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

M.C.C. No"s. 499, 559, 563 and 567 of 1995

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Sept. 27, 1995

**Acts Referred:** 

Income Tax Act, 1961 â€" 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.