

KERALA STATE COOPERATIVE MARKETING
FEDERATION LTD. AND ANOTHER

v

COMMISSIONER OF INCOME TAX

MAY 13, 1998

[S.C. AGARWAL, S.P. KURDUKAR AND S. RAJENDRA BABU, JJ.]

Income Tax Act, 1961 :

Section 80-P(2)(a)(iii)—Deduction claimed by a cooperative society engaged in marketing agricultural produce of its members allowable under Section 80-P(2)(a)(iii)—Types of societies entitled to such deduction—Held, even an apex society is entitled to such deduction in respect of profits earned out of marketing of agricultural produce of its members—Section 80-P does not limit the scope of the exemption to agricultural produce raised by members alone— It also extends to agricultural produce raised by others but belonging to cooperative societies—Cooperative Societies.

Section 80-P(2)(a) to (f)—Interrelation of different heads of exemption under—Held, each of the heads should be treated as a separate and distinct head—Income of cooperative society falling under any one head, although not satisfying the conditions of another head, nonetheless free from tax.

Words & Phrases—“Marketing” and “Of its members”— Meaning of —In the context of Section 80-P of the Income Tax Act, 1961.

Interpretation of Statutes—Legislative intent—Determination of.

The appellant-assessee, an apex society registered under the Kerala Cooperative Societies Act, purchased cashew nuts from the primary cooperative societies who were its members. For the assessment year 1980-81, the assessee claimed exemption under Section 80-P(2)(a)(iii) of the Income Tax Act in respect of profits earned by it out of the purchases made from the member societies. The claim for exemption was made on the basis that it marketed agricultural produce of its members. The Income Tax Officer rejected the claim. On appeal, the Commissioner of Income Tax (Appeals) took the view that the assessee was entitled to exemption under the

A aforesaid provisions in respect of the income from procurement of cashew nuts from the member societies. However, the said exemption was not applicable for purchases or supplies made by primary societies or service societies which were not members of the federation, the assessee. The matter was carried further in second appeal by the Revenue to the Appellate Tribunal which took the view that the assessee would be entitled to exemption under the aforesaid provisions of the Income Tax Act. The appellant also filed a second appeal claiming that the whole profit and gains of the business was entitled to deduction under Section 80-P(2)(a)(iii) of the Act. The Tribunal dismissed both sets of appeal. On reference to the High Court, in view of the decision of this Court in *Assam Cooperative Apex Marketing Societies Ltd. v. CIT***, the High Court held that the appellant would not be entitled to deduction under the said provision in respect of purchases made from its member societies and thus answered the question referred to it in the negative against the assessee and in favour of the Revenue. Hence this appeal.

D Allowing the appeal, this Court

HELD : 1.1. Section 80-P(2)(a) of the Income Tax Act was introduced with a view to encouraging and promoting the growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as separate and distinct head of exemption. Whenever a question arose as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether the income fell within any of the several heads of exemption. If it falls within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical function such as storage, transportation, processing and other commercial activities such as standardisation, financing, marketing intelligence etc. Such activities can be carried on by an apex society rather than a primary society. [449-C-E]

1.2. So long as agricultural produce handled by the assessee belonged to its members it is entitled to the exemption in respect of the profits derived from the marketing of the same. Whether the members came by the produce because of their own agricultural activities or whether they acquired it by

purchasing it from cultivators is of no consequence for the purpose of determining whether the assessee is entitled to the exemption. The only condition required for qualifying the assessee's income for exemption was that the assessee's business must be that of marketing, the marketing must be of agricultural produce and that agricultural produce must have belonged to the members of the assessee-society before it came up for marketing by it, whether on its own account or on account of members themselves. Section 80-P does not in effect limit the scope of the exemption to agricultural produce raised by members alone but includes agricultural produce raised by others but belonging to cooperative societies. The contrast in the said provision is with reference to the marketing of agricultural produce of the members of the society or that purchased from non-members.

[449-F-H; 450-A-B]

2. When the provisions of Section 80-P admits of a wider exemption, there is no reason to cut down the scope of the provision. The language adopted in Section 80-P (2)(a)(iii) will admit the interpretation that the society is engaged in marketing of agricultural produce of its members as agricultural produce "belonging to" its members which is not necessarily raised by such member. [450-E-F]

***Assam Cooperative Apex Society Ltd. v. Commissioner of Income Tax, 201 ITR 338, overruled.*

Commissioner of Income Tax v. National Agricultural Cooperative Marketing Federation Ltd., ITR No. 241/75; Commissioner of Income Tax v. Karjan Cooperative Cotton Sale, Ginning and Processing Society Ltd., 159 ITR 821; Commissioner of Income Tax v. Haryana State Cooperative Supply and Marketing Federation Ltd., 182 ITR 53; Meenachil Rubber Marketing and Processing Cooperative Society Ltd. v. Commissioner of Income Tax, 193 ITR 79 (Ker.); Commissioner of Income Tax v. Kerala State Cooperative Marketing Federation Ltd., 193 ITR 624 and Commissioner of Income Tax v. Tamil Nadu Cooperative Marketing Federation Ltd., 144 ITR 74, approved.

Commissioner of Income Tax v. Kerala State Cooperative Marketing Federation Ltd., (1994) 207 ITR 319 (Ker.), reversed.

Commissioner of Income Tax v. Ryots Agriculture Produce Cooperative Marketing Society Ltd., 115 ITR 709, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 506 of 1994
Etc.

A From the Judgment and Order dated 11.8.93 of the Kerala High Court in I.T.R. No. 33 of 1991.

K. Parasaran, Joseph Vellapally, Dushyant Dave, D.A. Dave, T.L. Vishuanatha Iyer, A.T. Patra, O.P. Khaitan & Co., Ms. Priya Hingorani, Aman Hingorani, Ms. A.K. Verma, T.C. Sharma, B.K. Prasad, C. Radha Krishan, Harish Chandra, P. Parmeswaran, Ms. Sushma Suri, D.N. Swahney, G. Umamathy and A. Raghunath for the appearing Parties.

The Judgment of the Court was delivered by

C **RAJENDRA BABU, J.** We have heard a batch of cases in which the question raised for our consideration is whether the assessee under the Income Tax Act which are Co-operative Societies are entitled to deduction under Section 80P (2) (a) (iii) of the Income Tax Act, 1961 in respect of the purchases made from member societies ?

D For purposes of convenience we shall set out the facts and decide one of these cases, number, C.A.No. 506 of 1994, filed by the Kerala State Cooperative Marketing Federation Limited and apply the result thereto in other matters. The society in question is registered under the Kerala Co-operative Societies Act and is an assessee under the Income Tax Act. For the assessment year 1980-81, the assessee claimed exemption under section 80P (2)(a)(iii) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in respect of profits earned by it out of the purchases made from the member societies. The assessee which is an apex society purchased cashew from the primary cooperative societies who are its members. The total purchases made by it were to the extent of Rs. 33,23,71,339 out of which the purchases from member societies was in a sum of Rs. 95,02,851. The claim for exemption of this amount was made on the basis that it marketed agricultural produce of its members. The Income Tax Officer rejected the claim. On appeal, the Commissioner of Income Tax (Appeals) took the view that the assessee is entitled to exemption under the aforesaid provisions in respect of the income from procurement of cashew nuts from the member societies. However he made it clear that the said exemption would not be applicable for purchases or supplies made by primary societies or service societies which were not members of the assessee society. The matter was carried further in second appeal by the Department to the Appellate Tribunal which took the view that the assessee would be entitled to exemption under the aforesaid provisions of the Act. The assessee also filed a second appeal claiming that the whole profit and gains of the business was entitled to deduction under Section

80-P2 (a) (iii) of the Act. The Tribunal dismissed both sets of appeals. The Department sought for a reference on the question referred to above to the High Court. The High Court held that in view of the decision rendered by it earlier, the assessee was entitled to succeed and question referred to them should be answered against the revenue. However, in view of the decision of this Court in *Assam Co-operative Apex Marketing Society Ltd. v. Commissioner of Income Tax*, (Addl.) 201 I.T.R. 338, it held that the assessee would not be entitled to deduction under the said provision in respect of purchases made from its member societies and thus answered the question referred to it in the negative against the assessee and in favour of the revenue. In *Assam Co-operative Apex Marketing Society Ltd. v. Commissioner of Income Tax*, (Addl.), this Court was concerned with the scope of Section 81 of the Income Tax Act which after omitting the portions of the provisions with which we are not concerned, read as follows :-

“81. Income of co-operative societies :-Income-tax shall not be payable by a co-operative society-

(i) in respect of the profits and gains of business carried on by it, if it is —

(a)

(b)

(c) a society engaged in the marketing of the agricultural produce of its members; or

By Finance Act No. 2 of 1967, Section 81 was deleted with effect from 1.4.1968 and Section 80P was incorporated in the Act with effect from 1.4.1968. Section 80-P (2)(a)(iii) after omitting the portion with which we are not concerned, reads as follows :-

“80-P(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :-

(a) in the case of a co-operative society engaged in—

- A (i)
- (ii)
- (iii) the marketing of the agricultural produce of its member;
or"

B Shri K. Parasaran, learned Senior counsel on behalf of the appellants submitted that a proper reading of section 80-P of the Act and the scheme would make it clear that the exemption from taxation so far as marketing of agricultural produce of its members would include the society which was marketing agricultural produce of its members who are other societies and is not necessarily confined to primary societies. He submitted that the view expressed by this Court to the contrary in *Assam Cooperative Society's* case (supra) requires re-consideration. The basis upon which this Court took that view is that Section 81(1)(c) was intended to encourage basic level societies engaged in cottage industries in marketing agricultural produce of their members and those engaged in purchasing and supplying agricultural implements etc. to their members and so on. The words 'agricultural produce of its members' will have to be understood concerning with that object and if not so understood even a co-operative society comprising of traders dealing in agricultural produce would become entitled to the exemption which would never have been the intention of the Parliament. Agricultural produce produced by the agriculturists could be legitimately called agricultural produce in his hands, but not in the hands of traders which would be an agricultural commodity and, therefore, it would cease to be an agricultural produce and thus, this Court had negated the claim of the assessee in that case.

F Mr. Viswanatha Iyer, learned senior counsel for the Department submitted that the view taken by this Court in *Assam Cooperative Society's* case (supra) does not require any re-consideration but on the other hand, in the light of the said decision, these appeals are liable to be dismissed.

The classes of societies covered by Section 80-P of the Act are as follows :-

- G (a) engaged in business of banking and providing credit facilities to its members;
- (b) cottage industry;
- H (c) society engaged in marketing agricultural produce of its members;

- (d) engaged in produce of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its member; A
- (e) a society engaged in the processing without the aid of power of the agricultural produce of its members; or
- (f) a primary society engaged in supplying milk raised by its members to a federal milk cooperative society. B

We may notice that the provision is introduced with a view to encouraging and promoting growth of co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial activities such as standardisation, financing, marketing intelligence etc. Such activities can be carried on by an Apex Society rather than a primary society. C
D
E

So long as agricultural produce handled by the assessee belonged to its members it was entitled to exemption in respect of the profits derived from the marketing of the same. Whether the members came by the produce because of their own agricultural activities or whether they acquired it by purchasing it from cultivators was of no consequence for the purpose of determining whether the assessee was entitled to the exemption. The only condition required for qualifying the assessee's income for exemption was that the assessee's business must be that of marketing, the marketing must be of agricultural produce and that agricultural produce must have belonged to the members of the assessee society before they came up for marketing by it, whether on its own account or on account of the members themselves. Thus there is no scope to limit the exemption. The co-operative societies are engaged in marketing of an agricultural produce both of its members as well as of non members. In the latter case, there is no difference between a F
G
H

A cooperative society or any other business organisation and so will not be entitled to exemption. The exemption is intended to cover all cases where a cooperative society is engaged in marketing agricultural produce of its members. Section 80-P does not in effect limit the scope of the exemption to agricultural produce raised by members alone but includes agricultural produce raised by others but belonging to cooperative societies. The contrast in the said provision is with reference to the marketing of agricultural produce of the members of the society of that purchased from non members.

A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemptions under the said provisions are sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary co-operative society it was so made clear as is evident from clause (f) referred to above with reference to a milk co-operative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk co-operative society, put no such distinction is made with reference to a banking business which provides trade facilities to its members. It is clear, therefore, that the legislature did not intend to limit the scope of exemption only to those which are primary societies. If a small agricultural co-operative society does not have any marketing facilities it can certainly become a member of apex society which may market the produce of its members. It was submitted on behalf of the Department that the member societies themselves do not raise the agricultural produce. The societies only market the produce raised by their members and do not themselves raise agricultural produce. The language adopted in Section 80-P (2)(a)(iii) with which we are concerned will admit the interpretation that the society engaged in marketing of agricultural produce of its members as agricultural produce "belonging to" its members which is not necessarily raised by such member. Thus, when the provisions of section 80-P of the Act admits of a wider exemption there is no reason to cut down the scope of the provision as indicated in *Assam Cooperative Apex Marketing Society's* case.

In an unreported decision *C.I.T. Delhi v. M/s National Agricultural Cooperative Marketing Federation Limited, Delhi*. I.T.R. No. 241/75, this very question has been exhaustively considered by a Division Bench of High Court of Delhi speaking through Ranganathan, J. (who later on adorned this Court) observed as follows:-

"17 (i) At the outset one should consider the plain and natural meaning of the words "of its members". Dr. Pal has referred us to the dictionary

meanings of this proposition. The Shorter Oxford English Dictionary (IIIrd Edn. P. 1360) gives the following meaning:- A

“Derivation, origin, source, starting point, indicating the person or things whence anything originates, comes, is acquired or nought, in the sense belonging or pertaining to, belonging to a person.”

“The Webster’s New Twentieth Century Dictionary (IIInd End, 1979, P. 1241) describes the following implications to it; B

“derived or coming from, belonging to, having to do with, relating to, pertaining to.”

“According to Corpus Juris Secundum (Vol. 67 p.85) the word “of” may denote “novice, such as origin or existence”. It is also defined as meaning “belonging to” pertaining to, connected with or associated with”. It is also defined no meaning “from, among by, concerning in, or over”. It also means “owned or manufactured by” or it may mean “residing or resident in”. It has been held equivalent to or synonymous with “for”. It is also used as a word of identification and relation. These meanings would suggest the necessity only of some links connection or association between the member and the goods and the word does not, in its ordinary connotation, involve anything further. C

“(ii) If the above word had appeared in isolation, there would have been, we think, no difficulty in attributing the above meaning to it. The doubt raised by the revenue is based, it seems to us, not because the word “of” is narrow in its meaning put by attempting to restrict its meaning by reference to the word which precedes it, thus curbing the natural expanse of the expression “of its members” and equating “produce of” to produce raised by”. Not only does this interpretation involve reading words into the statute that are not there; we think that it attaches an undue significance to what is nothing more than the natural use of an associate word familiarly employed in the context. In common parlance, one speaks of “agricultural produce” to denote crops raised in the soil. This is in contradistinction, not only to agricultural implements, seeds, livestock or other articles intended for agriculture vide Section 81(1)(a) and Section 80-P (2)(a)(iv) - but also to industrial and other types of products. Clauses (a) to (f) of Section 81(1) and Clauses (i) to (v) of Section 80-P (2)(a) refer to various aspects of activities in the rural sector and the use of the word ‘produce’ is only intended to restrict the exemption in the clause that D E F G H

A is being considered by us only to 'crops' and not to other agricultural commodities, articles or things. The word 'produce' should not, therefore, be allowed to cast its shadow over the preposition succeeding it and denude and denydrate it of its full potentiality.

B “(iii) We think that, rather than attempting to read the word 'of' in the light of the words preceding it, the proper emphasis in the clause is obtained by reading it in conjunction with the words that follow it. Here the words 'of its members' are used to bring out a contract with agricultural produce of persons other than members. A cooperative society engaged in the marketing of agricultural produce can purchase agricultural produce both from its members as well as from outsiders.

C If it purchases from, sells to or otherwise deals with outsiders then such a society is as good as any other business organisation and an exemption may not be called for. The exemption is intended to cases where a cooperative society is intended for a particular purpose by its members and its transactions are carried out only with its members.

D In other words the contrast in Section 81 (1)(c) is not between the agricultural produce raised by members and agricultural produce raised by others. The contrast is between agricultural produce acquired from members and agricultural produce purchased from outsiders. If this aspect is kept in mind there would appear to be no reason why the word 'of' should not be given its ordinary meaning of belonging to or 'pertaining to'.”

E

“(iv) It is a clear rule of statutory construction that, in trying to interpret statutory provision, attention should be given to the setting in which the provision occurs and regard must be had to the language of an entire group of connected provisions which may form an integral whole. Hence, for understanding the scope of the exemption in Section 81(1)(a)/80-P(2)(a) one should look at the whole scheme of the provisions contained in Sections 81, 82 and 93 of the 1961 Act till their amendment in 1968 and Section 10(29) and 80-P thereafter. All these provisions correspond to one subject matter dealt with in Sections 14(2) to (b) of the 1922 Act. If we read all those Sections together then it will be apparent that there is no reason to restrict the scope of the exemption by giving an unduly narrow meaning to the word “of” in Section 81(1)(a). For instance Section 81(1)(b) grants an exemption in respect of a society engaged in a cottage industry. These words are very wide and would not appear to confine exemption only to cases where the members of the society are so engaged. The society could

F

G

H

engage in a cottage industry by employing the services of other workmen and by purchasing the goods manufactured by persons other than members. Similarly, the language of clause (f) is also helpful in a way. Though it is true that the words "raised by" have been used in that clause because of the nature of the society and the nature of the commodity involved, the language permits exemption to such a society even where the milk supply to it by the members might have been obtained (or raised) by the members not by milking the cattle owned by them but by purchasing it from other farmers or owners of cattle. That clause also shows that if the legislature wanted an exemption to be given only to a 'primary society' it specifically said so. An indirect restriction of the exemption conferred by clause (c) only to primary societies would not, therefore, appear to be justified. Again when one turns to Section 81 (iv) an exemption is provided for in respect of any income derived by a cooperative society from the letting of godowns or ware-houses for storage, processing or facilitating the marketing of commodities. This again does not limit the exemption to godowns or ware-houses belonging to the members or required for the purpose of storage etc. of commodities belonging to them. The same language is also used in Section 83. On the contrary, where the legislature intends restricting the scope of the exemption it specifically says so. For example, under Section 81(1)(a) the exemption is restricted in the case of a credit society, to cases where the credit facilities are extended to the members. Similarly, where a cooperative society purchased agricultural implements etc. intended for agriculture its income from such activities is exempt only if the purpose of the purchase is to supply the commodities to the members of the society. As contrasted with these provisions there is no restrictive implication in the language of Section 81(1)(a) and 80-P(2)(a)(iii)."

We agree with this view. The analysis made by the Delhi High Court is with reference to lexicographical meaning of the expression 'of' occurring in the relevant provision, the use of the expression in the context, setting of the different categories of societies in the legislation in comparison with other provision thereof would indicate that the expression 'of' acquires the meaning as 'belonging to'. Any expression in any enactment will like chameleon acquire colour in the background in which it is situate. Trite, to say, that a word acquires meaning only with reference to text and context.

In *C.I.T. v. Ryots Agricultural Produce Co-operative Marketing Society*

A *Ltd.*, 115 ITR 709, wherein the scope of Section 81(1)(c) as it stood then was considered in respect of income from marketing of agricultural produce of its members after processing it.

In *C.I.T. Gujarat-IV v. Karjan Co-operative Cotton Sale, Ginning and Pressing Society Ltd.*, 159 I.T.R. 821, again an identical question was considered. The Gujarat High Court explained the expression used in Section 80-P of the Income Tax Act. So long as the commodity brought to the assessee society was agricultural produce and belonged to its members it was agricultural produce of its members, be the member a co-operative society in itself or individual member, the concept was ownership of agricultural produce. On that basis the said provision was interpreted and it fits in with the view taken by us.

Again in *C.I.T. v. Haryana State Co-operative Supply and Marketing Federation Limited* 182 I.T.R 53, an identical view as taken by the Gujarat High Court adverted to by us just now was taken.

D In *Meenachil Rubber Marketing and Processing Co-operative Society Limited v. C.I.T.*, 193 I.T.R. 79, the Kerala High Court had occasion to examine this short question and it took the view that the provision had been incorporated bearing in mind that the exemption had been granted to encourage vital national activity in the nature of rural economy in the co-operative sector and therefore, the construction to be placed on the provision should advance that intention. Explaining the meaning of marketing as was done by the Karnataka High Court to which we have adverted to earlier, the Kerala High Court was of the view that once the co-operative society buys the agricultural produce of the members of the society that buying is the first activity in the several links of the activities to constitute marketing by the co-operative society is entitled to exemption.

Similarly in *C.I.T. v. Kerala State Co-operative Marketing Federation Ltd.*, 193 I.T.R. 624, this question was again considered and the view taken by the Gujarat High Court to which we have adverted to in the *Karjon Cooperative Soeicity Ltd.* case (supra) was reiterated. In *C.I.T. v. Tamil Nadu Co-operative Marketing Federation Ltd.*, 144 I.T.R. 74, it was held that the expression "co-operative society" occurring in section 80P (1) covers any co-operative society whether it is a primary society or an apex society and hence reference to members in clause (iv) of section 80P (2) can be taken to refer to the members of a primary society or members of an apex society as the case may be.

The attention of this Court does not seem to have been drawn to the aforesaid decisions while deciding *Assam Cooperative Society's* case. With respect, we, therefore, hold that the view taken therein requires reconsideration as stated earlier by us. In the result, the order of the Kerala High Court following the decision of this Court in *Assam Cooperative Societies* is reversed. We hold that the society engaged in the marketing of agricultural produce of its members would mean not only such societies which deal with the produce raised by the members who are individuals or societies which are members thereof who may have purchased such goods from the agriculturists. Thus, we allow the civil appeal by setting aside the order made by the High Court and answering the question referred to us in the affirmative in favour of the assessee and against the revenue. There shall be no order as to costs.

Following this decision, we dismiss the Civil Appeal Nos. 15430/96, and 2354-2355/96.

R.K.S.

Appeals allowed/dismissed.