

(2011) 01 GUJ CK 0068
In the Gujarat High Court

Case No : Special Civil Application No. 11834 of 2002 A.Y. 1991-92 to 1998-99

Commercial Co-Operative Bank Ltd.

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 139, 142, 143(3), 144(A), 147

Citation : (2011) 336 ITR 196

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : S.N. Soparkar with Mrs. Swati Soparkar, for the Appellant; Pranav G. Desai, for the Respondent

Final Decision : Allowed

Judgement

Ms. Harsha Devani, J.—This petition under article 226 of the Constitution of India challenges notices dated 30-5-2001 issued u/s 148 of the income tax Act, 1961 ("the Act") whereby the assessments of the petitioner for the assessment years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 are sought to be reopened on the ground that the income has escaped assessment within the meaning of section 147 of the Act.

2. The facts of the case stated briefly are that the petitioner is a co-operative bank. In respect of the assessment years referred to hereinabove, assessments came to be framed up to the assessment year 1999-2000. For the assessment years 1991-92, 1992-93, 1993-94, 1994-95 and 1996-97, assessment came to be framed vide order dated 31-1-2000 u/s 143(3) read with section 147 of the Act. In respect of the assessment year 1995-96, the assessment came to be framed vide order dated 24-3-1998 u/s 143(3) read with section 144A of the Act. For the assessment year 1997-98, assessment came to be framed u/s 143(3) read with section 147 of the Act on 16-3-2000. For the assessment year 1998-99, assessment came to be framed vide order dated 16-3-2000 made u/s 143(3) of

the Act. Subsequently, vide the impugned notices dated 30-5-2001, the assessments in relation to all of the above referred to assessment years were sought to be reopened by the Assessing Officer, which has given rise to the present petition.

3. Though rule came to be issued way back on 9-12-2002, no affidavit-in-reply has been filed till date dealing with the averments made in the petition.

4. Mr. S. N. Soparkar, learned senior advocate appearing on behalf of the petitioner has submitted that in so far as the assessment years 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 are concerned, the impugned notices which have been issued on 30-5-2001 are clearly beyond a period of four years from the end of the relevant assessment years. In the circumstances, in the absence of any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment, the assumption of jurisdiction by the Assessing Officer is invalid. In respect of the other assessment years, attention is invited to the reasons recorded for reopening assessment to point out that the sole basis for reopening assessment is a subsequent decision of the Gujarat High Court in the case of Gujarat State Co-operative Bank Ltd. Vs. Commissioner of Income Tax, . It is submitted that the decision of the Gujarat High Court in the case of Gujarat State Co-operative Bank Ltd. Vs. Commissioner of Income Tax, has subsequently been reversed by the Supreme Court on the points in issue in the case of Mehsana District Central Co-operative Bank Ltd. Vs. Income Tax Officer, , and as such, the said decision is no longer good law. Attention is also invited to the decision of this High Court in the case of Commissioner of Income Tax-III Vs. The Baroda Peoples Co-op. Bank Ltd., . It is submitted that in the circumstances, even on the merits, no case has been made out for reopening the assessment.

5. On the other hand, Mr. P. G. Desai, learned standing counsel appearing on behalf of the respondent has supported the impugned notices and submitted that the Assessing Officer was justified in reopening the assessment and as such, no case has been made out to warrant any interference by this court.

6. From the facts noted hereinabove, it is apparent that in so far as the assessment years 1991-92 to 1995-96 are concerned, the impugned notices u/s 148 of the Act have been issued on 30-5-2001 and as such are clearly beyond the period of four years from the end of the relevant assessment year. In the circumstances, for the purpose of assuming jurisdiction u/s 147 of the Act, the condition precedent which is required to be satisfied is that there should be failure on the part of the assessee (i) to make return u/s 139 or in response to notice issued under sub-section (1) to section 142 or section 148, or (ii) to disclose fully and truly all material facts necessary for his assessment for that assessment year. In the facts of the present case, it is an admitted position that the first situation does not exist. In so far as the second requirement is concerned, a perusal of the reasons recorded indicates that there is no allegation to the effect that income has escaped assessment on account of any failure on

the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the assessment years under consideration. In the circumstances, in the absence of any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment, the assumption of jurisdiction after a period of four years from the end of the relevant assessment year is invalid and as such, the impugned notices relating to the said assessment years cannot be sustained.

7. As regards the assessment years 1996-97 to 1998-99, though the notices for reopening assessment have been issued within a period of four years from the end of the relevant assessment years, from the reasons recorded it is apparent that the Assessing Officer has placed reliance upon a decision of the jurisdictional High Court rendered in the case of Gujarat State Co-operative Bank Ltd. Vs. Commissioner of Income Tax, for the purpose of arriving at the opinion that income has escaped assessment. However, as pointed out by the learned counsel appearing on behalf of the petitioner, the said decision of the High Court stands reversed by the decision of the Supreme Court in the case of Mehsana District Central Co-operative Bank Ltd. Vs. Income Tax Officer, . Besides, this court in the case of Commissioner of Income Tax-III Vs. The Baroda Peoples Co-op. Bank Ltd., while dealing with the question as to whether income arising from utilization of reserves is, or is not, deductible u/s 80P(2)(a)(i) of the Act has observed that the apex court in relation to the said issue had restored the matter to the Commissioner (Appeals) for being decided afresh makes it abundantly clear that the finding of this court in Gujarat State Co-operative Bank Ltd. Vs. Commissioner of Income Tax, does not survive. This court for the reasons stated in the said decision also held that the apex court has categorically overruled the reasoning in the case of Gujarat State Co-operative Bank Ltd. Vs. Commissioner of Income Tax, relating to statutory reserves. In the circumstances, the decision of this High Court, which forms the basis for reopening of assessment, itself is no longer good law and as such the very substratum for reopening the assessment falls. In the circumstances, no useful purpose would be served in reopening the assessment. The impugned notices, therefore, cannot be sustained. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned notices dated 30-5-2001 (annexure A to the petition) are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.