

## **U.P. Co-Operative Cane Union ... vs Commissioner Of Income-Tax on 30 January, 1997**

**Equivalent citations: AIR1999SC1597, [1999]237ITR574(SC), JT1998(9)SC376, (1997)11SCC287**

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**Bench: S.C. Agrawal**

### **JUDGMENT**

1. These appeals, by special leave, are directed against the judgment of the Allahabad High Court whereby the following question which was referred to it for opinion by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') has been answered against the assessee and in favour of the Revenue:

Whether on the facts and in the circumstances of the case, the assessee was entitled for exemption under Section 80P(2)(a)(i) of the Income Tax Act, 1961 from income from press and income from supply of pumping sets ?

2. These appeals relate to the assessment years 1971-72 and 1972-73. The U. P. Co-operative Cane Union Federation Ltd. (hereinafter referred to as 'the Federation') is a co-operative society registered under the U. P. Co-operative Societies Act, 1965 (hereinafter referred to as 'the Co-operative Societies Act'). The members of the Federation are cane unions which are also co-operatives societies and the members of these cane unions are the individual cane growers. No individual cane grower is a member of the Federation. The Federation had sponsored an irrigation scheme for small farmers whereunder loan applications of the cane growers were forwarded to the State Bank and the Central Bank for India for purchase of pumping sets. In that connection, the Federation had entered into an agreement on March 5, 1970 with M/s. Southern Engineering Works for supply of pumping sets to the cane growers and had agreed to undertake to provide the loan either of its own or through any financial institution for the members of the cane unions for the purchase of pumping sets. The loan was to be provided to the extent of 75% of the purchase price and the balance 25% and other expenses were to be met by the cane grower and was repayable in instalments and the Federation agreed to undertake the entire responsibility of making prompt payment within seven days from the date of invoice of the distributors or dealers for the sale of pumping sets. In consideration of these services the suppliers paid 5% of the price of the pumping sets to the Federation.

3. During the assessment year 1971-72, the Federation received Rs. 55,098/- as 5% service charges from the supplier of the pumping sets and the Federation claimed exemption from tax on the said amount under Section 80P(2)(a)(i) and (iv) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). In respect of the assessment year 1972-73, the amount received as 5% service charges was

Rs. 23,374/- for which similar exemption was claimed. The said claim of the Federation was rejected by the Income Tax Officer and the said order was affirmed, in appeal, by the Appellate Assistant Commissioner. But on further appeal, the Tribunal has upheld the claim of the Federation for exemption under Section 80P(2)(a)(i) on the view that the individual cane growers can be regarded as members of the Federation and that the Federation was providing credit facility to its members. The Tribunal was, however, of the view that Section 80P(2)(a)(iv) could not be invoked by the Federation because it had not purchased any pumping set nor had it supplied such sets to the cane growers. On being moved by the Revenue, the Tribunal referred the above mentioned question for the opinion of the High Court.

4. The High Court has examined the matter in the light of the provisions of Section 80P(2)(a)(i) of the Act and has found that the Federation was engaged in providing credit facilities to the cane growers. But the High Court has held that the said facilities were not provided by the Federation to its members since the cane growers could not be regarded as members of the Federation. On that view, the High Court has answered the question referred against the Federation and in favour of the Revenue and has held that the Federation could not claim exemption under Section 80P(2)(a)(i) of the Act. Being aggrieved by the said decision of the High Court, the Federation has filed these appeals.

5. Shri Tripurari Rai, the learned Counsel for the Federation, has submitted that keeping in view the object and purpose with which the cane unions and the Federation have been formed, viz., to promote the growth of agricultural production of cane by the cane growers, and the object underlying the grant of exemption under Section 80P(2)(a)(i), the expression "members" in the said provision should be construed liberally to mean that individual cane growers were members of the Federation. The learned counsel has placed reliance on the observations of this Court in *Commr. of Income Tax, Madras v. South Arcot Dist. Co-op. Marketing Society Ltd.*, wherein, in the context of the provisions of Section 80P(2)(e) of the Act, it has been observed that having regard to the object with which the provision has been enacted, it is apparent that a liberal construction should be given to the language of the provision.

6. On behalf of the Revenue, Dr. Gauri Shankar has submitted that the High Court has rightly construed the expression "members" in Section 80P(2)(a)(i) in the light of the definition of the said expression contained in Section 2(n) of the Co-operative Societies Act and that since the cane growers were not members of the Federation, the High Court has rightly held that the benefit of Section 80P(2)(a)(i) of the Act could not be extended to the Federation. Dr. Gauri Shankar has invited our attention to the recent decision of this Court in *Assam Co-operative Apex Marketing Society Ltd. v. Commr. of Income Tax (Addl.)*

7. The relevant part of Section 80P(2)(a)(i) of the Act is reproduced as under:

Section 80P Deduction in respect of income of co-operative societies:

(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) carrying on the business of banking or providing credit facilities to its members,  
or...

8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the co-operative society claiming exemption, has been formed. It is, therefore, necessary to construe the expression "members" in Section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Co-operative Societies Act. The said provision reads as under:

Section 2(n). Member means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to "members" anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty.

9. It is not disputed that as per the said provision the members of the Federation were the cane union co-operative societies only. The individual cane growers who were members of the cane growers unions were not the members of the Federation. In this context, it may be mentioned that in Clause (b) of Sub-section (2) of Section 80P, reference has been made to primary society as well as federated co-operative (societies which indicates that while enacting Section 80P Parliament was conscious of the 'distinction between the various types of co-operative societies that the functioning in the country, namely, the federated co-operative societies and primary societies. In Section 80P(2)(a)(i), when Parliament has used the expression "members", it has used it in the normal sense of a member of a co-operative society. The intention was to extend the exemption to co-operative societies directly extending credit facilities to its members. There is nothing in the said provisions to show that the intention was to grant exemption to co-operative societies which were extending credit facilities to persons, though not the members of the said society, were members of another co-operative society which is a member of the co-operative society seeking exemption. The meaning of the expression "members" cannot, therefore, be extended to include the members of a primary co-operative society which is a member of the federated co-operative society seeking exemption. The principle of lifting the corporate veil which was invoked by Shri Tripurari Rai in support of his submission cannot have any application in the context of the provisions contained in Section 80P(2)(a)(i) of the Act.

10. In Assam Co-operative Apex Marketing Society Ltd. v. Commr. of Income Tax (Addl.) 1993 AIR SCW 3235 (supra) this Court has considered a similar question in the context of Section 81(i)(c), as it stood prior to its substitution by Section 80P. The said provision was in pari materia to Section 80P(2)(a)(iii) as it exists now. The appellant in that case was an Apex Co-operative Marketing

Society and its members were the various co-operative societies. The question was whether the words "agricultural produce of its members" would cover the agricultural produce of the growers who were not the members of the Apex Society but were the members of the co-operative societies which were members of the Apex Society. It was held that the said expression would not cover the agricultural produce of the growers. It has been observed (Para 7 of AIR):

A reading of Clause (i) of Section 81 shows that the idea and intention behind the said clause was to encourage basic level societies and those engaged in purchasing and supplying agricultural implants, seeds, etc. to their members and so on. Agricultural produce of its members must be understood consistent with this object and, if so understood, the words mean the agricultural produce produced by the members. If it is not so understood, even a co-operative society comprising traders dealing in agricultural produce would also become entitled to exemption which could never have been the intention of Parliament. The agricultural produce produced by the agriculturist can legitimately be called agricultural produce in his hands but in the hands of trader, it would be appropriate to call it agricultural commodities; it would not be his agricultural produce. Accordingly, it must be held in this case that since the agricultural produce marketed by the assessee was not the agricultural produce by its members, namely, the primary co-operative society, the assessee cannot claim the benefit of the said exemption.

11. What has been said about the intention behind Section 81(i)(c) (now Section 80P(2)(a)(iii)) is also applicable to Section 80P(2)(a)(i) and the intention behind the said provision is also to encourage basic level societies providing credit facilities to its members.

12. The High Court has rightly held that on the facts and in the circumstances of the case, the Federation was not entitled for exemption under Section 80P(2)(a)(i) of the Act. We, therefore, find no merit in these appeals and the same are accordingly dismissed. But in the circumstances, there shall be no order as to costs.