(1995) 09 MP CK 0032

Madhya Pradesh High Court (Indore Bench)

Case No: M.C.C. No''s. 499, 559, 563 and 567 of 1995

Commissioner of Income Tax		APPELLANT
	Vs	
Co-operative Processing and Marketing Society		RESPONDENT

Date of Decision: Sept. 27, 1995

Acts Referred:

- Income Tax Act, 1961 - Section 256, 43B, 80P, 80P(2)

Citation: (1995) 130 CTR 431 : (1995) 216 ITR 632

Hon'ble Judges: U.L. Bhat, C.J; N.K. Jain, J

Bench: Division Bench

Advocate: D.D. Vyas, for the Appellant;

Judgement

1. Shri D.D. Vyas, standing counsel for the Revenue heard.

2. These are applications filed by the Revenue u/s 256(2) of the Income Tax Act, 1961, for stating the case and to make a reference of the following common questions ;

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that ginning and pressing charges received from the members is allowable as an exemption though it was with the aid of power ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the claim of the assessee though not admissible within the provisions of Section 80P(2)(a)(v), but is admissible u/s 80P(2)(a)(iii) ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting interest u/s 217 ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting interest u/s 217 ?

(v) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the Assessing Officer to verify the claim and to allow it if the payment of sales tax, Central sales tax and entry tax has been made before filing the returns u/s 139(1) even when the proviso was introduced with effect from April 1, 1988, and not for the earlier years ?

(vi) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the penalty amounting to Rs. 1,30,000 on the ground that the foundation of levy of penalty does not stand even when the Department has not accepted the same ?"

3. We have heard learned senior standing counsel for the Revenue. The assessee involved in these cases is a co-operative society. The assessment years are during the period 1981 to 1985. Questions Nos. 1 and 2 are practically a repetition of the same question. Question No. 4 is a repetition of question No. 3. Therefore, question No. 4 is deleted. Questions Nos. 5 and 6 are renumbered as questions Nos. 4 and 5.

4. The assessee is a co-operative society whose members are cotton growers. The society has been established to help the members in the matter of ginning and pressing cotton and finding markets for the processed cotton. The society charges a fee for ginning and pressing and also collects a fee from members for assisting the marketing operations. The society contended that it is engaged in the marketing of agricultural produce of its members and also processing the agricultural produce of its members and, therefore, it is entitled for deduction of the whole of the amount of profits and gains of business attributable to such activities from the assessable income u/s 80P(2) of the Act. The Assessing Officer negatived this claim on the ground that Section 80P(2)(a)(v) can be invoked only where the processing is done without the aid of power and since processing is done by the assessee with the aid of power, deductions cannot be granted. The appellate authority and the Tribunal took the view that deduction has to be granted u/s 80P(2)(a)(iii) of the Act since the society is engaged in the marketing of agricultural produce of its members. It is this decision which has given rise to questions Nos. 1 and 2. Question No. 3 is incidental to the answers to questions Nos. 1 and 2.

5. Section 43B of the Act states, inter alia, that where sales tax, Central sales tax and entry tax is alleged to be paid, deduction is to be given only on actual payment and not on the basis of subsistence of liability. The Assessing Officer held that the payment is not proved and deleted the deduction. The Tribunal directed him to enquire into the question as to what extent payment has been made and to give deduction to the actual payment made. This decision has led to question No. 4. Question No, 5 is incidental to the answers to other questions.

6. The order of the Tribunal makes it abundantly clear that deduction is granted in regard to the profits from the ginning and pressing operation only because the society is engaged in the marketing of agricultural produce of its members. This is

u/s 80P(2)(a)(iii) of the Act. The condition that processing shall be done without the aid of the power, seen in Sub-clause (v), is not a condition precedent with reference to Sub-clause (iii), This matter has been clarified by the Supreme Court with reference to the provisions of the Act as they stood prior to the 1968 amendment (see Broach Distt. Co-operative Cotton Sales Ginning and Pressing Society Limited Vs. Commissioner of Income Tax, Ahmedabad,). In regard to the controversy arising in these cases, the amendment has not made any practical difference. The question is, therefore, covered by the decision of the Supreme Court and, cannot be said to arise.

7. The Tribunal has not granted deduction to the assessee u/s 43B of the Act in regard to the alleged payments of sales tax, Central sales tax and entry tax. The Tribunal only directed the Assessing Officer to verify whether payment has been made and if satisfied to grant deduction. This part of the decision of the Tribunal cannot be said to have given rise to any question of law. Other questions arc incidental to the alleged main questions and do not require independent consideration.

8. For the reasons indicated above, we hold that no question of law calling for stating the case and making a reference arises for consideration in these cases. The applications are, accordingly, dismissed.