IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

AND

MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.538/Bang/2023
Assessment Year : 2014-15

The Raddi Sahakara Bank Niyamitha, Dharwad PAN – AAAAT3297 K	**Vs.**	The Asst. Commissioner of Income-tax, Circle-2(1), Hubballi.
APPELLANT		**RESPONDENT**

Revenue by	**:**	Ms. Neera Malhotra, CIT (DR)
Assessee by	**:**	Shri Parthasarthi and Smt. Sheetal, Advocates

Date of Hearing	**:**	14-09-2023
Date of Pronouncement	**:**	21-09-2023

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the assessee is directed against the order dated 06/06/2023 passed by the National Faceless Appeal Centre (NFAC) vide DIN and Order No.ITBA/NFAC/S/2023-24/1053578370(1) arising out of the order dated 12/01/2018 passed by the ld.DCIT, Central Circle-2(1) u/s 143(3) of the Income-tax Act 1961 (the Act) for the

Assessment Year 2014-15 whereby whereunder the addition made by the ld.AO was confirmed.

2. At the time hearing of the instant appeal, it was argued by the ld.AR appearing for the assessee that the assessee did not receive any notice issued by the First Appellate Authority. Moreso, the impugned ex-parte order was passed without considering the evidences/materials furnished before the respective appellate authority physically before transfer of the matter to the National, Faceless Assessment Centre. In this regard, he has relied upon the letter written by the appellant dated 15/05/2018 to the ld.CIT(A), Navanagar, Hubli whereby whereunder all relevant documents in support of the case made out by the assessee were duly submitted which was further acknowledged by the Office of the ld.CIT(A), Navanagar, Hubli. The entire details of such relevant documents claimed to have been filed before the CIT(A) physically were also annexed to the paper book filed before us as pointed out by the ld.Sr. counsel appearing for the assessee. Under this premise, he has vehemently argued against the observation made by the ld.CIT(A) in disposing of the appeal without considering the relevant documents which ought to have been considered while disposing of the issue on merit. In that view of the matter, the ld.AR prayed for quashing of the ex-parte impugned order passed by the

National Faceless Assessment Centre as the same suffers from the violation of principle of natural justice.

3. The ld.AR further submitted before us that the issue involved in this particular case as to whether the assessee has deducted tax at source on payment made to members as already been duly considered by the co-ordinate bench of this Tribunal in assessee's own case for the assessment year 2010-11 and 2011-12 in SP. No.51 and 52/Bang/2015 and in ITA Nos.308 & 209/Bang/2015. A copy of the said order is also annexed in the paper book filed before us. It was pointed out that the issue has been decided in favour of the assessee relying upon the order passed by different benches of ITAT, wherein the assessee was also cooperative bank and the identical issue, which has been settled in favour of the assessee was duly taken into consideration. He also further relied on the order passed by the coordinate bench in assessee's own case in ITA No.1245/Bang/2016 for assessment year 2013-14 wherein on the same set of facts, the coordinate bench has been pleased to dismiss the appeal preferred by the revenue upholding the order of the First Appellate Authority in deleting the disallowance made u/s 40A(ia) of the Act for non deduction of tax on interest paid to the members. A copy has also been annexed to the paper book page No.47, filed before us.

4. On the contrary, the ld.DR submitted that the notices fixing the date of hearing were duly issued to the assessee on 4 occasions as mentioned in the order passed by the ld.CIT(A) but without any result. Hence, having no other alternative, the ld.CIT(A) proceeded with the matter ex-parte and decided the issue by confirming the order of addition made by the ld.AO in the absence of any assistance rendered by the appellant. She, therefore supports the order passed by the ld.AO.

5. We have heard the rival submissions made by the respective authorities, we have also perused the relevant materials available on record including the orders passed by the authorities below and the orders passed by the co-ordinate benches in favour of assessee and other benches on the identical issue. Upon perusal of the entire set of documents, we find that the impugned order is ultimately an ex-parte one. The documents furnished before First Appellate Authority physically on 15/5/2018 were also not taken into consideration by the ld.CIT(A), Faceless as impugned before us. This is clearly a violation of the principle of natural justice. The deliberation on this documents should have been made by the authorities below while dealing with the issue involved in the appeal preferred before the First Appellate Authority and in the absence of the same, the entire proceedings initiated by the ld.CI(TA) is found to be bad in law and requires re-adjudication of the same. We, therefore, find it fit and proper

to direct the ld.AO to consider the issue afresh upon consideration of the relevant evidences already been placed by the assessee or any other evidences appellant chooses to file at the time of hearing of the matter. We further note that we have considered the order passed in assessee's own case by the coordinate bench for assessment year 2010-11 and 2011-12. We find while dealing with the issue that the co-ordinate bench has been pleased to observe as follows:-

> *"17. We also find that the CBDT in Circular No.9 dated 11.9.2002 clarified certain aspects which are relevant to the present case. The same reads thus:*
>
> *"Circular No.9 of 2002*
>
> *"Sub : Tax deduction at source under section 194A of the Income-tax Act, 1961 —Applicability of the provisions in respect of income paid or credited to a member of co-operative bank—Reg. 1110912002 TDS 194A*
>
> *Under section 194A of the Income-tax Act, 1961, tax is deductible at source from any payment of income by way of interest other than income by way of interest on securities. Clause (v) of sub-section (3) of section 194A exempts such income credited or paid by a co-operative society to a member thereof from the requirement of TDS. On the other hand, clause (viia) of sub-section (3) of section 194A exempts from the requirement of TDS such income credited or paid in respect of deposits (other than time-deposits made on or after 1st July, 1995) with a cooperative society engaged in carrying on the business of banking.*
>
> *2. Representations have been received in the Board seeking clarification as to whether a member of a cooperative bank may receive without TDS interest on time deposit made with the co-operative bank on or after 1st July, 1995. The Board has considered the matter and it is clarified that a member of a co-operative bank shall receive interest on both time deposits and deposits other than time deposits with such co-operative bank without TDS under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section. The provisions of clause (viia) of the said subsection are applicable only in case of a non-member depositor of the co-operative bank, who shall*

receive interest only on deposits other than time deposits made on or after 1st July, 1995 without TDS under section 194A.

3. A question has also been raised as to whether normal members, associate members and sympathizer members are also covered by the exemption under section 194A(3)(v). It is hereby clarified that the exemption is available only to such members who have joined in application for the registration of the cooperative society and those who are admitted to membership after registration in accordance with the bye-laws and rules. A member eligible for exemption under section 194A(3)(v) must have subscribed to and fully paid for at least one share of the co-operative bank, must be entitled to participate and vote in the General Body Meetings and/or Special General Body Meetings of the co-operative bank and must be entitled to receive share from the profits of the co-operative bank.

18. It can be seen from para-2 of the Circular referred to above that the CBDT has very clearly laid down that Co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source. The above interpretation of the provisions by the CBDT which is in favour of the Assessee, in our view is binding on the tax authorities.

19. In the case decided by ITAT Panaji Bench in ITA No.85/PN/2013 for AY 09-10 in the case of The Bailhongal Uraban Co-op Bank Ltd. Vs. JCIT order dated 28.8.2013, the tribunal proceeded on the footing that the aforesaid circular has been quashed by the Hon'ble Bombay High Court in the case of The Jalgaon District Central Co-operative Bank Ltd. Vs. Union of India 265 ITR 423 (Born) and therefore chose to follow the decision rendered by Pune ITAT SMC in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra). In our view the Hon'ble Bombay High Court in the case of Jalgaon District Central Cooperative Bank Ltd.'s case was dealing with a case of challenge to para-3 of CBDT Circular No.9 dated 11.9.2002 which tried to interpret the word "member" as given in Sec.194A(3)(v) of the Act. It is only that part of the Circular that had been quashed by the Hon'ble Bombay High Court and the other paragraphs of the Circular had no connection with the issue before the Hon'ble Bombay high Court. How could it be said that the entire circular has been quashed by the Hon'ble Bombay High Court? In our view para-2 of the Circular still holds good and the conclusion of the ITAT Pune Bench in the case of The Bailhongal Uraban Coop Bank Ltd.(supra) are not factually correct. Consequently, the conclusions drawn in the aforesaid decision also contrary to facts and hence cannot be considered as precedent.

20. The learned counsel for the Assessee has brought to our notice that the ITAT Vishakapatnam Bench in the case of The Visakhapatnam

Co-operative Bank ITA No.5 and 19 of 2011 order dated 29.8.2011 has held that co-operative societies carrying on banking business when it pays interest to its members on deposits it need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act. Similar view has also been expressed by the Pune Bench of the ITAT in the case of Ozer Merchant Co-operative Bank ITA No.1588/PN/2012 order dated 30.10.2013. We may add that in both these decisions the discussion did not turn on the interpretation of Sec.194A(3)(i)(b) of the Act vis-a-vis Sec.194A(3)(v) of the Act. It is thus clear that the preponderance of judicial opinion on this issue is that cooperative societies carrying on banking business when it pays interest to its members on deposits need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act.

21. For the reasons given above, we hold that the Assessee which is a co-operative society carrying on banking business when it pays interest income to a member both on time deposits and on deposits other than time deposits with such co-operative society need not deduct tax at source under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section."

6. We further find that the order passed by the Co-ordinate Bench in Asst. Year 2013-14, the following observation was made:-

"7. Having considered the rival submissions gas well as the relevant material on record, we note that co-ordinate Bench of this Tribunal in assessee's own case for the Assessment Years 2010-11 & 2011-12 in 1TA Nos.368 & 369/Bang/2015 vide order dt.10.07.2015 has considered and decided this issue in paras 13 to 15 as under :-

13. We have heard the rival submissions. At the time of hearing of the appeal, it was brought o our notice by the learned counsel for the Assessee that the Bangalore Bench of TAT in the case of Bagalkot District Central Co-op Bank, Vs. JCI T (2014 i 48 Taxmann. com 117 (Bangalore- T rib) held that co-operative societies carrying on banking business while paying interest to members on time deposits and deposits other than time deposits need not deduct tax at source u/s194-A of the Act by virtue of exemption granted ufs.194A(3)(v) of the Oct. The learned DR relied on the orders of the revenue authorities.

14. We have considered the rival submissions. This tribunal in the case of Bagalkot District Central Co-operative Bank (supra) dealt with identical issue and identical stand taken by the revenue and the Assessee in the case of co-operative society engaged in banking business and have upheld identical order of CIT(A). The relevant observations of the Tribunal in this regard were as follows:-

"15. We have given a very careful consideration to the rival submissions. We are of the view that the submissions made by the learned counsel for the Assessee deserves to be accepted. As rightly contended by him Sec.194A(3)(i)(b) of the Act is a provision which mandates deduction of tax at source by a cooperative Society carrying on the business of banking, where the income in the form of interest which is paid by such society is in excess of ten thousand rupees. Sec.194A(3)(v) of the Act provides that tax need not be deducted at source where the income in the form of interest is credited or paid by a cooperative society to a member thereof or to any other cooperative society. This provision therefore applies to all cooperative societies including co-operative society engaged in the business of banking. It is not possible to exclude co-operative society engaged in the business of banking from the provisions of Sec.194A(3)(v) of the Act on the ground that the same is covered by the provisions of Sec.194A(3)(i)(b) of the Act. Sec.194A(3)(v) of the Act refers to payment by a co-operative Society to a member and payment by a co-operative society to non-member would continue to be governed by the provisions of Sec.194A(3)(i)(b) of the Act. Similarly u/s.194A(3)(viia)(b) interest on deposits other than time deposits even if the payment is made to a non-member by a co-operative society, the cooperative society need not deduct tax at source. Thus this section carves out another exception to Sec.194A(3)(i)(b) of the Act. We do not think that any of the above provisions can be called a general provision and other provisions called specific provisions. Each provision over-lap and if read in the manner as indicated above, there is perfect harmony to the various provisions. We do not agree with the view expressed by the Pune ITAT SMC in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra) when it says that Co-operative society as mentioned in cl. (v) is a general species, whereas the other five categories of co-operative societies which are specifically referred to in other provisions are specific co-operative societies. The further conclusion in the said decision that the term 'co-operative society' in cl. (v) of s. 194A(3) has to be interpreted as co-operative society other than co-operative bank, is again

unsustainable. The law is well settled that by a process of interpretation one cannot add on words that are not found in the text of the statute. Such a course is permitted only when there is "causus omisus". We do not think that the provisions of Sec.194A(3)(v) suffers from any causus omisus as has been interpreted by the ITAT Pune Bench SMC.

16. We are also of the view that the decision of the Hon'ble Kerala High Court in the case of Moolamattom Electricity Board Employees Co-op Bank Ltd. (supra) supports the plea of the Assessee before us. The petitioners in that case were primary credit societies registered under the Kerala Co-operative Societies Act. In view of the specific provisions of Sec.194A(3(viia) of the Act, they claimed that they need not deduct tax at source on interest paid. It was submitted by the petitioner that subs.194A(3)(v) deals with such income credited or paid by a cooperative society to a member whereas sub-s. (3)(viia)(a) provides a total exemption to deposits with the primary credit society. The Hon'ble Kerala High Court accepted their plea and in their judgment have observed that Sec.194A (3)(i) exemption limit of Rs. 10,000 to interest paid on time deposits with cooperative societies engaged in carrying on business of banking is allowed but that does not mean that all co-operative societies who have credited or paid exceeding Rs. 10,000 are liable to deduct tax at source. The Court held that co-operative society engaged in carrying on business of banking and primary credit societies stand on different footing and belong to different class. That does not mean that Sec.194A(3)(v) of the Act is applicable only to Cooperative Societies other than co-operative societies carrying on the business of banking as observed in para-37 of its judgment the Pune ITAT in the case of Bhagani Nivedita Sah Bank Ltd. (supra). In fact in para-2 of Circular No.9 dated 11.9.2002, the CBDT has very clearly laid down that Co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act.

17. We also find that the CBDT in Circular No.9 dated 11.9.2002 clarified certain aspects which are relevant to the present case. The same reads thus:

"Circular No.9 of 2002 "Sub : Tax deduction at source under section 194A of the Income-tax Act, 1961 —Applicability of the provisions in respect of income paid or credited to a member of co-operative bank—Reg.

11/09/2002

TDS
194A

Under section 194A of the Income-tax Act, 1961, tax is deductible at source from any payment of income by way of interest other than income by way of interest on securities. Clause (v) of sub-section (3) of section 194A exempts such income credited or paid by a co-operative society to a member thereof from the requirement of TDS. On the other hand, clause (viia) of sub-section (3) of section 194A exempts from the requirement of TDS such income credited or paid in respect of deposits (other than time-deposits made on or after 1st July, 1995) with a cooperative society engaged in carrying on the business of banking.

2. Representations have been received in the Board seeking clarification as to whether a member of a cooperative bank may receive without TDS interest on time deposit made with the co-operative bank on or after 1st July, 1995. The Board has considered the matter and it is clarified that a member of a co-operative bank shall receive interest on both time deposits and deposits other than time deposits with such co-operative bank without TDS under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section. The provisions of clause (viia) of the said subsection are applicable only in case of a non-member depositor of the co-operative bank, who shall receive interest only on deposits other than time deposits made on or after 1st July, 1995 without TDS under section 194A.

3. A question has also been raised as to whether normal members, associate members and sympathizer members are also covered by the exemption under section 194A(3)(v). It is hereby clarified that the exemption is available only to such members who have joined in application for the registration of the cooperative society and those who are admitted to membership after registration in accordance with the bye-laws and rules. A member eligible for exemption under section 194A(3)(v) must have subscribed to and fully paid for at least one share of the co-operative bank, must be entitled to participate and vote in the General Body Meetings and/or Special General Body Meetings of the co-operative bank and must be entitled to receive share from the profits of the co-operative bank.

F. No. 275/106/2000-IT(B)]
(2002) 177 CTR (St) 1"

18. It can be seen from para-2 of the Circular referred to above that the CBDT has very clearly laid down that Co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source. The above interpretation of the provisions by the CBDT which is in favour of the Assessee, in our view is binding on the tax authorities.

19. In the case decided by ITAT Panaji Bench in ITA No.85/PN/2013 for AY 09-10 in the case of The Bailhongal Uraban Co-op Bank Ltd. Vs. JCIT order dated 28.8.2013, the tribunal proceeded on the footing that the aforesaid circular has been quashed by the Hon'ble Bombay High Court in the case of The Jalgaon District Central Co-operative Bank Ltd. Vs. Union of India 265 ITR 423 (Bom) and therefore chose to follow the decision rendered by Pune ITAT SMC in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra). In our view the Hon'ble Bombay High Court in the case of Jalgaon District Central Cooperative Bank Ltd.'s case was dealing with a case of challenge to para-3 of CBDT Circular No.9 dated 11.9.2002 which tried to interpret the word "member" as given in Sec.194A(3)(v) of the Act. It is only that part of the Circular that had been quashed by the Hon'ble Bombay High Court and the other paragraphs of the Circular had no connection with the issue before the Hon'ble Bombay high Court. How could it be said that the entire circular has been quashed by the Hon'ble Bombay High Court? In our view para-2 of the Circular still holds good and the conclusion of the ITAT Pune Bench in the case of The Bailhongal Uraban Coop Bank Ltd.(supra) are not factually correct. Consequently, the conclusions drawn in the aforesaid decision also contrary to facts and hence cannot be considered as precedent.

20. The learned counsel for the Assessee has brought to our notice that the ITAT Vishakapatnam Bench in the case of The Visakhapatnam Co-operative Bank ITA No.5 and 19 of 2011 order dated 29.8.2011 has held that co-operative societies carrying on banking business when it pays interest to its members on deposits it need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act. Similar view has also been expressed by the Pune Bench of the ITAT in the case of Ozer Merchant Co-operative Bank ITA No.1588/PN/2012 order dated 30.10.2013. We may add that in both these decisions the discussion did not turn on the interpretation of Sec.194A(3)(i)(b) of the Act vis-a-vis Sec.194A(3)(v) of the Act. It is thus clear that the preponderance of judicial opinion on this issue is that

cooperative societies carrying on banking business when it pays interest to its members on deposits need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act.

21. For the reasons given above, we hold that the Assessee which is a co-operative society carrying on banking business when it pays interest income to a member both on time deposits and on deposits other than time deposits with such co-operative society need not deduct tax at source under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section.

15. In our view, the above decision rendered by the co-ordinate bench is squarely applicable to the facts of the present case. Respectfully following the decision of the co-ordinate bench referred to above, we set aside the orders of the lower authorities and hold that to the extent interest is paid to members of the society there is no obligation to deduct tax at source."

7. It was further pointed out by the ld.counsel appearing for the assessee that amendment to the Rule though has been made by the Finance Act, 2015 to this effect that no such deduction would be required for interest paid by a cooperative society to its members in terms of the provision of sec. 194A(3)(v) of the Act, he has relied upon the order passed by the Chennai Tribunal in ITA No.1111/Chen/2016 for Assessment Year 2012-13 in the case of Dharmapuri District Central Cooperative Bank Ltd. The copy of the said order has also been furnished before us, wherein the amendment has been held to be prospective in nature.

8. Upon considering the argument, we find that so far as the amendment made by the Finance Act 2015 is concerned, the Chennai Bench has been pleased to observe that the amendment

is prospective in nature and applicable only from 01/06/2015. The relevant observation to this effect is as follows:-

> *"It was thus held by Hon'ble Court that none of the State or Central enactments such as the Tamil Nadu Co-operative Societies Act, 1983, the Multi-State Co-operative Societies Act, 2002, the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949 and the National Bank for Agriculture and Rural Development Act, 1981 make any distinction between a co-operative society engaged in carrying on banking business and a co-operative bank. However, the amendment as brought in by Finance Act, 2015 was prospective in nature and applicable only from 01.06.2015. It is only on and from 01.06.2015, the assessee could be held liable for such TDS but not before that date. On the basis of this decision, it could be concluded that the co-operative banks have thus been taken out of the purview of beneficial exception only from 01.06.2015 and not before that. We order so. In the result, the impugned order could not be faulted with."*

9. We find substance in the submission made by the ld.Counsel for the assessee that though amendment has been made by the Finance Act 2015, the same is not applicable to the instant case, particularly taking into consideration the observation made by the Mumbai Benches. We also find that the asseseee has been able to make out a substantial case against addition made by the authorities below on the issue itself and thus, respectfully relying upon the order passed by the Co-ordinate Bench, particularly in assessee's own case on the identical issue as already discussed above, we remit the issue to the file of the ld.AO for fresh adjudication of the same on merit upon giving an opportunity of being heard to the assessee and to consider the evidence in support of the case made out by the assessee. The ld.AO is further directed to pass a speaking order

considering the ration laid down by the different Benches as indicated above on merit.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21st September, 2023

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	(MADHUMITA ROY)
Accountant Member	Judicial Member

Bangalore,
Dated, the 21st September, 2023.
/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore