

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.11.2016

Coram:

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO

AND

The Hon'ble DR. Justice Anita Sumanth

TAX CASE (Appeal) No.758 of 2016

Commissioner of Income Tax,
No.63, Race Course Road,
Coimbatore

.. Appellant

Versus

M/s. The Nilgiris Co-operative
Marketing Society Ltd.,
Sailing House, Ooty,
The Nilgiris.

.. Respondent

Appeal under Section 260A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, Madras "C"
Bench, dated 5.12.2014 in ITA No.584/Mds/2013.

For Appellant .. Mr.T.R. Senthilkumar

Standing Counsel.

JUDGMENT

(Judgment of this Court was made by NOOTY. RAMAMOHANA RAO, J)

This Tax Case Appeal is preferred by the Revenue under
Section 260A of the Income Tax Act, 1961, calling in question the

correctness of the common order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai , in I.T.A.No.584/MDS/2013 on its Bench. The Substantial Questions of Law raised in these Tax Case Appeals are as follows:-

(i) Whether in the facts and under the circumstances of the case, the Tribunal was right holding that the assessee society engaged in selling of agricultural produce of the members is eligible for the benefit of section 80P(2)(a)(i) in respect of the interest received from members?

(ii) Whether in the facts and under the circumstances of the case, the Tribunal was right in holding that the assessee is eligible for deduction under section 80P(2)(a)(i) when it is not a cooperative society engaged in the business of banking or providing credit facilities to its members?

2. In this case, the Assessee is a Co-operative Marketing Society. Pursuant to a notice served on it by the Assessing Officer under Section 143(2) of the Act, the Assessee has made a claim that its income is not liable to suffer any assessment it being a Co-operative Credit Society, but not a Co-operative Bank.

3. Section 80P of the Act deals with all aspects relating to deduction in respect of income of Co-operative Societies. Sub-section (1) thereof clearly spelt out that in case of an Assessee being a Co-operative Society, the gross total income of it includes any income referred to under sub-section (2), there shall be deduction in accordance with and subject to the provisions of the said Section, the sums specified in sub-section (2) in computing the total income of the Assessee. The sums referred to in sub-section (1) have been clarified in sub-section (2). With regard to a Co-operative Society carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to such activities, becomes the total income of such a society. If, thus a Co-operative Society is providing facilities to its members alone then the income generated thereby is not liable to be taken into account and shall be deducted from its gross total income. Sub-section (4) of Section 80P has however, provided that the provisions of Section 80P shall not apply in relation to any Co-operative Bank other than a Primary Agricultural Credit Society or Primary Co-operative Agricultural and Rural Development Bank. In other words sub-section (4) of Section 80P gets attracted only to such Co-operative Societies which fall within the ambit of the expression 'Co-operative Bank'.

Therefore, the whole question which is required to be examined in the present cases is whether the Assessee falls within the ambit and four corners of the expression 'Co-operative Bank' or it is merely a credit society which is carrying on its business by making available credit facilities to its members.

4. If we spare a look at the provisions of Tamil Nadu Co-operative Societies Act, 1983 henceforth called as Co-operative Societies Act, 1983 as well as its immediate predecessor namely Tamil Nadu Co-operative Societies Act, 1961, which have provided for the registration of Co-operative Societies. Under Section 4 of the 1983 Act, a society can be registered which has as its objects of promotion of the economic interests or general welfare of its members in accordance with the Co-operative Principles or a society established with the object to facilitate the operations of such society by the society registered under the Act with limited or unlimited liability. Thus if a society is interested in extending certain credit facilities on the basis of Co-operative Principles, such a credit society is liable to be registered under the provisions of the 1983 Act as well as its predecessor 1961 Act. As is now made out such societies essentially render certain services or facilities for purposes of the benefit and promotion of the welfare of its members. In other words the basic theme behind the

formation of such a society and its registration is to promote the objectives for which it is established for the benefit of its members only. In contrast to the above principles, if we examine the expression 'banking' as defined in Section 5 (b) of the Banking Regulation Act, 1949 the distinction between a 'Co-operative Credit Society' and a 'Co-operative Society' carrying on banking business becomes imminently clear. The expression 'banking' has been defined in the following terms by the Banking Regulation Act, 1949.

"(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

Thus, banking means accepting of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise and such acceptance of money is intended for the purpose of lending or investment by itself. Therefore, the crucial expression relevant for making one answer the description of banking is that it is capable of accepting money from the general public but not necessarily confined to its members. Any such activity carried on by anybody requires, apart from licensing, to answer the regulatory domain prescribed under the 1949 Act. Even a Co-operative Bank which carries on banking activity requires to be regulated by the

provisions of the 1949 Act. Section 80P(4) therefore is clearly attracted to such an institution. But not to credit society. Even while dealing with a Co-operative Bank sub-section (4) has taken care to ensure that the Primary Agricultural Credit Societies and Primary Co-operative Agricultural and Rural Development Banks are kept out of the purview of the said provision. Sub-section (4) of Section 80P therefore, in its application is confined to Co-operative Banks only. In the instant case the Assessee being, a Co-operative Credit Society which in turn is providing for certain credit facilities to its members alone but not to the general public at large and which also does not receive monies by way of deposit from the general public, it does not answer the description of a Co-operative Bank. Consequently, the main provision contained under sub-section (i) of Section 80P gets attracted and consequently the Assessee is entitled to seek the deduction which has been provided for under Section 80P.

5. Sri.T.R.Senthilkumar, learned Standing Counsel for the Income Tax Department, however, is certainly right to a certain extent in his criticism about the reasoning assigned by the Tribunal in the impugned order. We see some force behind the submission of the learned Standing Counsel. The learned Standing Counsel contended that the Tribunal ought to have confined its scrutiny as to whether the

Assessee answers the expression 'Co-operative Bank' or not, for it to fall within the four corners of the provision contained in sub-section (4) of Section 80P so that it will not be in a position to derive the benefit of the main part contained under Sub-Section (1) and (2). Instead of confining its scrutiny the Tribunal has made certain observations which fall out side the purview while examining the issue in the perspective of Section 80P of the Act and to that extent, the order of the Tribunal does warrant interference.

6. However, in view of our concurrence that the Assessee is a mere Co-operative Credit Society but not a Co-operative Bank, we are of the view that the order passed by the Assessing Officer as well as the Appellate Authority and the conclusion arrived at by the Tribunal are not erroneous and hence there is no merit in these appeals and accordingly the appeal stands rejected. No costs.

(N.R.R.,J) (A.S.M., J)
02.11.2016

msr

NOOTY. RAMAMOHANA RAO, J
AND
ANITA SUMANTH, J.

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