

## Commissioner Of Income-Tax, Bombay ... vs Bombay State Co-Operative Bank Ltd. on 23 November, 1967

**Equivalent citations:** [1968]70ITR86(SC)

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**Bench:** J.C. Shah

### JUDGMENT

J.C. Shah, J.

1. The respondent, a co-operative society registered under the Bombay Co-operative Societies Act, 1925, carries on the business of banking and for that purpose holds Government securities as its stock in trade. In proceedings for assessment to income-tax for the years 1953-54 and 1954-55 the Income-tax Appellate Tribunal declared that the interest received from the Government securities held by the society as its stock-in-trade qualified for exemption under Notification No. F. D. (C. R.) R. Dis. No. 291-T.T./25 dated August 25, 1925, issued section 60 of the Income-tax Act, and the High Court of Bombay agreed with that view in a reference under section 66(1) of the Income-tax. The Commissioner has appealed against the order passed by the High Court.

2. The Income-tax Act, 1922, before it was amended by the finance Act, 1955, contained no provision for exempting the income or profits earned by a co-operative society from liability to pay tax. But the Government of India issued a notification in exercise of the power under section 60 of the Indian Income-tax Act granting exemption in respect of the profits of the co-operative societies, and the dividends and other payments received by the members of any such society on account of profits. This notification was amended from time to time, and in the years of assessment with which these appeals are concerned in so far as it relates to the income of a co-operative society it reads as follows :

"The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :....

(2) The profits of any co-operative society other than the Sanikatta Salt-owner's Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), or the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), or the dividends or other payments received by the members of any such society out of such profits.

Explanation. - For this purpose the profits of a co-operative society shall not be deemed to include any income, profits or gains from -

1. Investments in -

(a) Securities of the nature referred to in section 8 of the Indian Income-tax Act, or

(b) Property of the nature referred to in section 9 of that Act,

2. Dividends, or

3. The 'other sources' referred to in section 12 of the Income-tax Act".

3. The High Court held - and in our judgment the High Court was right in so holding - that the exemption under the notification applied to interest earned by a co-operative society from Government securities held by it as its stock-in-trade : it was inapplicable only to interest received from Government securities held by the society as investments.

4. By the plain terms of the notification, exemption was granted in respect of "the profits of any co-operative society" : it was not granted merely in respect of the profits of the society computable under section 10 of the Indian Income-tax Act. The expression "classes of income" in the opening part of the notification was intended to designate particular categories intended to be exempted. The profits received by a co-operative society, whatever may be the method of computation, were therefore entitled, subject to the exception provided by the Explanation, to exemption. Under the Act income from different sources has, it is true, to be computed in the manner and according to the provisions of the Act applicable to the source from which the income is received. Income from property will be computed in the manner provided by section 9; income from securities of the Central Government or the State Government or debentures or other securities for money issued by or on behalf of a local authority or a company will be computed in the manner provided by section 8; income from business, profession or vocation will be computed in the manner provided by section 10; and income from sources other than those expressly specified will be computed in the manner provided by section 12. But the total income received from different sources, computed in the manner provided by the diverse provisions of the Act, is, under the Notification, profit of the society and qualifies for exemption, unless the operation of the exemption is expressly excluded by the Explanation.

5. It was clearly intended by the Explanation that in giving the benefit of the exemption, income received by a co-operative society from investments in securities of the nature referred to in section 8 will not be excluded, but securities held as stock-in-trade of the business and not as investments will be admissible to the benefit of the exemption. If all income of a co-operative society from securities was intended to be excluded from the benefit of the exemption, the expression "investments in" in the Explanation was wholly unnecessary.

6. In *Surat People' Co-operative Bank Ltd. v. Commissioner of Income-tax* the Bombay High Court held that the word "investment" in the Explanation to the notification related only to such securities as did not form part of the stock-in-trade of the co-operative society, and since, in that case, the securities did form part of the stock-in-trade of a co-operative bank, the profit made by sale of the securities was not taxable. This view was apparently accepted by this court in *Bihar State Co-operative Bank Ltd. v. Commissioner of Income-tax*. In *Bihar State Co-operative Bank* case, the appellant society carried on the business of general banking and received interest on short-term deposits made by it with the Imperial Bank of India. The claim of the Appellant-society for exemption from income-tax under the notification was rejected by the tribunal. The High Court of Patna on a reference held that only the income derived from the business of the co-operative society fell within the exemption and that the exemption was not available in regard to income derived from investment of fluid assets with third parties. This court held that since the appellant-society was a bank and one of its object was to carry on general business of banking its normal business was to deal in money and credit and was not restricted to receiving deposits and lending money to its members or other societies, and, therefore, the money laid out in the form of deposit did not cease to be part of the circulating capital and interest from the deposits arose from the business of the bank and was exempt from income-tax under that notification. This court observed at page 122 :

"In our opinion, the High Court was in error in treating interest derived from deposits as not arising from the business of the bank and therefore not falling within the income exempted under the notification."

7. The appeals fail and are dismissed with costs. One hearing fee.

8. Appeals dismissed.