

(2011) 10 MAD CK 0085

Madras High Court

Case No: T.C. (A) . No. 221 of 2005

Commissioner of Income Tax
Chennai

APPELLANT

Vs

The Madurantakam Co-op Sugar
Mills Ltd. Padalam - 603308
Chengulpet MGR District

RESPONDENT

Date of Decision: Oct. 11, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 80P(1), 80P(2), 80P(2)

Hon'ble Judges: P.P.S. Janarthana Raja, J; P. Jyothimani, J

Bench: Division Bench

Advocate: J. Naresh Kumar, for the Appellant; J. Balachander for M/s. Sridhar, for the Respondent

Final Decision: Allowed

Judgement

P. Jyothimani, J.

This tax case appeal is preferred by the Revenue against the order of the Income Tax Appellate Tribunal Madras "A" Bench dated 31.3.2004 made in ITA No.2534/Mds/1994 for the assessment year 1991-1992, and the same was admitted on the following questions of law:

- Whether in the facts and under the circumstances of the case, the Appellate Tribunal was right in holding that the assessee who is engaged in the manufacture of sugar is eligible for the benefit of Section 80P(2)(a)(i) in respect of interest received from members?
- Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that the assessee is eligible for exemption u/s 80P(2)(a)(i) when it is not a co-operative society engaged in the business of banking or providing credit facilities to its members?

2. The assessee is a co-operative society engaged in the business of manufacture and sale of sugar. It claimed deduction under Sections 80P(2)(a)(i) and Section 80P(2)(ii) of the Income Tax Act in respect of interest received from the members on loans advanced to them. The Assessing Officer disallowed the claim holding that the assessee's main object and business is manufacture of sugar, whereas such deduction will be given only if its main object is banking and providing credit facilities to its members. Being aggrieved, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer. The assessee preferred further appeal to the Appellate Tribunal. The Tribunal holding that similar issues have been answered in favour of the co-operative societies upheld the claim of the assessee and allowed the appeal. Hence, the present tax case appeal.

3. This Court in [Commissioner of Income Tax Vs. Tirupattur Co-op. Sugar Mills Ltd.](#), considered a similar issue in the light of the decision of the Supreme Court in (2009) 117 ITD 220 , wherein the Supreme Court has observed as follows:

With regard to the question whether the assessee was entitled to exemption u/s 80P(2)(a)(i) of the Income Tax Act, 1961, in respect of interest received from the members of the society, we find that none of the authorities below, including the High Court, have examined the memorandum of association filed by Salem Coop. Sugar Mills Ltd., Madurantakam Coop. Sugar Mills Ltd., Ambur Coop. Sugar Mills Ltd., Dharampuri District Coop. Sugar Mills Ltd., Vellore Coop. Sugar Mills Ltd., Attur Agricultural Producers Coop. Society Ltd. and Modern Engineers Construction Coop. Society Ltd. u/s 80P(1) deduction in respect of income of cooperative societies is provided for. u/s 80P(1), where the gross total income of a cooperative society includes any income referred to in sub-section (2) then the sums specified in sub-section (2) shall be deducted from the gross total income to arrive at the total income of the assessee society. In order to earn exemption u/s 80P(2) a cooperative society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2). In that connection, it is important to note that under sub-section (2), in the context of cooperative society, Parliament has stipulated that the society must be engaged in carrying on the business of banking or providing credit facilities to its members. Therefore, in each case, the Tribunal was required to examine the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc. This exercise had not been undertaken at all.

and held that the exercise indicated by the Supreme Court in Ponni Sugars and Chemicals Ltd. case, supra, has not been done by the Tribunal and therefore, remanded the matter to the Tribunal for reconsideration.

4. On the facts of the present case, the Tribunal has simply followed its earlier decision in identical issue and held that the interest earned on credit facilities provided to its members is eligible for deduction u/s 80P(2)(a)(i) of the Income Tax

Act. While holding so, the Tribunal has not decided the matter on merits by carrying out the exercise indicated in the decision of the Supreme Court, viz., examination of the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc.

In view of the above, the order of the Tribunal should be set aside and accordingly, this tax case appeal is allowed and the impugned order of the Tribunal is set aside and the matter is remanded to the Tribunal for reconsideration in the light of the decision of the Supreme Court in Ponni Sugars and Chemicals Ltd case, supra, and the decision of this Court in Tirupattur Co-op. Sugar Mills Ltd case, supra. No costs.