

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos. 173 & 174/Ind/2024
Assessment Years: 2014-15 & 2015-16

ITO Ujjain		<u>बनाम/</u> Vs.	M.P. Police Sakh Sahakari Sanstha Maryadit, Dewas Road, Nagziri, Ujjain
(Revenue)			(Respondent)
PAN: AABAM661C			
Assessee by	Shri Milind Wadhwani, CA		
Revenue by	Shri Ashish Porwal, Sr. DR		
Date of Hearing		10.07.2024	
Date of Pronouncement		12.07.2024	

आदेश / O R D E R

Per Vijay Pal Rao, J.M.

These two appeals by the revenue are directed against the two separate orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi both dated 30.12.2023 for the Assessment Years 2014-15 and 2015-16 respectively.

2. The revenue has raised following grounds of appeal:

ITA No.173/Ind/2024 A.Y. 2014-15

1. *The Co-operative society is entitled to claim deduction u/s 80P(2)(d) on the interest income received on FDR/Deposits kept in the bank or other institutions and thus is required to be treated as income from other sources.*
2. *The AO had no where mentioned in assessment order u/s 143(3) dated 15.06.2017 for A.Y. 2015-16 issue with regards to allow ability to sec. 80P(2)(d) to the assessee and therefore, reopening of assessment is valid also the validity of notice u/s 147 was not challenged by the assessee during the re-opened proceeding u/s 147.*

ITA No.174/Ind/2024 A.Y 2015-16

1. *The Co-operative society is entitled to claim deduction u/s 80P(2)(d) on the interest income received on FDR/Deposits kept in the bank or other institutions and thus is required to be treated as income from other sources.*
2. *The AO had no where mentioned in assessment order u/s 143(3) dated 15.06.2017 for A.Y. 2015-16 issue with regards to allow ability to sec. 80P(2)(d) to the assessee and therefore, reopening of assessment is valid also the validity of notice u/s 147 was not challenged by the assessee during the re-opened proceeding u/s 147.*

3. The Ld. AR has raised the question of maintainability of these appeals due to low tax effect of Rs.3,23,712/- and Rs.3,13,567/- respectively in view of CBDT circular No.3/2018, Circular No.17/20198 and latest Circular No.5/2024 dated 15.3.2024 and submitted that the appeals filed by the revenue are not maintainable. On the other hand Ld. DR has filed comments of A.O that due to tax audit objection in the case of the assessee which was accepted by the A.O while reopening the assessment, despite tax effect in both the years which are below the prescribed monetary limit these two cases fall under the exception in para No.10(c) of the Circular No.3/2018 and 17/2019. Thus, the Ld. DR has submitted that these cases fall in the exception and

should be decided on the merits instead of low tax effect. To counter the stand of the Department Ld. AR has submitted that the latest circular No.5/2024 has an effect of supersession of the earlier circulars issued by the CBDT and the exceptions as provided in the earlier circulars have been modified as per the new circular which does not have an exception with regard to the audit objections as it was there in the earlier circulars. Thus, the Ld. AR submitted that the appeals of the department are not maintainable and liable to be dismissed. He has also relied upon Circular No.18/2015 dated 02.11.2015 whereby the CBDT has clarified that in view of the judgment of **Hon'ble Supreme Court in case of CIT V/s Nawanshahar Central Cooperative Bank Ltd 160 Taxman 48 (SC)** the income arising from the investments made by the cooperative banks as well as commercial banks is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession" and therefore, is eligible for claiming deduction u/s 80P(2)(a)(i) of the Act. The Board has decided that no appeal may be filed on this ground by the officers of the Department and the appeals already filed, if any, on this ground before the Courts/Tribunal may be withdrawn/nor pressed upon. Thus, the Ld. AR has submitted that even otherwise when the CIT(A) has allowed the claim of deduction u/s 80P(2)(a)(i) in respect of interest income which is in conformity with the judgment of Hon'ble Supreme Court as well as CBDT circular No.18/2015 (supra) the department ought to have not filed these appeals and now shall withdraw or not press upon these appeals.

4. We have considered rival submissions as well as relevant material on records. The Assessing Officer has not disputed the fact that the tax effect for these two appeals are only Rs.3,23,712/- and Rs.3,13,567/- for the Assessment Year 2014-15 and 2015-16 respectively. Thus the tax effect in these two appeals are below the monetary limit prescribed in the Circular No.3/2018 as well as Circular No.17/2019 which is Rs.50 lakh for filing appeal before the Tribunal. The A.O in the report dated 02.07.2024 has taken a stand that though the tax effect is below the prescribed monetary limit provided in the above said circulars of CBDT but these cases fall under exception provided in para no.10(c) of Circular No.3/2018 being case of audit objections. It is pertinent to note that the CBDT has issued the latest circular No.5/2024 dated 15.03.2024 and para 2 & 3 of the above circular reads as under:

“2. In supersession of the above referred communications issued by CBDT, the following may be noted in respect of departmental appeals to be filed before ITATs and HCs and SLPs/ appeals before SC:

3.1 Monetary limits given in paragraph 4 with regard to filing appeal/SLP shall be applicable to all cases including those relating to TDS/TCS under the Act with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or

b. Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or

c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGCI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or

d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or

conviction order has been passed and the same has not been compounded, or

e. Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or

f. Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.

g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or

h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or

i. Where mandated by a Court's directions, or

j. Writ matters, or

k. Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or

l. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-

i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or

ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise

m. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

3.2 Attention is drawn to Circular No. 8/2023 issued vide F.No. 279/Misc./M-93/2018-ITJ(Pt.) dated 31.05.2023 in respect of deferral of appeals u/s 158AB of the Act. Exceptions in such cases operate as follows:

a. When judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' is contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.

b. If the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality".

5. Therefore, in this latest CBDT Circular there is no exception to the monetary limit regarding any audit objection. It is settled position that the CBDT circulars prescribing monetary limits for filing the appeals by the Department before the Tribunal/Hon'ble High Court/Hon'ble Supreme Court are also applicable on the pending appeals on the date of circular. The **Hon'ble Bombay High Court in the case of CIT V/s Madhukar K Inamdar HUF 318**

ITR 149 has held in para 10 to 13 as under:

***“10.** At this juncture, it will be relevant to note that the CBDT has also issued a Circular on 5-6-2007 directing the Department to examine all Appeals pending before this Court on case to case basis with further direction to withdraw cases wherein the criteria of monetary limits as per the prevailing instruction is not satisfied, unless the question of law involved or raised in Appeal or referred to the High Court for opinion is of a recurring nature required to be settled by the higher Court.*

***11.** The aforesaid Circular makes it clear that on the date of issuance of Circular, prevailing instructions fixing monetary limit will hold good even for pending cases. Adopting the same approach, we are of the considered view that the CBDT Circular dated 15-5-2008 would be very much applicable to the pending cases requiring department to withdraw cases wherein the tax effect is less than the prescribed monetary limits.*

***12.** At this juncture, it will also be relevant to mention that it was necessary for the CBDT to put a caveat, while issuing instructions vide its Circular dated 5-6-2007, that the Appeals involving substantial question of law of recurring nature should not be withdrawn since provision like section 268A of the Income-tax Act was absent. Now, in view of insertion of the provision of section 268A by the Finance Act, 2008 with effect from 1-4-1999 in the Income-tax Act, 1961, no prejudice could be caused to the revenue even if the cases involving legal issues of recurring nature are withdrawn, since the newly inserted provision takes care of the adverse eventuality which could have been put against the revenue. The section 268A of the Act, reads as under :—*

"268A. Filing of appeal or application for reference by income-tax authority.—

(1) *The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.*

(2) *Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—*

(a) the same assessee for any other assessment year; or

(b) any other assessee for the same or any other assessment year.

(3) *Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.*

(4) *The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.*

(5) *Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly."*

13. *In the aforesaid backdrop, we are of the considered view that the Circular dated 15-5-2008 would be applicable to the cases pending before this Court either for admission or for final disposal and that it is binding on revenue. In this view of the matter, all these Appeals, having tax effect less than Rs. 4 lakhs, are dismissed with no order as to costs".*

6. Accordingly in view of the judgment of Hon'ble Bombay High Court in case of **CIT V/s Madhukar K Inamdar HUF (supra)**, the **CBDT Circular No.5/2024** is applicable in the present appeals

filed on 27.2.2024 and consequently due to low tax effect the appeals of the revenue are not maintainable and liable to be dismissed. We order accordingly. Since the appeals of the department are dismissed due to low tax effect therefore, we do not proposed to go into the merits of the issue of allowability of deduction u/s 80P(2)(a)(i) of the Act.

7. In the result, the appeals of the revenue are dismissed.

Order pronounced in the open court on 12.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 12.07.2024
Dev/Sr. PS

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore