 761, 762 and 763/Bang/1993 by the Income Tax Appellate Tribunal, Bangalore Bench, [hereinafter referred to as "the Tribunal"] holding that-(1) the income received by the respondent by letting out the premises belonging to it; and (2) the interest received out of the funds deposited in Reserve Bank and other banks are exempted from payment of tax in terms of Section 80P(2)(a)(i) of the Income Tax Act, 1961, [hereinafter referred to as "the Act"]. The assessments relate to the years 1989-90, 1990-91 and 1991-92.

2. Facts in brief, which may be relevant for disposal of these appeals, may be stated as follows:

The Respondent is the Grain Merchant Co-operative Bank (hereinafter referred to as "the Assessee"), engaged in banking activity. The assesses filed its return for the Assessment years 1989-90, 1990-91 and 1991-92. The assessing Officer, while completing the assessment, took the view that the rental income received by the assessee in letting out the portion of the building partly occupied by it; and the interest received from setting apart certain funds as reserve fund, does not come within the purview of Section 80P(2)(a)(i) of the Act and as such are not deductible while computing the income of the Assessee. Aggrieved by the said Assessment Order, the assessee preferred an appeal to the Commissioner of Income -Tax (Appeals)-ll [hereinafter referred to as "the Appellate Commissioner"]. The Appellate Commissioner, by means of his order dated 16th March 1993 allowed and appeals accepting the contention of the assessee that the rental income received by it as well as the interest received on reserve fund are exempted from payment of tax u/s 80P(2)(a)(i) of the Act. Aggrieved by the said order of the Appellate Commissioner, the Revenue took up the matter in appeal to the Tribunal. The Tribunal, as noticed by us earlier, in the impugned order affirmed the order passed by the Appellate Commissioner.

3. Sri M,V. Sesachala, learned Counsel appearing for the revenue challenging the correctness of the orders impugned, made two submissions. Firstly, he submitted that the Tribunal as well as the Appellate Commissioner have seriously erred in law in taking the view that the interest derived out of the income from funds maintained as reserved funds is also an income derived by the assessee on account of the banking activites carried on by the assessee and as such the same is deductible u/s 80P(2){a)(i) of the Act while computing the income of the assessee. Elaborating this submission, the learned Counsel pointed out that the Tribunal as well as the Appellate Commissioner have failed to consider that the funds maintained as reserve funds have not been utilized by the assessee for its business activities. Secondly, he submitted that the Tribunal as well as the Appellate Commissioner have also seriously erred in law in taking the view that the rental income received by the assessee is an income received by it carrying on business of banking and as such is entitled for exemption u/s 80P(2)(a)(i) of the Act. It is also his submission that the letting out of premises by the assessee and receiving rent out of it cannot be considered as carrying on business of banking activity or providing credit facilities by the assessee to its members; and hence the income received by the assessee by way of rent in respect of the premises let out must be treated as an income which is liable for payment of tax u/s 22 of the Act. In support of this submission, he referred to us Clauses (a) to (f) of subsection (2) of Section 80P of the Act. It is also pointed out by him that Clause (f) of Sub-section (2) of Section 80P of the Act clearly spells out that in the case of a co-operative society, not being a housing society or an urban consumers society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, wherein the gross total income does not exceed Rs. 20,000/-, the amount earned by way of interest on securities on any income from certain property is chargeable u/s 22 of the Act. He pointed out that Clause (f) of Sub-section (2) of Section 80P of the Act should be

understood as making an exception to Clause (a)(i) of Sub-section (2) of Section 80P of the Act wherein it is provided that if a cooperative society carrying on banking business receives income from the House property, such an income is liable to be taxed u/s 22 of the Act. It is his submission that when the Parliament had made a distinction between the income received from banking business and the income received from non-banking business by way of rental income on account of letting out of premises belonging to the assessee, it is not permissible for the assessee to claim exemption relying upon Clause (a)(i) of Sub-section (2) of Section 80P of the Act. It is also his submission that the assessee cannot derive any assistance from Clause (k) and (I) of Sub-section (1) of Section 6 of the Banking Regulation Act. 1949 [hereinafter referred to as "the Regulation Act"], as according to the learned Counsel the said provision only empowers the banking institution to carry on certain activities which are not considered as a banking business. In this connection he referred to us the language employed in Section 6 of the Regulation Act wherein it is referred that in addition to the business of banking, a banking company may engage in any of the businesses referred to in the said Section.

4. However, Sri K.R. Prasad, learned Senior Counsel appearing for the assessee in this appeal and Sri G. Sarangan, learned Senior Counsel appearing for assessee in other connected matters strongly supported the impugned Orders, So far as the first contention of Sri Sesachala is concerned, they pointed out that the contention urged by Sri Sesachala is covered against the Revenue by our earlier decision rendered in the case of THE INCOME TAX OFFICER, HUBLI v. KARNATAKA CENTRAL CO-OPERATIVE BANK LTD., DHARWAD, ITA No. 183 of 2003 dd 7th August 2003 Therefore, they pointed out that for the very reason assigned by us in the said decision, the first contention urged by Sri Sesachala is required to be held against the Revenue. Further, Sri Prasad also relied upon the decision of the Hon''ble Supreme Court in the case of Mehsana District Central Co-operative Bank Ltd. Vs. Income Tax Officer, . With regard to the second contention of Sri Sesachala, they pointed out that in view of Clauses (k) and (I) of Sub-section (1) of Section 6 of the Regulation Act, 1949 which provides that the acquisition, construction of a building and leasing of building belonging to a banking company as a banking business, the income received by the assessee by way of rent in respect of premises let out by it must be treated as an income received by the assessee by way of profit and gains and the business attributable to the banking activities of the assessee. It is their further submission that Clauses (a) to (f) Sub-section (2) of Section 80P of the Act are mutually exclusive and independent of each other. It is also their submission that so far as Clause (a)(i) of Sub-section of 2 of Section 80P is concerned, it is only controlled by Clause (c) of Sub-section (2) of Section 80P of the Act. In support of their submission that Clause (I) of subsection (1) of Section 6 of the Regulation Act must be understood as banking business, they referred to us the decision of the Hon''ble Supreme Court in the case of GUJARAT STATE CO-OPERATIVE BANK LTD. v. COMMISSIONER OF Income Tax (supra) and referred to us the observation made at page 524 of the judgment; and the judgment of the Hon''ble Supreme Court in the case of Kerala State Co-operative Marketing Federation Ltd. and Others Vs. Commissioner of

Income Tax, and referred to us the observation made at page 819 of the judgment. They also relied upon the judgment of the Hon''ble Supreme Court in the case of Commissioner of Income Tax Vs. Ramanathapuram Distt. Co-op. Central Bank Ltd., and drew our attention to pages 424 and 425 of the judgment.

5. Now, we will proceed to consider each one of the contentions advanced by Sri Sesachala. So far as the first contention is concerned, the same is covered against the revenue by our earlier decision rendered in the case of KARNATAKA CENTRAL COOPERATIVE BANK LTD. (supra). In the said decision, we have taken the view that the income received out of the reserve fund is exempted from payment of tax. The said decision was rendered by us following the decision of this Court rendered in the case of THE COMMISSIONER OF INCOME TAX v. SRI RAM SAHAKARI BANK LTD., ITA No. 137 of 2002 disposed 5th September 2002 wherein the Division Bench of this Court following the decision of the Hon''ble Supreme Court in the case of The Bihar State Co-operative Bank Ltd. Vs. The Commissioner of Income Tax, has taken the view that the income received out of reserve fund is exempted from payment of tax- In the case of BIHAR STATE CO-OPERATIVE BANK LTD. (supra) the Hon''ble Supreme Court has observed as follows:

".....As we have pointed out above, it is a normal mode of carrying on banking business to invest moneys in a manner that they are readily available and that is just as much a part of the mode of conducting a bank''s business as receiving deposits or lending moneys or discounting hundies or issuing demand drafts. That is how the circulating capital is employed and that is the normal course of business of a bank. The moneys laid out, in the form of deposits as in the instant case would not cease to be a part of the circulating capital of the appellant nor would they cease to form part of its banking business. The returns flowing from them would form part of its profits from its business. In a commercial sense the directors of the company owe it to the bank to make investments which earn them interest instead of letting moneys lie idle. It cannot be said that the funds of the bank which were not lent to borrowers but were laid out in the form of deposits in another bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the bank, or that the interest arising therefrom did not form part of its business profits."

Therefore, there is no merit in the first contention advanced by Sri Sesachala. In the light of the above discussion, we find it unnecessary to refer to the decision of GUJARAT STATE CO-OPERATIVE BANK LTD, (supra) relied upon by Sri Prasad.

6. To examine the correctness of the second contention of Sri Sesachala, it is useful to refer to Clauses (k) and (l) of Sub-section (1) of Section 6 of the Regulation Act, which reads as hereunder:

"6. Forms of business in which banking companies may engage:

(a) to (j) xxxxxxxxxx

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(I) Selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account of otherwise dealing with all or any part of the property and rights of the company;"

8. The reading of Clauses (k) and (I) of Section 6 of the Regulation Act, to our mind, appears that in addition to the business of banking set out in clause (b) of Section 5 of the Regulation Act, acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the Banking company and also selling/improving or leasing or otherwise dealing with all or any part of the property and rights of the company, also should be treated as banking business.

9. No doubt, it is true, as contended by Sri Sesachala that the businesses referred to in Clauses (a) to (o) of Sub-section (1) of Section 6 of the Regulation Act cannot be treated as a banking business within the meaning of Clause (b) of Section 5 of the Regulation Act. But as noticed by us earlier, Section 6 of the Regulation Act intends to make several businesses referred to in Clauses (a) to (o) of Sub-section (1) of the Act as ''banking business'' and in addition to the definition of ''banking'' provided under Clause (b) of Section 5 of the Regulation Act. In support of our view, we derive support from the observation made by the Hon''ble Supreme Court in the case of GUJARAT STATE CO-OPERATIVE BANK LTD. (supra). In the said decision, while considering the question whether locker rent received by the Banking Company is not deductable u/s 80P(2)(a)(i) of the Act, the Hon''ble Supreme Court has taken the view that the safe-deposit vault is part of the ordinary banking business of the Bank in terms of Section 6(1)(a) of the Regulation Act. It is useful to refer to the observation made by the Hon''ble Supreme Court at page 524 of the judgment, which reads as follows:

"....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 u/s 80P(2)(a)(i) of the Income Tax Act, 1691....."

Clause 6(1)(a) is one of the items of businesses referred to in Section 6(1) of the Regulation Act. Further, in the case of KERALA STATE CO-OPERATIVE MARKETING FEDERATION LTD. AND OTHERS (supra) the Hon''ble Supreme Court has observed that whenever a question arises as to whether any particular category of income of a co-operative society is exempt from tax, what has to be considered is, as to whether the income falls within one of the several heads of exemption and if it falls within any one of the heads of the exemption, it would be free from taxes notwithstanding that the

conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The Hon''ble Supreme Court has observed that the correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. In this connection, it is useful to refer to the observation made by the Court at page 819 of the judgment, which reads as hereunder:

"We may notice that the provision is introduced with a view to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in the pursuance of the declared policy of the Government, the correct way of reading the different heads of exemption enumerated in the Section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax what has to be seen is whether the income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial activities such as standardization, financing, marketing intelligence, etc. Such activities can be carried on by an apex society rather than a primary society."

10. In our view, the provisions contained in Clause (f) of subsection (2) of Section 80P of the Act strongly relied upon by Sri Sesachala, is of no assistance to him. The said Clause provides that the income derived by the Housing Society is chargeable u/s 22 of the Income Tax Act. The Housing Society referred to in Clause (f) of the said Section must be understood as the Society which is not carrying on banking business or providing credit facilities which is included u/s 80P(2)(a)(i) of the Act. So far as the assessee is concerned, as noticed by us earlier, it is not in dispute that the assessee is carrying on business of banking. Under these circumstances, the provisions of Clause (f) of the Section cannot control the benefit of exemption extended to the assessee from payment of tax. In the light of the discussion made above, the second contention advanced by Sri Sesachala is also liable to be rejected. Accordingly it is rejected.

11. In the light of the conclusion reached above, we are of the view that these appeals are liable to be rejected as one devoid of any merit. Accordingly, they are rejected. However, no order is made as to costs.