

(2011) 08 MAD CK 0335

Madras High Court

Case No: TC (A) No"s. 478 to 481 of 2005

Commissioner of
Income Tax

APPELLANT

Vs

The Kanchipuram Anna
Silk Handloom
Weavers Co-operative
(P and S) Society Ltd.

RESPONDENT

Date of Decision: Aug. 22, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 154, 250, 80HH, 80P

Hon'ble Judges: M. Jaichandren, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: J. Naresh Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.

The Revenue is on appeal as against the common order passed by the Income Tax Appellate Tribunal relating to assessment years 1993-94 to 1996-97. The following common substantial questions of law were raised for consideration in this Tax Case Appeal.

(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the application of the judgment of the Supreme Court in the case of [Commissioner of Income Tax Vs. Karnataka State Co-operative Apex Bank](#), to the Appellant's case is a defect rectifiable u/s 154?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the interest earned by the Assessee on Kisan Vikas Patra and NSC etc. is income from business eligible for deduction u/s 80P(2)(a)(ii) and not income from other sources?

2. The Assessee herein is a co-operative society engaged in the production and sale of Kancheepuram Silk Sarees woven by members. The Assessee herein invested its funds in various Government securities viz., Kisan Vikas Patra, Indra Vikas Patra etc. as directed by the Deputy Director of Handlooms and Textiles, Kancheepuram on the orders received from the District Collector. The said direction was given in the context of the Assessee claiming credit facility from the Central Government and the State Government with reference to the business activities. Thus, to make their investments in these Government securities, the Assessee borrowed money from the bank. On the interest derived on these investments, which were made out of business compulsion, the Assessee claimed that they were attributable to the business. Consequently, the Assessee was entitled to the benefit of Section 80P(2) of the Income Tax Act. The Assessee filed a petition u/s 154 of the Income Tax Act for rectification of the order passed u/s 143(3) read with 250 of the Income Tax Act, by placing reliance on the decision of the Apex Court reported in [Commissioner of Income Tax Vs. Karnataka State Co-operative Apex Bank](#), and [Commissioner of Income Tax Vs. KARNATAKA STATE CO-OPERATIVE APEX BANK](#), The said claim was however rejected by the Officer on the ground that the decision referred to would not be of any help to the Assessee since there were conflicting decisions.

3. The Assessee filed appeals before the Commissioner of Income Tax (Appeals), who dismissed the Assessee's plea holding that the issue was debatable one and hence, the petition filed u/s 154 of the Income Tax Act was not maintainable. However, the Commissioner of Income Tax (Appeals), referred to the order passed in the case of the Kancheepuram Silk Weavers Co-operative Production and Sale Society Limited and pointed out that the Assessee, who went in for credit facilities with the Government, had no choice except to make this investments in the Government securities. The investments thus prompted by the business exigencies is clearly substantiated the letter of the Deputy Director of Handlooms and Textiles. Thus, the Commissioner of Income Tax (Appeals) viewed that even though the income is attributable to the business and derived from the business, by reason of scope of Section 154 of the Income Tax Act, the Assessee was not entitled to the relief. Aggrieved by the same, the Assessee went on appeal before the Income Tax Appellate Tribunal.

4. It is seen from the order of the Tribunal that, apart from reiterating the contentions taken before the Commissioner of Income Tax (Appeals), the Assessee placed reliance on the CBDT circular No. 68 dated 17.11.1971 directing that where an Assessee moves an application u/s 154 of the Act, placing reliance on the later decision of the Supreme Court pronouncing the correct legal position, the application had to be acted upon. The Tribunal pointed out that as far as the present case is concerned, no further investigation of facts was necessary to consider the claim. Hence, applying the decision of the Supreme court reported in [Commissioner of Income Tax Vs. Karnataka State Co-operative Apex Bank](#), , the Tribunal held that the interest income derived on its investments was exempt u/s 80P(2) of the Act since the said investments were made only

to protect the business interest. Aggrieved by the same, the Revenue is on appeals before this Court.

5. As far as the first question of law as to the invoking of jurisdiction u/s 154 of the Act is concerned, learned standing counsel stated before this Court that in the light of the decision of the Apex Court reported in [Commissioner of Income Tax Vs. Karnataka State Co-operative Apex Bank](#), there cannot be any dispute for rectifying the mistake apparent on the face of the order. Learned standing counsel for the Revenue submitted that the Revenue has no serious dispute to be argued as regards the jurisdiction aspect u/s 154 of the Act. Thus recording the said statement of the learned Standing Counsel, the first question is answered against the Revenue.

6. As far as the second substantial question of law is concerned, as already pointed out, the investment made by the Assessee in Government securities was evidently on account of compulsion of the law. In terms of the scheme on credit facility offered by the State Government, the Assessee acted on the directions of the Deputy Director of Handlooms and Textiles and made investments in the Government securities. This was done by drawing money from the bank. Thus, rightly the Tribunal held that the investment made by the Assessee was linked to the business exigency stands clearly established for getting the credit facility from the State Government.

7. Section 80P is a specific provision relating to deduction in respect of income of co-operative societies. Section 80P(2) of the Act refers to the sums to be considered for the purpose of deduction. Section 80P(2)(c) of the Act which is relevant to the case on hand reads as under,

80P(2) The sums referred to in Sub-section (1) shall be the following, namely -

(c) in the case of a co-operative society engaged in activities other than those specified in Clause (a) or Clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as [does not exceed, -

(i) where such co-operative society is a consumers" co-operative society, [one hundred] thousand rupees, and

(ii) in any other case, [fifty] thousand rupees, Explanation. - In this clause, consumers" co-operative society" means a society for the benefit of the consumers;].

8. Thus, in contra distinction to the provisions of deductions, restricting the claim of deduction to the income "derived" from the activity specified therein, having direct nexus to the activity or the business therein, Section 80P of the Income Tax Act provides for the deductions in respect of profits and gains "attributable to" the activities of the co-operative society.

9. In the decision reported in [Liberty India Vs. Commissioner of Income Tax](#), , the Apex Court pointed out that the connotations of the words "derived from" is narrower as compared to that of the phrase "attributable to". The Apex Court pointed out that when the Parliament uses the expression "derived from", it intended to cover sources which have a direct nexus to the business activities.

10. In the decision reported in [Pandian Chemicals Ltd. Vs. Commissioner of Income Tax](#), , which was referred to in the decision reported in [Liberty India Vs. Commissioner of Income Tax](#), , the Supreme Court held that the words "derived from" in Section 80HH of the Income Tax Act, 1961, must be understood as something which has a direct or immediate nexus with the Assessee's industrial undertaking. In so holding, the Apex Court also referred to the decision reported in [Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad](#), , and considered the expression "attributable to" as covering receipts from sources other than the actual conduct of the business. Thus, going by the said distinction between the phrases "derived from" and "attributable to", the use of phrase "attributable to" in Section 80P(2)(c), thus indicates a wider application to include such income which even though may not have direct nexus to the profits and gains of the activities of the Assessee, yet are attributable to the business of the Assessee. In the light of the provisions of Section 80P(2)(c) of the Income Tax Act, we do not find that the Revenue's contention merits any acceptance by this Court.

11. In the circumstances, we have no hesitation in rejecting the plea of the Revenue, thereby confirming the view of the Tribunal. The Tax Case Appeals are dismissed. No costs.