National Co-Operative Development Corporation Civil Appeal Nos. 5105-5107 of 2009 Supreme Court

Issues discussed and addressed:

Taxability of Interest Income as IFOS or PGBP and Deduction of Business Expenditure

Facts of the Case with respect to Issue No 1:

The appellant-Corporation, National Co-operative Development Corporation, was established under the National Cooperative Development Corporation Act, 1962 (hereinafter referred to as the 'NCDC Act').

The functions of the appellant-Corporation are set out in Section 9 of the NCDC Act, which is, inter alia, to advance loans or grant subsidies to State Governments for financing cooperative societies; provide loans and grants directly to the national level cooperative societies, as also to the State level cooperative societies, the latter on the guarantee of State Governments.

The funding process for the appellant-Corporation is set out in Section 12 of the NCDC Act, by way of grants and loans received from the Central Government. The appellant-Corporation is required to maintain a fund called the National Cooperative Development Fund (for short 'the Fund') which is, inter alia, credited with all monies received by it by way of grants and loans from the Central Government, as well as sums of money as may from time to time be realised out of repayment of loans made from the Fund or from interest on loans or dividends or other realisations on investments made from the Fund.

In furtherance of this, as and when surplus funds accumulated, the appellant-Corporation invested the idle funds in fixed deposits from time to time, which generated income. It may also be noted that income by way of interest on debentures and loans advanced to the State Governments/Apex Cooperative Institutions are credited to this account.

Insofar as funds are received from the Central Government, these are treated as capital receipts, and hence are not chargeable to tax. There is no dispute about this. With respect to the interest component, it is treated as taxable income and is logically taxed as "business income."

The issue which has arisen for consideration is whether the component of interest income earned on the funds received under Section 13(1), and disbursed by way of "grants" to national or state level co-operative societies, is eligible for deduction for determining the "taxable income" of the appellant-Corporation.

Held by the Authorities with respect to Issue No 1:

The first aspect which we would advert to is whether interest on loans or dividends would fall under the head of 'Income from other sources' under Section 56 of the IT Act or would it amount to income from

'Profits and gains of business or profession' under head 'D' of Section 14 of the IT Act. In terms of Section 28 of the IT Act such profits and gains of any business or profession under the head 'D' of Section 14 of the IT Act would be chargeable to income tax if the income is relatable to profits and gains of business or profession carried out by the assessee at any time during the previous year. Section 56 of the IT Act is in the nature of a residuary clause, i.e., if the income of every kind which is not to be excluded from total income under the IT Act would be chargeable under this head if it is not chargeable under Section 14 heads 'A' to 'E'.

The aforesaid aspect did not form a part of the rationale of the view taken by the AO, but the CIT(A) opined that the grants made by the appellant-Corporation undisputedly fall within its authorised business activities and, thus, even the advancing of grants from the interest income would be a revenue expense as it had not resulted in acquisition of capital assets by the appellant-Corporation and, thus, would be adjustable under Section 37(1) of the IT Act.

We are in agreement with this view taken by the High Court, as the only business of the appellant-Corporation is to receive funds and then to advance them as loans or grants. The interest income arose on account of the fund so received and it may not have been utilised for a certain period of time, being put in fixed deposits so that the amount does not lie idle. That the income generated was again applied to the disbursement of grants and loans. The income generated from interest is necessarily interlinked to the business of the appellant-Corporation and would, thus, fall under the head of 'profits and gains of business or profession'. There would, therefore, be no requirement of taking recourse to Section 56 of the IT Act for taxing the interest income under this residuary clause as income from other sources.

In our view, to decide the question as to whether a particular source of income is business income, one would have to look to the notions of what is the business activity. The activity from which the income is derived must have a set purpose. The business activity of the appellant-Corporation is really that of an intermediary to lend money or give grants. Thus, the generation of interest income in support of this only business (not even primary) for a period of time when the funds are lying idle, and utilised for the same purpose would ultimately be taxable as business income. The fact that the appellant Corporation does not carry on business activity for profit motive is not material as profit making is not an essential ingredient on account of self-imposed and innate restriction arising from the very statute which creates the appellant-Corporation and the very purpose for which the appellant Corporation has been set up.

The facts before us clearly set out that undoubtedly the amount received to be advanced as loans and grants by the appellant-Corporation from the Central Government are treated as capital receipts. We are not in

disagreement with the proposition to the extent that there can be an amount treated as a capital receipt while the same amount expended may be a revenue expenditure. In fact, to the extent grants were returned back, the CIT(A) did not allow the entire deduction as claimed for but only did so qua the amount which was disbursed as grant and never received back.

In a larger canvas the appellant-Corporation plans, promotes and makes financial programmes for the benefit of these societies and other entities to which such loans, grants and subsidies are advanced. We may say it is really in the nature of an intermediary with expertise in the financial sector to carry forward the intent of the Central Government to assist State Governments, Cooperative Societies, etc. Since this is the business activity, that is what has persuaded us to opine that the income generated in the form of interest on the unutilised capital is in the nature of business income. The objectives are wholly socio-economic and the amounts received including grants come with a prior stipulation for the funds received to be passed on to the downstream entities. This is the reason they have been treated as capital receipts. However, we are unable to opine that since this is a pass-through entity on the basis of a statutory obligation, the advancement of loans and grants is not a business activity, when really it is the only business activity. Once it is business activity, the interest generated on the unutilised capital has been held by us to be the business income. The corollary is that all expenses incurred in connection with the business are deductible.

The legal position, which emerges is that if an assessee carries on business all that is required to be seen is whether any outlay constitutes expenditure 'for the purpose of business' as used in Section 37(1) of the IT Act.

The disbursement of grants has already been held to be the core business of the appellant-Corporation. Once that requirement is satisfied, the expenditure incurred in the course of business and for the 'purpose of business', would naturally be an allowable deduction under Section 37(1) of the IT Act. The source of funds from which the expenditure is made is not relevant. It is also not really relevant as to whether the expenditure is incurred out of the corpus funds or from the interest income earned by the appellant-Corporation.

The logical conclusion is that every application of income towards business objective of the appellant-Corporation is business expenditure and nothing else. The scheme of the IT Act requires the determination of 'real income' on the basis of ordinary commercial principles of accountancy. To determine the 'real income', permissible expenses are required to be set off.

The Finance Act, 2003, inserted a new clause in Section 36 so as to provide that an expenditure not being capital expenditure incurred by a corporation or body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorised by such Act under which such corporation or body corporate was constituted or established, shall be allowed as a deduction in computing the income under the head 'profits and gains of business or profession'. The amendment had been introduced into the Act with effect from 1.4.2002. Thus prior to insertion of this sub-clause, such expenses would be permissible under the general Section 37(1) of the IT Act, which provides for deduction of permissible expenses on principles of commercial accountancy. Post amendment, such expenses get allowed under the specific section, viz. Section 36(1)(xii) after the amendment by the Finance Act, 2003.

Pesco Beam Environmental Solutions (P.) Ltd T.C. Appeal No.219 of 2020 Madras High Court

Issues discussed and addressed:

Mandatory Payment of Self Assessment of Taxes before filing appeal

Facts of the Case:

The assessment for the year under consideration namely Assessment Year 2012-13 was completed under section 143 (3) read with Section 92 (C) (A) of the Act by order dated 27-2-2016. Against certain addition was made, the assessee being aggrieved, filed an appeal before the Commissioner of Income-tax (Appeals)-VI, Chennai ('the CIT (A)' for brevity). The appeal was not considered on merits and was dismissed by the CIT (A) by order dated 31-7-2017 on the ground that the assessee has not paid the self assessment tax which the assessee had admitted before the appellate authority. Aggrieved by the same, the assessee preferred an appeal before the Tribunal. When the appeal was taken up for hearing, the assessee raised additional grounds contending that they had inadvertently offered an income of Rs. 82.37 Crores relating to inbuilt Revenue which was neither received nor accrued. The Tribunal upon considering the grounds of appeal raised by the assessee at the first instance as well as additional grounds, rejected the same by holding that the self assessment tax was admittedly not paid and there is no satisfactory evidence to substantiate the assessee's plea that the assessee has wrongly computed the income.

Held by the Authorities:

As to whether the CIT (A) ought to have granted time to the assessee to pay the self assessment tax, is concerned, if we look at Sub Section 4 of Section 249 of the Act, it is made clear that unless and until, the assessee has paid the income tax due on the income returned by him, no appeal under Chapter XX will be admitted. The Statute does not neither give any discretion to the appellate authority to entertain an appeal

nor extend the time for paying the self assessment tax, except in respect of cases falling under clause b of Section 249 (4) in terms of proviso under the said Section.

Though such a ground raised in the appeal memorandum filed before the Tribunal, the assessee appears to have been more interested in canvassing the additional grounds with regard to offering a sum of Rs. 82.37 Crores relating to inbuilt revenue which according to the assessee was an inadvertent income. In our considered view, the Tribunal has rightly held that there is no satisfactory evidence placed before it to substantiate the assessee's plea that they wrongly computed the admitted income. Thus in the light of the above discussion, we find there is no Substantial Questions of Law much less Substantial Questions of Law arises for consideration in this Appeal.

Solan District Truck Operators Transport Co-op. Society ITA No. 3 of 2020 Himachal Pradesh High Court

Issues discussed and addressed:

Interest on delayed refund of tax

Facts of the Case:

The case of the appellant is that the respondent Society-assessee filed return of income for the assessment year 1996-97 on 25-6-1997, which was processed under section 143 (1) of the Income Tax Act, (for short 'the Act'). The further case of the appellant is that for the assessment years 1996-97 to 1999-2000, certain refunds arising out of excess TDS were issued in favour of the assessee. However, interest under section 244-A of the Act was not paid in respect of some of the refunds. The CIT vide its order dated 24-10-2008 directed the Assessing Officer to pay interest to the assessee from July 1997 to February 1999 on refund of RS. 2,85,658/-. Thereafter, the Assessing Officer issued refund of Rs. 1,82,165/- on 31-1-2009. It is further averred in the appeal that subsequently, the assessee filed an application under section 154 of the Act on 15-2-2010, requesting therein to allow interest on delayed interest on the refund which was rejected by Assessing Officer.

Held by the Authorities:

The interest on the delayed refund becomes part of the principle amount and the delayed interest includes the interest for not refunding the principle amount. Accordingly, it also includes the interest on the delayed refund.

Judgments Relied upon by the Authorities:

Commissioner of income Tax v. HEG Ltd Supreme Court

Jairam G Kimmane IT APPEAL NO. 2026 (BANG.) OF 2019 Bangalore ITAT Against Assessee

Issues discussed and addressed:

Agricultural land

Facts of the Case:

In the course of assessment proceedings, the AO noticed that assessee received a sum of Rs. 2 crores on sale of 0.40.0 hectares (*ha*) of land at Agarsure Village, Alibaug Taluk, Raigad Dist., Maharashtra (hereinafter referred to 'the property' or 'land'). Since capital gain on sale of the property had not been disclosed in the return of income, the AO called upon the assessee to explain why the same was not declared. The assessee took a stand that the property was an agricultural land and therefore was not a capital asset and capital gain on sale of agricultural land was not exigible to tax.

The AO took the view that to be called an agricultural land, the land must have been used for Agricultural purposes. According to the AO, the Assessee did not establish use of the land for agricultural purpose and other circumstances showed that the Assessee's land was not agricultural land and was sold as a capital asset and not as agricultural land and hence the gain on sale of the property was chargeable to tax as income under the head "Capital Gain".

Held by the Authorities:

There is no dispute in this appeal that the property that was sold by the Assessee did not fall within clauses of Sec.2(14)(*iii*)(*a*) or (*b*) of the Act. The mere fact that a land is situate in an area outside the area referred to in clause (*a*) or (*b*) of sec.2(14)(*iii*) of the Act, does not automatically make it an Agricultural land and such land has to be used for agricultural purposes as laid down in several judicial pronouncements.

In the present case, the claim of the Assessee that agricultural operations were carried out over the property and the property was actually used for agricultural purpose was sought to be established by relying on the classification of the property in revenue records. The Revenue contends that there is no evidence of the Assessee having carried out agricultural activities over the property. The Assessee has not established as to how agricultural activities were carried out and what expenses were incurred in carrying out agricultural operations over the property. The revenue also contends that the Assessee has not declared any income from Agriculture from the property in question. There is no evidence of availability of Agricultural produce and how they were dealt utilized. The Revenue also contends that the burden of proof that the property was agricultural land at the time of transfer to claim exemption was on the Assessee. As already observed, the question whether the land was Agricultural land has to be decided on facts of each case and decided cases

are only guidelines to be kept in mind. Facts and all the circumstances are to be considered as a whole and an overall view is to be taken in deciding whether the land was an agricultural land. In a given case, large number of circumstances may be indicative of agricultural character, but one circumstance may outweigh all of them and on its basis the land would be held to be a non-agricultural land.

Factors in favour of the Assessee:

a. The land in question is entered as agricultural land in revenue records and is assessed as such.
b. The land is not converted to non-agricultural user.
c. The Assessee as well as the purchaser are Agriculturalist.

Factors against the Assessee:

a. The land is too small for carrying out agricultural operations, considering the fact that the Assessee is basically a trader in betel nuts and carries on agricultural operation in Chikamagalur-Shimoga, a place far away from the land at Agarsure.
b. The land is sold at a price comparable to the price fetched by building sites.
c. The price is such that no bona fide agriculturist would purchase the same for genuine agricultural operations.
d. No Evidence of Agricultural operations carried out have been placed on record. The Assessee was owner of the property in question for 16 years. The evidence filed regarding use of the land for agricultural purpose are sporadic not sufficient to discharge the burden on the Assessee.

If one considers the facts and circumstances of the present case as a whole and an overall view is to be taken in deciding whether the land was an agricultural land, one would come to a conclusion that the property cannot be considered as Agricultural land. Though the circumstance that the land is classified as Agricultural in the revenue records is in favour of the assessee, in our view, the other circumstances pointed out above outweighs all of the circumstances in favour of the Assessee and on the basis of those circumstances, we are inclined to conclude that the property was not an agricultural land. We therefore find no merits in this appeal and hence dismiss the same.

Judgments Relied upon by the Authorities:

1. Smt. Sarifabibi Mohamed Ibrahim 204 ITR 631 (SC) 2. Siddharth J. Desai 139 I.T.R. 628, (Gu(j

3. V.A. Trivedi 172 I.T.R. 95, a Division Bench of the Bombay High Court

Belvedere Tower Condominium Association ITA No. 1427/Del/2018 Delhi ITAT

Issues discussed and addressed:

Deduction of Interest Expense u/s 57

Facts of the Case:

The assessee is a resident welfare association (RWA) and filed its return of income on 6-8-2014 declaring the total income at Rs. 13,41,806.

The assessee has received an amount of Rs. 34, 84,631 on account of interest bearing maintenance security kept with banks and savings bank interest and has paid Rs. 23,98,582 to members being interest bearing maintenance security. The net interest income of Rs. 10,92,439 was called in the income-tax return as 'Interest income.'

The assessing officer, in the order passed under section 143(3) dated 13-12-2016 disallowed the amount of Rs. 23,98,582 being interest paid to members from the interest received of Rs. 34,84,631 on the ground that the deduction is not allowed as per section 57(iii) of the Income Tax Act.

Held by the Authorities:

There is no dispute to the fact that assessee is a registered society form with the basic object to provide for maintenance and repair of common arrears and facilities of the building to its members. There is no dispute about the maintenance charges being collected and utilised towards maintenance.

The dispute is regarding the interest income earned by it on deposit with the Bank made out of the security deposit obtained from its members. The assessing officer has held that the interest earned on it is not covered by the principle of mutuality.

The alternative contention of the assessee that interest paid by it on such security deposit is to be set off against interest income earned on such deposit has also been rejected by the assessing officer. After going through the facts of the case we are of the considered opinion that the assessing officer has gone wrong in rejecting this contention of the assessee society. As rightly pointed out by the learned AR that the assessee society has obtained the interest bearing maintenance security from the flat owners and such security deposit has been deposited with the Bank on which interest has been earned. Thus, there is a direct nexus in earning interest on such fixed deposit with Bank and payment of interest on the security deposit to the flat owners. The interest expenditure has been incurred wholly and exclusively for earning such interest income on Bank deposit.

The assessee society has paid interest each one after deducting tax at source. Thus, it is not a case of exemption on the principle of mutuality. Such interest paid by the assessee society is taxable in the hands of the Apartment owner. In view of these facts, we are of the view that interest expenditure is to be set off against the interest income. As regards the assessing officer's contention that interest paid to member is not eligible deduction in the case of AOP under section 40 (BA), we have perused the said section. This clause excludes registered society from its applicability. Moreover, as rightly contended by the learned AR section 40 (ba) is applicable while computing business income. This clause is not applicable while computing income from other sources. There is no prohibition in section 57 (iii) under which deduction of interest is eligible to the assessee society.

Judgments Relied upon by the Authorities:

Belaire Condominium Association v. ITO ITO in [ITA No. 655/Del/2018,

Mahendra Singh Meel ITA No. 55/JP/2018 Jaipur ITAT

Issues discussed and addressed:

Deduction of Interest Expense u/s 57

Facts of the Case:

The assessee is an Individual and filed his return of income on 21-3-2015 declaring total income of Rs. 6,89,140 which includes income from house property, business and other sources. During the assessment proceedings, the assessing officer noted that the assessee has shown interest income as well as interest payment. From the details, the assessing officer noted that the assessee has received interest income at the maximum rate of 18% whereas in one of the payments of interest the assessee has paid the interest at 20%. Accordingly, the assessing officer restricted the interest paid against the interest received by applying the rate at 18% instead of 20% paid by the assessee in respect of one party.

Held by the Authorities:

The assessing officer has not doubted the genuineness of the payment and also not given a finding that the payment is either inflated by the assessee. Once the interest is paid to a third party which is not related to the assessee, then it is a commercial decision of the assessee to take the funds at an interest rate which may be higher than the normal prevailing rate due to pressing circumstances or urgent need of funds. When the assessing officer has not disputed the correctness of the payment and genuineness of the transaction, then merely because the payment of interest to one of the parties is higher than the average earning of interest, the same cannot be a reason for disallowing the claim of interest expenditure. The only requirement for

allowing the deduction under section 57(iii) is that the expenditure has been incurred wholly and exclusively for the purpose of earning the income.

Judgments Relied upon by the Authorities:

1 Rajendra Prasad Moody (1978) 115 ITR 519 (SC) 2. Pankaj Munjal Family Trust 2010) 326 ITR 286 (P&H)