

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.46 OF 2008

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Solapur Nagari Audyogic Sahakari
Bank Ltd. 340A, Sakhar Peth,
Solapur - 413 005. ..Respondent.

WITH

INCOME TAX APPEAL (LOD) NO.664 OF 2008

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Vidya Sahakari Bank Ltd.,
596 Sadashiv Peth, Laxmi Road,
Pune - 411 030. ..Respondent.

WITH

INCOME TAX APPEAL NO.157 OF 2009

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Laxmi Co-operative Bank Ltd.,
319, South Kasba, Solapur. ..Respondent.

WITH
INCOME TAX APPEAL NO.477 OF 2005
WITH
INCOME TAX APPEAL NO.478 OF 2005
WITH
INCOME TAX APPEAL NO.521 OF 2005

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Solapur Janata Sahakari Bank Ltd.,
"Shivsmarak", Gold Finch Peth, Solapur ..Respondent.

WITH
INCOME TAX APPEAL NO.560 OF 2005

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Mangalwedha Urban Co-op. Bank Ltd.,
A/p. Mangalwedha, Dist. Solapur. ..Respondent.

WITH
INCOME TAX APPEAL (L) NO.393 OF 2008

The Commissioner of Income Tax-III,
PMT Building, "B" Wing, 3rd Floor,
Shankar Sheth Road Swargate,
Pune - 411 037. ..Appellant.

V/s.

Sadhana Sahakari Bank Ltd.,
Shivsam Complex, Hadapsar,
Pune - 411 028. ..Respondent.

WITH

INCOME TAX APPEAL (L) NO.212 OF 2008

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

Swami Samarth Sahakari Bank Ltd.,
Santosh Niwas, A/P. Akkalkot,
Tal. Akkalkot, Dist. Solapur. ..Respondent.

WITH

INCOME TAX APPEAL (L) NO.162 OF 2008

The Commissioner of Income Tax-I,
B-Wing, 1st Floor, PMT Building,
Shankar Sheth Road, Swargate
Pune - 411 037. ..Appellant.

V/s.

Janata Sahakari Bank Ltd.,
1444, Shukrawar Peth, Pune-411 002. ..Respondent.

WITH

INCOME TAX APPEAL (L)No.211 OF 2008

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

Shivshakti Urban Co-op. Bank Ltd.,
739, Karmveer Nagar, A/p. Barshi,
Tal. Barshi, Dist. Solapur. ..Respondent.

WITH

INCOME TAX APPEAL NO.526 OF 2006

The Commissioner of Income Tax-II ..Appellant.

V/s.

Shri Mahavir Co-op. Bank Ltd. ..Respondent.

WITH

INCOME TAX APPEAL NO.19 OF 2007

The Commissioner of Income Tax,
Kolhapur, Ayakar Bhavan, 31, C/2,
Tarabai Park, Kolhapur-416 003. ..Appellant.

V/s.

Shri Mahalaxmi Co-op. Bank Ltd.,
'Shree Bhavan', 167-B, Mangalwar
Peth, Kolhapur. ..Respondent.

WITH

INCOME TAX APPEAL NO.29 OF 2007

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Solapur District Industrial
Co-op. Ltd., 29/30, Raviwar Peth,
Solapur. ..Respondent.

WITH

INCOME TAX APPEAL NO.44 OF 2007

WITH

INCOME TAX APPEAL NO.465 OF 2007

WITH

INCOME TAX APPEAL NO.469 OF 2007
WITH
INCOME TAX APPEAL NO.470 OF 2007

The Commissioner of Income Tax,
Kolhapur, Aayakar Bhavan, 31,C/2,
Tarabai, Kolhapur - 416 003. ..Appellant.

V/s.

The Ajara Urban Co-op. Bank Ltd.
At Post & Tal. Ajara, Dist. Kolhapur. ..Respondent.

WITH

INCOME TAX APPEAL NO.163 OF 2007

The Commissioner of Income Tax,
Kolhapur, Aayakar Bhavan, 31,C/2,
Tarabai, Kolhapur - 416 003. ..Appellant.

V/s.

Youth Development Co-op. Bank Ltd.,
'Poornima' F-2, First floor,
Near Sambhaji Bridge, Kolhapur. ..Respondent.

WITH

INCOME TAX APPEAL NO.166 OF 2007

The Commissioner of Income Tax-II,
9th Floor, MIDC Bldg., Road No.16,
Wagle Estate, Thane (W). ..Appellant.

V/s.

Parsik Janata Sahakari Bank Ltd.
Nasheeman Bldg., 1st Floor, Kalwa
Market, Kalwa, Thane - 400 605. ..Respondent.

WITH

INCOME TAX APPEAL NO.435 OF 2007

The Commissioner of Income Tax-I,
Aayakar Bhavan, 31-C/2, 'E' Ward,
Tarabai Park, Kolhapur-416 003. ..Appellant.

V/s.

Vasantdada Shetkari Sahakar Sakhari
Karkhana Ltd., Sangli, Dist. Sangli. ..Respondent.

WITH
INCOME TAX APPEAL NO.777 OF 2007

The Commissioner of Income Tax-I,
B-Wing, 1st floor, PMT Building,
Shankarsheth Road, Swargate,
Pune - 411 037. ..Appellant.

V/s.

Pune District Centra Co-op. Bank Ltd.
4 B,B,J.Road, Pune -411 001. ..Respondent.

WITH
INCOME TAX APPEAL NO.50 OF 2008

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

The Solapur Nagar Audyogik Sahakari
Bank Ltd., 340A, Sakhar Peth,
Solapur - 413 005. ..Respondent.

WITH
INCOME TAX APPEAL (LOD) NO.1320 OF 2007

The Commissioner of Income Tax-IV,
60/61 Praptikar Sadan Annex
Building, Erandwana, Karve Road,
Pune - 411 004. ..Appellant.

V/s.

Solapur District Central Co-op.
Bank Ltd., 207, Gold Finch Peth,
Solapur.

..Respondent.

Mr.Vimal Gupta for appellant.

Mr.S.N.Inamdar with Ms.Aasifa Khan for respondent.

CORAM : V.C.DAGA AND
J.P.DEVADHAR, JJ.

DATED : 16TH JUNE, 2009.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. The common question of law raised in all these appeals is,

" Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under section 80P(2)(a)(i)of the Income Tax Act, 1961 ? "

2. Mr.Gupta, learned counsel appearing on behalf of the revenue fairly stated that, the interest income earned by a co-operative bank from KVP / IVP, where investments in KVP / IVP are made from statutory reserves in compliance of any statutory provision would be income from banking business exempt under section 80P(2)(a)(i),

in the light of the decision of this Court in the case of CIT V/s. Ratnagiri District Central Co-operative Bank Ltd. reported in 254 I.T.R. 697 and several decisions of the Apex Court including the decision in the case of CIT V/s. Karnataka State Co-operative Bank reported in 251 I.T.R. 194(S.C.).

3. Mr.Gupta, however submits that the aforesaid decisions would not apply to the facts of the present case, because in the present case, the investments in KVP / IVP are made out of voluntary reserves and the investments are not made out of statutory reserves in compliance of any statutory provision.

4. The basic argument of Mr.Gupta is that the Tribunal committed an error in relying upon the decision of the Apex Court in the case of C.I.T. V/s. Nawanshahar Central Coop. Bank Limited (289 ITR 6), C.I.T. V/s. Ramanathapuram Dist. Coop. Central Bank Limited (255 ITR 423) and C.I.T. V/s. Karnataka State Coop. Apex Bank (251 ITR 194), because in all those cases, the Apex Court was concerned with the income arising from investments made by co-operative banks in Government approved securities from the statutory reserves and the investments were made in compliance with the statutory provisions. Facts in the present case being altogether different, the Tribunal committed an error in upholding the contention of the

assessee by relying upon the aforesaid decisions of the Apex Court which are wholly distinguishable on facts.

5. Relying upon the decision of the Apex Court in the case of Mehsana District Central Coop. Bank Limited V/s. I.T.O. reported in 251 ITR 522 (S.C.), Mr.Gupta submitted that since the Tribunal has not considered the question as to whether the voluntary reserves were utilized in the course of the ordinary banking business, it is just and proper to set aside the decisions of the Tribunal and remand the matter for denovo consideration.

6. We see no merit in the above contentions. This Court in the case of Ratnagiri District Central Cooperative Bank Limited (supra) after considering various provisions of the Maharashtra Cooperative Societies Act, 1960 and the Banking Regulation Act, 1949 has held that the investments made by a Cooperative Bank in IVP out of the funds generated from the banking business would have direct and proximate connection with or nexus with the earning from banking business and attract the provisions of Section 80P(2)(a)(i) of the Act. In other words, this Court in the above case has held that the interest income earned by a Cooperative Bank from IVP would be income from banking business, if the investment in IVP represented the funds generated from the banking business. The said decision has been

upheld by the Apex Court by dismissing the Special Leave Petition filed by the revenue [see 256 ITR (St) 48 (S.C.) and 260 ITR (St) 272 (S.C.)].

7. Thus, it is clear that investment in KVP / IVP by a co-operative bank is a permissible banking business and for availing deduction under section 80P(2)(a)(i) of the Act, the co-operative bank has only to show that the investment in KVP / IVP have been made from the funds generated from the banking business. Whether the investments in KVP / IVP have been made out of statutory reserves or non statutory reserves is wholly irrelevant, so long as the funds in the statutory reserves or the non-statutory reserves are the funds generated from the banking business.

8. In all these cases, it is not the case of the revenue that the amounts in the non statutory reserves of the co-operative banks were not the amounts generated from the banking business. In fact, the specific case of the revenue is that in all these cases, the surplus funds available with the bank which were not immediately needed for the banking activity were set apart in the voluntary reserves. Thus, in all these cases, deduction under section 80P(2)(a)(i) is sought to be denied not on the ground that the funds for investment in KVP / IVP were not generated from the banking business, but the

deduction is being denied solely on the ground that the investment in KVP / IVP have been made from the funds lying in the voluntary reserves.

9. As rightly contended by Mr. Inamdar, learned counsel for the assessee, the ratio laid down by this Court in the case of Ratnagiri Dist. Central Co-op. Bank Ltd. (supra) as well as the Apex Court in the cases relied upon by the Tribunal is that making investments by a bank is part of the business of banking. Therefore, to avail deduction on income from investments in KVP / IVP under section 80P(2)(a)(i) of the Act, what is relevant is that the investments in KVP / IVP are made by the co-operative banks from the funds generated from the banking business. In all the cases in hand, it is not the case of the revenue that the amounts in the voluntary reserves did not represent the funds generated from the banking business. In these circumstances, the decision of the the Tribunal in holding that the interest income from KVP / IVP was from the business of banking eligible for deduction under section 80P(2)(a)(i) of the Act cannot be faulted.

10. Strong reliance was placed by the counsel for the revenue on the decision of the Apex Court in the case of Mehsana District Central Co-op. Bank Ltd. (supra). That decision has no relevance to the facts of the

present case. In that case, there was dispute as to whether the voluntary reserves were utilised in the course of the ordinary banking business and, therefore, the matter was remanded back to ascertain as to whether the voluntary reserves were utilised in the course of its ordinary banking business. In the present case, there is no dispute that the voluntary reserves have been utilised to purchase KVP / IVP and this Court in the case of Ratnagiri District Central Co-op. Bank Ltd. (supra) has held that the investment in KVP / IVP by a bank is attributable to banking business. Therefore, the decision of the Apex Court in the case of Mehsana Dist. Central Co-op. Bank Ltd. (supra) does not support the case of the revenue.

11. It was contended that where the co-operative banks withdraw the surplus amount from the circulating or working capital and keep them in voluntary reserves, then it would mean that these surplus amounts are not immediately needed for the banking business. In such a case, it is contended that investing the surplus amounts in the voluntary reserves in KVP / IVP for a long period of 5 years cannot be said to be during the course of banking business. There is no merit in the above argument, because, the very same argument advanced by the revenue in the case of Karnataka State Co-operative Apex

Bank (supra) have been rejected by the Apex Court by holding that there is nothing in the phraseology of section 80P(2)(a)(i) which makes it applicable only to income derived from working or circulating capital.

12. Therefore, in all these cases, where the surplus funds not immediately required for day to day banking were kept in voluntary reserves and invested in KVP / IVP, the interest income received from KVP / IVP would be income from banking business eligible for deduction under section 80P(2)(a)(i) of the Act.

13. In the result, there being no dispute that the funds in the voluntary reserves which were utilised for investment in KVP / IVP by the co-operative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income received by the co-operative banks from the investments in KVP / IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act.

14. All the appeals are disposed of accordingly with order as to costs.

(V.C.DAGA, J.)

(J.P.DEVADHAR, J.)