

Important judgements and Updates

Update No 03/2022 (Previous Colander Year 100/2021)

Peroorkada Service Co-Operative Bank Ltd In favour of Assessee (Partly) Kerala High Court

ITA NO. 323 OF 2019

Issues discussed and addressed:

Issue No 1 Section 80P the interest income earned by the assessee from investment of surplus funds with co-operative bank and treasury doesn't come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act. interest earned from Treasury is inadmissible for deduction under clause (d).

Facts of the case with respect to issue No 1:

The assessee is engaged in banking activity and providing credit facilities to its members. The assessee claimed complete deduction of income under Section 80P(2)(a)(i) of the Act and also claimed inclusion of interest income earned by the assessee from the deposit of idle funds with co-operative bank and treasury treating the said income as business income falling within the admissible ambit of deduction under Section 80P(2) (a)(i) of the Act. The Assessing Officer rejected the claims of the assessee for deduction under Section 80P(2)(a)(i) and treated the interest income as income from other sources and also that the interest income does not come within the purview of Section 80P(2)(d) of the Act the deduction claim made by the assessee has been rejected.

Held by the Authorities with respect to Issue No 1:

An institution claiming the benefit of clause (a) of sub-section (2) of Section 80P should satisfy two requirements: At the first instance, the institution has to establish that it is a Co-operative Society. In the case on hand, such requirement is satisfied by the assessee. At the second instance, the institution has to establish that the interest income earned by it is from the business of banking or by providing credit facilities to its members. In such an eventuality, the entire income earned by the assessee is entitled for deduction under Section 80P(2)(a)(i) of the Act. The interest income earned by the assessee, in the case on hand, does not straight away fall under Section 80P(2)(a)(i) of the Act commending for deduction since interest income is from deposit of idle funds.

Now, clause (d) deals with interest in respect of any income by way of interest or dividends derived by the Cooperative Societies from its investments with any other Cooperative Society, the whole of such interest income is eligible for deduction. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the

Important judgements and Updates

Update No 03/2022 (Previous Colander Year 100/2021)

income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d). The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction.

Judgments Relied upon by the Authorities with respect to Issue No 1:

The HC has succinctly tabulated the Societies and the benefits to which each one of the category of Societies is entitled to

- a. Vavveru Co-operative Rural Bank Ltd [2017] 396 ITR 371 (T&AP)

Assessee/Society regularly invests funds not immediately required for business purposes. Interest on such investments therefore cannot fall within the meaning of the expression 'profits and gains of business'. Such interest income cannot be said also to be attributable to the activities of the Society, namely carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members.

- a. The Totgar's Co-operative Sale Society Limited. Supreme Court

A Co-operative bank carrying on the business of banking is statutorily required to place a part of its funds in approved securities therefore, be attributable to the business of bank falling under the head 'profits and gains of business' and thus deductible under Section 80P(2)(a)(i) of the Income Tax Act, 1961

- a. Nawanshahar Central Co-operative Bank Ltd Supreme Court
- b. Bihar State Co-operative Bank Ltd v. CIT [1960] 39 ITR 114 (SC);
- c. CIT v. Karnataka State Co-operative Apex Bank [2001] ITR 194 (SC)
- d. CIT v. Ramanandapuram District Co-operative Central Bank Ltd [2002] 255 ITR 423 (SC)

Elsevier Information Systems GMBH ITA No. 7126/Mum/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 195 Subscription fee received towards providing access to proprietary database to Indian clients cannot be taxed as Royalty

Facts of the case with respect to issue No 1:

Assessee based at Germany was engaged in providing access to proprietary data bases, namely, REAXYS & EMBASE to its client in India pursuant to subscription agreement. Both the data base were scientific data

Important judgements and Updates

Update No 03/2022 (Previous Colander Year 100/2021)

base rendering unique search and research. Assessee earned subscription fee for providing access to database to Indian clients. AO taxed the same as royalty.

Held by the Authorities with respect to Issue No 1:

There was no material on record which could even remotely demonstrate that while allowing customer /users to access the database, non-resident assessee had transferred right to use copyright of any literary, artistic or scientific work to the subscribers. Further, from the invoices raised by assessee, it was noticed that subscription was period based and further subscriber could not even use the data stored in the database. That being the case, payment received by assessee could not be treated as royalty under article 12(3) of India-Germany DTAA.