Communiqué

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Inside this edition

High Court Rulings

In section 246A there is no provision of mandatory pre-deposit for admitting and entertaining appeal, High Court could not interfere with impugned intimation in writ proceedings.

Notice u/s 148 issued against a deceased person is invalid in law; proceedings against deceased's legal representatives are permissible only if initiated in compliance with section 159(2)(b)

ITAT Rulings

Section 54B not applicable where agricultural land was sold but use for agricultural purposes for two years immediately preceding date of transfer could not be demonstrated.

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Facts

The Petitioner challenges an intimation passed u/s 143(1) dt. 26-07-23 for AY 2022-23 whereby demand of approximately INR 6600 Crores was raised. The ld. counsel for the Petitioner, submits that a huge demand has been raised, and therefore, the remedy of appeal would not be an efficacious remedy, and therefore, this Court should exercise its writ jurisdiction. He further submits that prior to passing the impugned intimation order, no opportunity was given to the Petitioner, and therefore, this also raises the jurisdictional point. He further submits that on 28-03-24, an order u/s 143(3) r.w.s. 144B came to be passed by the AO accepting the return income.

It is ld. counsel for the Petitioner contentions that in view of the subsequent 143(3) order and on a reading of Section 143(4), the subject matter of 143(1) gets subsumed in 143(3) proceedings. He further points out that the Petitioner has made an application u/s 154 on 31-03-23 for rectifying the mistake which has crept in the intimation u/s143(1) and same, till today, has not been disposed of on the ground that the subject matter of 143(1) is pending before this Court in the present Petition.

Ruling

At the outset, at no point of time, HC had restrained the Respondents from adjudicating any issue in the regular assessment proceedings, and therefore, the observations made in the assessment order u/s 143(3) that since the issue of ICDS adjustment and valuation of inventory is pending before this Court, no decision about this issue has been taken, is incorrect. If the officer was of the view that our ad-interim order amounts to restraining himself from adjudicating this issue in regular assessment proceedings, then, he should have approached this Court for clarification. Secondly, the Petitioner had made an application for rectification of the intimation. The said application of the Petitioner was never decided by the AO on the ground that issue of Section 143(1) adjustment is pending before this Court. We once again clarify that we had not restrained the Respondents from passing any order to decide the rectification application filed by the Petitioner on 31-07-23. We fail to understand that in the absence of any restraint order by this Court the stand of the Respondents not to adjudicate the rectification application is misconceived. The officer ought to have adjudicated this rectification application in accordance with law.HC held that the Petitioner is at liberty to challenge the impugned intimation by filing an appeal within a period of four weeks from the date of uploading of the present order and the Appellate Authority will consider the appeal on merits without recourse to limitation, since the Petitioner was bonafide pursuing the present Petition before this Court. Further, HC also

directed to decide the rectification application within a period of two weeks from the date of uploading the present order. Before passing any order deciding the rectification application, Respondent shall give an opportunity of personal hearing to the Petitioner and thereafter shall pass a speaking order after considering the submissions. The Petition was therefore disposed of.

Source : High Court, Bombay in Fiat India Automobiles Ltd. Vs DDIT vide [2025] 170 taxmann.com 789 (Bombay) on January 15, 2025

Notice u/s 148 issued against a deceased person is invalid in law; proceedings against deceased's legal representatives are permissible only if initiated in compliance with section 159(2)(b)

Facts

The Assessing Authority received information that the Petitioner Smt. Ramanatha Gurulakshmi had huge cash deposits and the fact that during AY 2016-17, she had made transactions pertaining to immovable properties and further that she had not filed her Returns of Income declaring interest from the deposits and capital gains. A notice u/s 148 also was issued directing the petitioner to file her returns which was same went back unserved with a postal Shara 'Deceased'. The Assessing Authority after referring to Sec. 159(2)(d) made the Assessment u/s 147 r/w Sec 144, against the deceased petitioner. The Petitioner filed W.P.No.12537/2024 (T-IT) laying a challenge inter alia to the above Assessment Order & Notice of Penalty mainly on the ground that, all they were generated against a dead

person and consequently were liable to be treated as null & void and therefore could not be enforced against him, even if he is a legal representative of the deceased. The learned Single Judge agreed with this and granted relief to him. Aggrieved thereby, this Intra-Court Appeal is preferred. The Writ Petitioner who happens to be the Respondent in this Appeal is on Caveat through his counsel, who opposes the Appeal making submission in justification of the reasons of the learned Single Judge.

Ruling

Considering the above, question of continuing with fresh proceedings against the deceased which liberty is sought of by the ld. counsel for the revenue would be permissible only if proceedings could have been taken against the deceased if he had survived. The present proceedings u/s 148 are as regards the AY 2016-17, the time limit for the proceedings u/s 148 would be in terms of Section 149(1)(b) proviso. In terms of the proviso there is a bar for issuance of notice u/s 148 in a case for a relevant AY before 01-04-21 and in the present case falls within the applicability of the proviso, and proceedings would have been initiated within 31-03-23 within the outer limit of 6 years from the end of AY 2016- 17 as against the legal representative. Accordingly, at this stage while setting aside the notice u/s 148, question of granting liberty would be contrary to the mandate of time prescribed u/s 149(1) (b) proviso. HC further stated that conspicuously, there is no provision which provides for discounting the time spent during the pendency of proceedings against the deceased Petitioner while computing the limitation period for initiating the proceedings against his Legal Representatives. Therefore, Revenue cannot seek any such discount.

Source : High Court, Karnataka in ITO vs Smt. Preethi V. vide [2025] 170 taxmann.com 673 (Karnataka) on January 22, 2025

Rebate u/s 87A could be granted only from tax computed u/s 115BAC or also from tax computed under other provisions of Chapter XII; Revenue could not modify its utility to prevent petitioner from claiming rebate u/s 87A at threshold of uploading his return of income online

Facts

The revenue published a change in utility w.e.f. 05-07-24, said modification unilaterally disabled petitioner from claiming rebate u/s 87A. As a result, taxpayers, despite being statutorily eligible, were effectively deprived of their entitlements solely due to technical modifications introduced by the revenue. Pursuant to said modification, petition was filed by Chamber of Tax Consultants (petitioner) and High Court granted interim relief by directing the CBDT to issue notification for extending the due date for e-filing of the ITR to ensure that taxpayers eligible for the rebate u/s 87A were allowed to exercise their statutory rights without facing procedural impediments. Pursuant to said direction, the Board issued a notification on 31-12-24, extending the last date for furnishing returns u/s 139(4)/139(5) for the relevant AY in the case of a resident individual from 31-12-24 to 15-1-25. The petitioners made various representations to revenues on the issue of utility not providing for making a claim u/s 87A but, having failed to

get justice, approached the High Court for redressal of their grievances. It was this denial on account of the modification of the utility on and from 05-07-24, which was challenged in the present petition.

The petitioners contended that rebate u/s 87A was to be allowed not only from the tax computed u/s 115BAC but also from the tax computed following other provisions of Chapter XII unless such other provisions expressly debar them from making the claim.

Ruling

The Hon'ble High Court directed to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order directing the revenues to modify the utilities for filing of the return of income u/s 139 immediately, thereby allowing petitioner s to make a claim of rebate u/s 87A read with the proviso to section 87A, in their return of income for the AY 2024-25 and subsequent years including revised returns to be filed u/s 139(5). The issue of adjudication of eligibility of a claim u/s 87A is left to the authorities under the Act while processing the returns filed by the petitioners.

Source : High Court, Bombay in Chamber of Tax Consultants vs DGIT vide [2025] 170 taxmann.com 707 (Bombay) on January 24, 2025

Section 54B not applicable where agricultural land was sold but use for agricultural purposes for two years immediately preceding date of transfer could not be demonstrated.

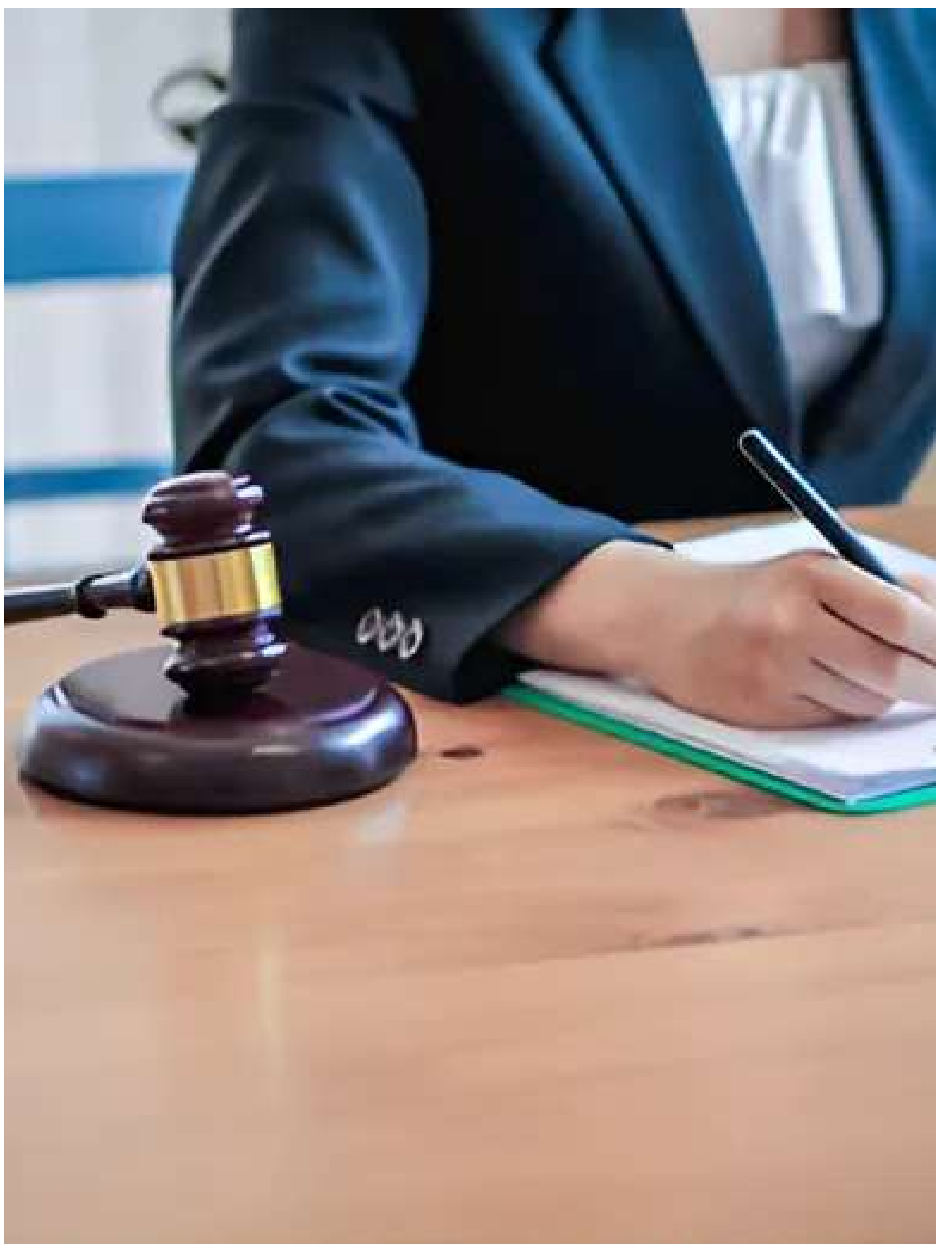
Facts

The petitioner had filed return for AY 2017-18 declaring total income of INR 3,26,550 post claiming deduction u/s 54B. The case was selected for limited scrutiny to examine the capital gain on sale of property and claim of deduction/exemption from capital gains. During original assessment proceedings, the return filed by the petitioner was accepted. However, later, on examination of records, the PCIT observed that the petitioner had sold agricultural land along with three co-owners and the petitioners share in the property was 1.73 crores. In the return, the petitioner had claimed deduction u/s 54B by way of deposit of INR 85 lakhs in the capital gains account and the petitioner also claimed to have purchased new agricultural land jointly with two other persons on 09-11-16 for a consideration of 1.98 crores, wherein the petitioners share in investment was INR 69,93,533. However, ongoing through the records, the PCIT observed certain anomalies in the petitioners claim of deduction u/s 54B, which according to PCIT were not examined by the Assessing Officer. Firstly, to claim deduction u/s 54B, the first condition is that the land which was sold was being used for agricultural purposes for two years immediately preceding the date on which the transfer took place. During 263 proceedings, the PCIT observed that petitioner submitted copies of computation of income for A.Ys. 2018-19 and 2019-20 and 07/12 abstract. However, PCIT observed that while the

petitioner had sold the land on 26-10-16, whereas the petitioner submitted computation of income for AYs 2018-19 and 2019-20 showing agricultural income offered to tax, which are for succeeding AYs and therefore, this data was not relevant. Further, the PCIT observed that the 7/12 abstract shows the land holding as on 13-03-11 and not for preceding two years from the date of sale. Therefore, PCIT was of the view that the petitioner was not able to demonstrate that this essential condition for claiming deduction u/s 54B, of land being used for agricultural purposes for immediately two years prior to date of sale of land was not substantiated by the petitioner. However, PCIT observed that the word "purchase" has a narrow interpretation as compared to the term "transfer" used in respect of original asset and therefore, strictly speaking this amount of INR 57.66 lakhs was not eligible for claim of deduction u/s 54B against which the petitioner is in appeal before the Tribunal.

Ruling

ITAT placed reliance on Ramanbhai Bholidas Patel ([2023] 148taxmann.com 92 (Ahmedabad - Trib.) and held that the petitioner has not been able to demonstrate that he is carrying out agricultural activities prior to sale of land on which deduction u/s 54B was claimed. In our view the language of Section 54B is very categorical in which it has been expressly stated that for claiming deduction u/s 54B, the capital asset should be used for agricultural purposes for two years immediately preceding the date of transfer of such agricultural land. However, ITAT



observed that PCIT has clearly brought on record certain anomalies with respect to this aspect and the AO has in our view omitted to enquire into this crucial aspect. Another aspect on which there was failure on part of the Assessing Officer to make inquiries was that a sum of INR 57,66,666 had been paid by the petitioner towards obtaining relinquishment rights from third parties, and the AO had not made due inquiries whether this amount was eligible for claim of deduction. We observe that PCIT had also obtained report from the concerned Government Authority/agency to substantiate that no agricultural activities were being carried out between the years 2014 to 2018 in respect of both the properties which was sold by the petitioner and the property which was subsequently purchased by the petitioner with respect to which deduction u/s 54B was claimed.

ITAT observed that the Counsel for the petitioner has cited several case laws, however, the same were not discussed in the present order since those judicial precedents have been rendered with regards to their own set of facts and have no bearing to the issue under consideration before us. The appeal of the petitioner is therefore dismissed.

Source : ITAT, Ahmedabad in Amartbhai Mandanbhai Desai vs PCIT vide [2025] 170 taxmann.com 614 (Ahmedabad - Trib.) on January 08, 2025

Where cash was found at residential premises of petitioner during search was sourced from past savings of family members and gift received from brothers, then, based on cumulative circumstances, impugned addition made on account of such cash was to be deleted

Facts

A search & seizure operation u/s 132(1) was carried out on 25-04-18 at the residential premises of the petitioner alongwith various business premises of the group. The AO has issued notice, and a return of income was filed declaring total income of INR 7.38 lacs. The AO has issued notice u/s 143(2) and on scrutiny of the accounts it revealed that a cash of INR 10.73 lacs was found at the residential premises of the petitioner at the time of search. The petitioner has submitted that INR 4 Lacs was brought at home by his son Shri Nitish Singla who is the Director, Avinash Agro Pvt. Ltd., and rest of the amount is savings of the family as well as INR 7 lacs received by him as a gift from his brother. He has filed documentary evidence in respect of this plea. The ld. AO has accepted the availability of INR 4 lacs from M/s Avinash Agro Pvt. Ltd. but did not accept balance explanation and made the addition of INR 6 lacs. Appeal to the CIT(A) did not bring any relief to the petitioner.

Ruling

ITAT held that if explanation is taken into consideration, based on cumulative circumstances, namely, INR10 lacs was declared to cover up such type of issues in the case of M/s Avinash Agro Pvt. Ltd.; Past savings

of the family members, and Gift received from the brothers, then it would be established that source of cash is available with the petitioner. It is difficult to establish a cash available in the family with a mathematic precision. It is to be appreciated on the normal human behaviour available in the family and if all the family members are assessable to tax, then possibility of their savings and availability of INR 10 lacs could never be denied. Therefore, ld. Revenue Officers have erred in not appreciating the facts and circumstances in right perspective and confirming the addition of INR 6 lacs. Therefore, the appeal was allowed, and addition of INR 6 lacs were deleted.

Source : ITAT, Chandigarh in Avinash Singla vs DCIT vide [2025] 170 taxmann.com 710 (Chandigarh - Trib.) on January 08, 2025

Where petitioner, a co-operative society, derived interest income from its investments held with a co-operative bank, it would be entitled to claim deduction u/s 80P(2)(d)

Facts

The Petitioner during the AY under consideration has earned the amount of INR 5.74 lacs on account of interest from investments in fixed deposits with Apna Sahakari Bank Ltd., which is a cooperative bank, wherein the Petitioner has maintained saving bank account and fixed deposits. The Petitioner therefore claimed the deduction of the said amount u/s 80P(2)(d), however, the same was denied by the CPC, vide intimation u/s 143(1). The Petitioner, being aggrieved, challenged the said addition/disallowance

before the Ld. CIT(A), however, could not succeed and therefore the Petitioner is in appeal before Tribunal.

Ruling

ITAT held that the learned CIT(A) has placed reliance upon the decision of the **Hon'ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sales Society, [2017] 83 taxmann.com 140/395 ITR 611(Karnataka)**, wherein it was held that interest earned by the Petitioner, a Co-operative Society, from surplus deposits kept with a Cooperative Bank, was not eligible for deduction u/s 80P(2)(d). ITAT find that in an earlier decision the Hon'ble Karnataka High Court in Pr. CIT v. Totagars Cooperative Sales Society, [2017] 78 taxmann.com 169/392 ITR 74 (Karnataka) held that according to section 80P(2)(d), the amount of interest earned from a Cooperative Society Bank would be deductible from the gross income of the Co-operative Society to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction undersection 80P(2)(d) in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We must, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. ITAT find guidance from the judgment of the **Hon'ble Supreme Court in CIT v. Vegetable Products Ltd., [1973] 88 ITR 192 (SC).** In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the Petitioner must be adopted". Therefore, in view of the above, ITAT uphold the plea of the Petitioner and direct the AO to grant the deduction u/s 80P(2)(d) to the Petitioner in respect of interest income earned from investment with Cooperative Banks. Accordingly, we set aside the impugned order passed by the ld. CIT(A) for the AY 2018-19. As a result, grounds raised by the Petitioner were allowed.

ITAT, Mumbai in Sai Ankur Co-operative Housing Society Ltd. vs ITO vide [[2025] 171 taxmann.com 44 (Mumbai - Trib.) on January 22, 2025

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