

(1994) 12 BOM CK 0070

Bombay High Court

Case No: Income-tax Reference No. 373 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Ratanabad Co-operative Housing
Society Ltd.

RESPONDENT

Date of Decision: Dec. 15, 1994

Acts Referred:

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

Citation: (1995) 215 ITR 549

Hon'ble Judges: S.M. Jhunjhunwala, J; B.P. Saraf, J

Bench: Division Bench

Advocate: G.S. Jetley and J.P. Devadhar, instructed by Mrs. S. Bhattacharya, for the Appellant;

Judgement

S.M. Jhunjhunwala, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has rightly held that the income of the assessee from letting out shops to persons other than its members is exempt from tax u/s 80P(2)(c) of the Income Tax Act, 1961 ?"

2. The assessee is a co-operative society. As per bye-law 80A of the bye-laws of the assessee-society, certain shops constructed by the assessee-society were not to be sold but were to be let out on leave and licence basis to help maintenance of the assessee-society. In the assessment years 1976-77, 1977-78 and 1978-79, the assessee-society did derive income from letting of shops to persons other than its Members. In the course of the assessment proceedings for the said assessment years, the assessee-society contended that its income derived from letting of the shops to persons other than its members was exempt from tax u/s 80P(2)(c) of the

Income Tax Act, 1961. The Income Tax Officer rejected this contention. The assessee-society filed three appeals before the Appellate Assistant Commissioner who confirmed the order of the Income Tax Officer for each of the said assessment years under consideration and dismissed all the three appeals of the assessee-society by a common order. Being aggrieved by the order of the Appellate Assistant Commissioner, the assessee-society filed three appeals before the Income Tax Appellate Tribunal. The Tribunal, by its common order while following its order in the assessee's own case for the assessment year 1973-74, allowed the claims of the assessee-society in each of the said assessment years and set aside the order of the Appellate Assistant Commissioner. It is in these circumstances that this reference has been made at the instance of the Revenue.

3. Section 80P of the Income Tax Act, 1961 (for short, "the act") deals with deduction in respect of income of co-operative societies. According to sub-section (1) of section 80P, where the gross total income includes any income referred to in sub-section (2) thereof, there shall be deducted, in accordance with and subject to the provisions of the section, the sums specified in sub-section (2), in computing the total income of the assessee. Sub-section (2) specifies such sums. Clause (c) of sub-section (2) deals with a co-operative society engaged in activities other than those specified in clause (a) or clause (b) thereof. Section 80P allows a straight deduction in the computation of the total income of a co-operative society in respect of incomes and to the extent as mentioned therein. In order to earn exemption u/s 80P, a co-operative society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2) thereof. The business must have a direct or proximate connection with or nexus to the earning in order that such assessee-society may enjoy the exemption. Section 80P has obviously been enacted with a view to encourage and promote growth of the co-operative sector in the economic life of the country. There are different heads of exemption enumerated in the section. Each is a distinct and independent head of exemption. Whenever a question arises whether a particular category of income of a co-operative society is exempt from tax, it will have to be seen. If a co-operative society carries on certain activities income from which is exempted and also certain activities income from which is not exempted the profits and gains attributable to the exempted activities shall enjoy the exemption and those attributable to the non-exempted activities shall be taxed. Letting out of the shops of the assessee-society to persons other than its members did not fall as an activity of the assessee society either in clause (a) or clause (b) of sub-section (2) of section 80P. It was an activity of the assessed-society other than those specified in clauses (a) and (b) of sub-section (2) of section 80P and as such, the question arose whether the income derived by the assessee-society from letting out the shops to persons other than its members was exempt from tax u/s 80P(2)(c) of the Act.

4. A similar question arose for consideration before a Division Bench of the Gauhati High Court in the case of [Commissioner of Income Tax Vs. The Industrial](#)

[Co-operative Bank Ltd.](#), of which one of us (Dr. B. P. Saraf J.) was a member. In that case, the assessee, a co-operative society, was engaged in carrying on the business of banking, the income whereof was totally exempt from tax u/s 80P(2)(a) of the Act. The society had also constructed house property and derived rental income therefrom. The Gauhati High Court, after considering the submissions of learned counsel appearing therein held that the expression "profits and gains" in clause (c) of sub-section (2) of section 80P is not confined to profits and gains of business as is the case under clause (a). It further held that income derived by the society by way of rent from the house property constructed would be profits and gains attributable to the activity of constructing and letting out the house and that the rent received by it from letting out the house property was profit or gain attributable to the activity of letting out the house. In the instant case, the letting out of the shops by the assessee-society to persons other than its members was not the primary activity of the assessee-society. However, it was an activity carried on in addition to the primary activity of the assessee-society. Such a case would fall within the ambit of clause (c) of sub-section (2) of section 80P.

5. We are in agreement with the view taken by the Gauhati High Court in the case of [Commissioner of Income Tax Vs. The Industrial Co-operative Bank Ltd.](#). In our view, the assessee-society was entitled to get deduction from the profits and gains attributable to its activity of letting out the shops to persons other than its members to the extent of Rs. 20,000 in each of the said assessment years.

6. Accordingly, we answer the question in the affirmative, that is, in favour of the assessee-society subject, however, to the limit as mentioned in clause (c) of sub-section (2) of section 80P of the Act.

7. There shall be no order as to costs.