

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No. 45 of 2008

a/w ITA No. 46 of 2008

Decided on: 06.11.2012

ITA No. 45 & 46 of 2008

Commissioner of Income Tax, Shimla

...Appellant.

Versus

M/s Himachal Gramin Bank, Jawahar Nagar, Mandi, through its
Managing Director.

...Respondent.

Appeals under Section 260-A of the Income
Tax Act, 1961.

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?¹

For the appellant(s): Mr. Vinay Kuthiala, Senior Advocate, with
Ms. Vandana Kuthiala, Advocate.

For the respondent(s): Mr. Ramakant Sharma, Advocate.

Deepak Gupta, J.

Both these appeals are disposed of by a common
judgment since common questions of law are involved in these appeals.

2. The appeals were admitted on the following questions of
law:

**“1. Whether on the facts and in the circumstances of
the case the ITAT was right in law in holding that
the assessee bank was entitled to deduction u/s
80P (2) (a) (i) of the Income Tax Act in respect of
interest earned on deposits made even out of the
non-SLR funds whereas the income so earned
can not be said to be earned from the normal
banking business/activities?**

**2. Whether the ITAT was correct in law in holding
that the issue regarding allowability of deduction**

¹ *Whether the reporters of local papers may be allowed to see the Judgment? Yes.*

u/s 80P (2) (a) (i) of the Income Tax Act in respect of such income had been settled by the Hon'ble Supreme Court in the case of Nawanshaher Central Co-op. Bank, whereas that judgment related to income from investment of statutory reserves only?"

3. These questions have already been decided in Income Tax Appeals No. 40, 41, 42, 43, 44 of 2006 and 3 of 2007, wherein after discussing the provisions of Sections and the judgments of the Apex Court in **Cambay Electric Supply Industrial Co. Ltd. versus Commissioner of Income-tax, Gujarat-II, (1978) 113 ITR 84; Commissioner of Income-tax versus Karnataka State Co-operative Apex Bank, (2001) Vol. 251 ITR 194 and Mehsana District Central Co-operative Bank Ltd. versus Income-tax Officer, (2001) Vol. 251 ITR 522**, this Court held as follows:

"On the basis of the aforesaid observation of the Apex Court it is contended that we should remand the matter to the Revenue Authorities to permit the Bank to establish the fact that the interest was earned on account of banking activities and utilized for such activities. We are not inclined to accept this argument. In the case before the Apex Court, the Bank had lost throughout before the revenue authorities as well as the High Court. None of the authorities had considered the question whether the income from interest of Non-SLR reserves was attributable to normal banking activities. It was in these circumstances that the Supreme Court directed that the matter be remanded to the Commissioner (Appeals). In the present case the Tribunal has already decided this issue in favour of the bank.

Any banking institution, carrying on banking business will not keep its reserves uninvested where they earn no income. The question which arises is whether the income earned on account of interest on deposits made out of the non SLR funds can be said to be attributable to the banking activities of the bank. There can be no dispute with the proposition that the word attributable is much wider in scope than derived. The Legislature has used the words "attributable to" in conjunction with the phrase "any one or more of such activities".

The words used by the legislature are very important. The first word used is attributable, which is much wider in scope than the word derived. The second phrase used is any one or more of such activities. Any banking business providing credit facilities to its members and investing the sums deposited by the members of the society is part of banking business.

We are, therefore, of the considered view that the investment of the funds by the banks including the non reserves were part of the banking activities since no bank would like its reserve funds to remain idle and not earn any interest. This is not only prudent business management but is also a part of the activity of banking. Therefore, the interest earned on such deposits is directly attributable to the business of banking. The question is accordingly answered in favour of the assessee and against the revenue.”

4. Following the aforesaid judgment, we decide both the questions in favour of the assessee and against the revenue and the present appeals are also dismissed.

(Deepak Gupta)
Judge

(Rajiv Sharma)
Judge

November 6, 2012
(rajni)