Sabarkantha Zilla Kharid V. Sangh Ltd. vs Commissioner Of Income-Tax on 5 August, 1993

Equivalent citations: AIR1993SC2561, [1993]203ITR1027(SC), JT1993(4)SC448, (1993)4SCC102, [1993]SUPP1SCR993

Bench: B.P. Jeevan Reddy, N. Venkatachala

ORDER

B.P. Venkatachala, J.

1. As the assessee is common to all these appeals they could he disposed of by this common judgment.

CIVIL APPEALS NOS. 793-95(NT) OF 1977

2. These are assessee's appeals from the common judgment in ITR Nos. 100 of 1974, 24 of 1974 and 139 of 1974 of the Gujarat High Court reported in 107 ITR 447. The assessee, who is the appellant in these appeals, is Sabarkantha Zilla Kharid Vechan Sangh Ltd., Himat Nagar. It is a cooperative society engaged in the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture, for the purpose of supplying them to its members as well as to its non-members. It filed the income-tax returns before the concerned Income Tax officer for the assessment years 1964-65, 1965-66 and 1966-67 under the Income Tax Act, 1961 - the IT. Act. In those returns, it sought to claim exemption from payment of income-tax on profits and gains of its business of every assessment year, purporting to be under Section 81(i)(d) of the I.T. Act, as stood then. According to it, amount of profits and gains of the business carried on with its members represented its income and that income in its totality was exempt from payment of income-tax under Section 81(i)(d) of the I.T. Act. But, the Income Tax Officer did not accede to the claim so made. He took the view that the income-tax exemption allowed to an assessee under Section 81(i)(d) of the I.T. Act was not on the amount of gross profits and gains of business with its members hut only on such portion of gross profits and gains of business includible in computation of total income under Section 110 thereof, since the income exempted from income-tax under Section 81(i)(d) thereof was includible in the total income of the assessee as required by Section 66 thereof. The Income Tax Officer made the assessment orders, respecting all assessment years accordingly. The Appellate Assistant Commissioner, before whom the assessee preferred the appeals against the said orders of the Income Tax Officer, dismissed the appeals. The assessee took up the matters in further appeals before the Tribunal. The Tribunal allowed the first two appeals acceding to the assessee's claim that the exemption from payment of income-tax provided for under Section 81(i)(d) of the I.T.

Act was respecting its gross profits and gains. However, it dismissed the third appeal by upholding the order of the Income Tax Officer and the order of the Appellate Assistant Commissioner. Thereafter, two questions which related to the controversy in the first two cases were, at the instance of the Revenue, referred by the Tribunal to the High Court. One of the questions was reframed, by the High Court. The questions, after one of them was reframed read:

> (1) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the case of the assessee is covered by Section 81(i)(d) only and the provisions of Section 66 read with Section 110 of the Act are not attracted is erroneous in law?
>
> (2) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessee was entitled to rebate under Section 81(i)(d) of the Act on the whole of the amount of profit of Rs. without deduction of proportionate overhead expenses?

3. The High Court which examined the said questions answered them against the assessee and in favour of the Revenue. A question covering the same controversy, which was referred by the Tribunal to the High Court, at the instance of the assessee in the third case, read:

> Whether on the facts and in the circumstances of the case, the decision reached by the Tribunal that the assessee was entitled to rebate on profit on sales to the members in the manner indicated by it was correct in law, having regard to the provisions in Section 81(i)(d) of the Act, as it stood before the amendment in the year 1968?

4. The High Court on consideration of the said question answered it against the assessee and in favour of the Revenue.

5. The High Court disposed of all the said three cases, by its common judgment adverted to at the outset. The assessee having preferred the present appeals against the said common judgment of the High Court, it is these appeals which need our consideration.

6. The main controversy requiring our decision in these appeals since relates to "profits and gains" of business carried on by a co-operative society on which no income-tax is payable under Section 81(i)(d) of the I.T. Act, it would be advantageous to excerpt the material portion of that provision, here itself:

> 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 its. if it is -
>
> (a)...

> (d) a society engaged in the purchase of agricultural implements, seeds, livestock, or other articles intended for agriculture for the purpose of supplying them to its members.

7. The said provision, as seen therefrom, undoubtedly exempts an assessee - co-operative society, which carries on the business envisaged therein, from payment of income-tax on profits and gains of such business. But the controversy which relates to the said provision is, whether the income-tax not payable thereunder, calls to be calculated either with reference to the full amount of profits and gains of the co-operative society's business as contended on behalf of the assessee or with reference to the net amount of profits and gains of the co-operative society's business,as otherwise computable under the provisions of the I.T. Act for the purpose of charging income-tax thereon, as contended on behalf of the Revenue. If the relevant provisions of the I.T. Act providing for charging a person including a co-operative society with income-tax on "profits and gains" of such person's business show that it is the net profits and gains, i.e., income of such business computed in accordance with the provisions of the I.T. Act, which is includible in such person's total income liable to charge of income-tax, it must flow therefrom, as a necessary corollary thereof that the "profits and gains" for which exemption of income-tax is envisaged under Section 81(i)(d) of the I.T. Act, ought to be net profits and gains, i.e., income of business computed in accordance with the provisions of the I.T. Act which is includible in such person's total income for charging income-tax thereon. This situation requires us to advert to such of the relevant provisions of the I.T. Act, which could be of assistance to us in resolving the controversy.

8. Profits and gains of business is an income classified under the head 'D' in Section 14 for the purpose of charge of income-tax and for computation of total income, save as otherwise provided thereunder. What is the income which is chargeable for income-tax under the head "Profits and gains of business or profession", becomes clear from Section 28. Then, Section 29 requires that the income referred to in Section 28 shall be computed in accordance with the provisions contained in sections 30 to 43C. Section 37 found in the group of sections 30 to 43, is a general provision which provides for giving allowance of any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of the business or profession, while computing the income chargeable under the head "Profits and gains" of business. Thus, the said section makes it clear, that the business expenditure not covered by the preceding sections 30 to 36, could be deducted in computing profits and gains of business. Sections 38 to 43C covers specific items of expenditure not deductible in computation of the income under the head "profits and gains" of business. Section 4(1) which assumes importance in the context, reads:

> 4(1) - Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions of this Act in respect of the total income of the previous year or previous years, as the case may be of every person.

9. Then Section 5 tells that the total income of any previous year of a person includes all income from whatever source derived, varying, of course, according to the factor of residence.

10. When, we come to Section 66, it requires that in computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VII thereof. What needs to be noticed here is, that Clause (45) of Section 2 defines 'total income' as the total amount of income referred to in Section 5 computed in the manner laid down in the I.T. Act. Then comes Section 110. It provides for the mode of computing the tax in cases where the exempted income is included in the total income. It reads:

> Where there is included in the total income of an assessee any income on which no income-tax is payable under the provisions of this Act, the assessee shall be entitled to a deduction from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable.

11. Thus, when Section 66 of the I.T. Act. requires the computation of the total income of every person to be done by including all income on which no income-tax is payable under Chapter VII, the income on which no income-tax is payable by a co-operative society under Section 81(i)(d) falling in Chapter VII. has to be necessarily included in its total income. The above Section 110 is then attracted because of the very words of its opening clause. Hence, when the assesses-co-operative society's income is included in its total income, it becomes entitled to a deductions from the amount of income-tax chargeable on its total income. That means, the co-operative society concerned becomes entitled to deduction or exemption from income-tax payable by it only on. its net amount of profits and gains, i.e., on income of its business otherwise computable in accordance with the provisions of the I.T. Act for the purpose of charging income-tax thereon and which is included in its total income, and not on the amount of its gross profits and gains of business.

12. Thus, the said provisions of the IT. Act, in our view, clearly envisage a legislative scheme of giving income-tax exemption to a co-operative society carrying on its business contemplated in Section 81(i)(d) of the I.T. Act, not with respect to the amount of gross profits and gains of its business but only with respect to the amount of net profits and gains, i.e., income of its business otherwise computable according to the provisions of the I.T. Act for the purpose of charging income-tax as a part of the total income of the assessee, as required under Section 110 of the I.T. Act.

13. Since the above view of ours on the income-tax exemption allowed under Section 81(i)(d) of the I.T. Act is based on the applicability of the express provisions in the I.T. Act bearing thereon, it would be enough to refer to two decided cases-one of the Andhra Pradesh High Court in Commissioner of Income-tax v. Anakapalli Co-operative Marketing Society 175 I.T.R. 584 and the other of this Court in Distributors (Baroda) P. Ltd. v. Union of India and Ors. 155 I.T.R. 120, which directly bear on the controversy.

14. In Anakapalli Co-operative Marketing Society's case (supra), the question referred for decision of the Andhra Pradesh High Court under Section 256(1) of the I.T. Act was:

> Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the entire amount of Rs. 3,72,038 relating to marketing of agricultural produce of its members and interest on loans given to its members should be allowed as deduction under Section 80P(2)(a) of the Income-tax Act, and not Rs. 73,720 with reference to the proportionate net profit referable to those activities only?

15. Section 80P, which provided for exemption to a co-operative society from payment of income-tax, was incorporated in the I.T. Act with effect from 1.4.1968 by deletion of Section 81, with which we have dealt with. The material provision of Section 80P read thus:

> 80P(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, 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 -
>
> (i) ...
>
> (ii) ...
>
> (iii) the marketing of the agricultural produce of its members, or
>
> (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or ...

the whole of the amount of profits and gains of business attributable to any one or more of such activities.

16. Jeevan Reddy, J. (one of us) who spoke then for the Division Bench of the High Court, answered the aforesaid question in the negative, taking the view that what was deductible under Sub-section (1) of Section 80P was only that portion of the said amount as can be called total income attributable to activities defined in Clause (5) of Section 80B. Section 80AB introduced into the I.T. Act by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, was adverted to by His Lordship to buttress the view so taken, in that it read:

> Where any deduction is required to be made or allowed under any section (except Section 80M) included in this chapter under the heading 'C. Deductions in respect of certain incomes'. In respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then notwithstanding anything contained in that section for the purpose of computing the deduction under

> that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.

17. Hence, the view taken by the Andhra Pradesh High Court on the scope of Section 80P of the I.T. Act which had replaced Section 81 of the I.T. Act, fully supports the view we have already expressed on the 'income exemption' of profits and gains of a business of a co-operative society as envisaged under Section 81 of the I.T. Act read in conjunction with sections 66 and 110 thereof.

18. The case of Distributors (Baroda) P. Ltd. (supra) is a decision of the Constitution Bench of this Court. There, this Court was concerned with the interpretation to be placed on Section 80M of the I.T. Act. That section read thus:

> 80M. Deduction in respect of certain intercorporate dividends, - (1) Where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, deduction from such income by way of dividends of an amount equal to -
>
> (a) where the assessee is a foreign company - (i) in respect of such income by way of dividends received by it from an Indian company which is not such a company as is referred to in Section 108 and which is mainly engaged in a 80% of such priority industry income; (ii) in respect of such income by way of dividends other than the dividends 65% of such referred to in Sub-clause (i) income; (b) where the assessee is domestic company - in respect of any such 60% of such income byway of dividends income.

19. The requirement of the above Sub-section (1) of Section 80M of the I.T. Act, according to the Constitution Bench, was this:

> Sub-section (1) of Section 80M provides that in computing the total income of the assessee, there shall be allowed a deduction from 'such income by way of dividends' of an amount equal to the whole or a specified percentage of such income. Now, when in computing the total income of the assessee, a deduction has to be made form 'such income by way of dividends', it is elementary that such income by way of dividends' from which deduction has to be made must be part of gross total income. It is difficult to see how the language of this part of Section (1) of Section 80M can possibly fit in if 'such income by way of dividends' were interpreted to mean the full amount of dividend received by the assessee. The full amount of dividend received by the assessee would not be included in the gross total income: what would be included would only be the amount of dividend as computed in accordance with the provision of the Act. If that be so, it is difficult to appreciate how for the purpose of computing the total income from the gross total income, any deduction should be required to be

made from the full amount of the dividend. The deduction required to be made for computing the total income from the gross total income can only be from the amount of dividend computing in accordance with the provisions of the Act which would be forming part of the gross total income. It is, therefore, clear that whatever might have been the interpretation placed on Clause (iv) of Sub-section (1) of Section 99 and Section 85A, the correctness of which is not in issue before us, so far as Sub-section (1) of Section 80A is concerned, the deduction required to be allowed under that provision is liable to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with reference to the full amount of dividend received by the assessee.

20. If, what is staled above is the requirement of Section 80M of the I.T. Act, regarded as a clarificatory provision on its plain language, the requirement of Section 81(i)(d) of the I.T. Act, on its plain language read in conjunction with Sections 66 and 110 of the I.T. Act, makes it manifest that the scheme of 'income-tax exemption' provided for under the I.T. Act for a co-operative society in relation to profits and gains of its business, is not in any way different. Thus the view, we have taken as to the income-tax exemption envisaged under Section 81(i)(d) of the I.T. Act receives full support from the decision of the Constitution Bench.

21. Then, coming to the question of actual amount to be deducted as income-tax to which a co-operative society becomes entitled under Section 81(i)(d), Section 110 makes it clear that the deduction to which such co-operative society would be entitled from the amount of income-tax with which it is chargeable on its total income, is an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable. Since the 'average rate' of income-tax is defined in Section 2(10) as meaning the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income, the deduction in income-tax to which a co-operative society doing the business envisaged under section 81(i)(d) would be entitled, can only be the average rate of income-tax on the amount on which no income-tax is payable and nothing more.

22. In the view, we have taken on the matters of controversy in the appeals, the answers given by the Gujarat High Court in its judgment under appeals on all the questions referred to it, require to be upheld, in their entirety.

23. In the result, we dismiss these appeals. However in the circumstances of these appeals, we do not propose to make any order as to costs.

CIVIL APPEALS NOS. 1549-51(NT) OF 1977.

24. As the previous judgment of the Gujarat High Court relied upon by it in the judgment under challenge in these appeals, is upheld by us in Civil Appeals Nos. 793-95(NT) of 1977 just now disposed of, we dismiss these appeals as well, however, without costs.