

Supreme Court of India

The Assam Co-Operative Apex ... vs Additional Commissioner Of ... on 25 February, 1993

Equivalent citations: AIR 1993 SC 2575, 1993 201 ITR 338 SC, 1994 Supp (2) SCC 96

Bench: B J Reddy, N Venkatachala

JUDGMENT

1. This appeal is preferred against the judgment of the Gauhati High Court answering the question referred to it against the assessee. The question referred is:

Whether on the facts and in the circumstances of the case, the assessee i.e., Assam Cooperative Apex Marketing Society Ltd., is entitled to exemption under Section 81(1)(c) in respect of their income arising out of procurement of paddy and other agriculture produce?.

2. The assessment year concerned herein is 1962-63, the first assessment year under the Income-tax Act, 1961. During the accounting year relevant to the said assessment year, the appellant. The Assam Co-operative Apex Marketing Society Ltd., Assam was appointed as the procuring agent for paddy by the Government under a scheme evolved by the Government of Assam and contained in its proceeding dated 23rd November, 1962. The assessee is a society registered under the Assam Co-operative Societies Act, 1949. The objects of the Society are:

(i) to arrange for the sale of produce of the members of affiliated societies and other members to the best advantage.

(ii) to purchase and sell agricultural produce and farm and farmers requisites including seeds, manures, fertilizers and machinery etc.

(iii) to act as agent of members for the disposal of their produce; and

(iv) to act as a central purchasing agency for agricultural as well as Consumers Society and for other members. The membership of the assessee society is divided into three classes as follows:

(a) A-Class consisting of co-operative institutions;

(b) B-Class consisting of individual cultivators and sympathisers;

(c) C-Class consisting of traders commission agent etc.

(d) The State Government.

3. There are various categories of Societies in the State of Assam. We are concerned with two such categories i.e., Village Service Co-operative Societies and Primary Marketing Societies. The assessee, of course, is at the apex. The Village Service Co-operative Societies are at the base of the pyramid. Their membership consists of agriculturists. These Village Societies are the members of the Primary Marketing Societies. The Primary Marketing Societies in turn are members of the assessee society. It

does not appear that any agriculturist as such is member of the assessee society.

4. The system of procurement was that the Village Service Co-operative Societies procured agricultural produce from their respective members at the prescribed price and made it over to the Primary Marketing Society. The Primary Marketing Society in turn made over the same to the assessee society. In lieu of this procuring activity, the assessee society was being paid remuneration at the rate of Re. 1/- per maund. This one rupee commission was divided between the three co-operative societies. The apex society took 19 paise, the Village Service Co-operative Society was entitled to 19 paise and the remaining 62 paise went to the Primary Marketing Society.

5. In the assessment proceedings, "the assessee claimed exemption of its income from the said activity under Section 81(i)(c), as it then stood. This plea was negatived by the Income-tax Officer but on appeal, the Appellate Assistant Commissioner agreed with the assessee. The revenue went up in appeal to the Tribunal. The appeal was allowed, where upon the assessee obtained the reference aforesaid.

6. Section 81(i) read thus:

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

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

(a) a society engaged in carrying on the business of banking or providing credit facilities to its members; or

(b) a society engaged in a cottage industry; or

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

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

(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 co-operative society;

Provided that, in the case of a co-operative society which is also engaged in activities other than those motioned to this clause, nothing contained herein shall apply to that part of its profits and gains as is attributable to such activities and as exceeds fifteen thousand rupees;

7. Sub-clause (c) of Clause (1) exempts the income of a co-operative society 'engaged in the marketing of the agricultural produce of its members'. The contention of Sri Parekh, learned

Counsel for the assessee appellant is that inasmuch as the assessee has marketed the agricultural produce of its members, namely, the agricultural produce belonging to Primary Marketing Societies, the assessee is entitled to the benefit of the said sub-clause. Learned Counsel submits that the High Court was not right in holding that for obtaining the benefit of the said sub-clause, the agricultural produce by such members (Sic). Such an interpretation, according to the learned Counsel, amounts to adding words to the said clause which are not there. We find it difficult to agree with the learned Counsel. A reading of Clause (i) of Section 81 shows that the idea and intention behind the said clause was to encourage basic-level societies engaged in cottage industries, marketing agricultural produce of its members and those engaged in purchasing and supplying agricultural implements, seeds etc. to their members and so on. The words '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 comprised of traders dealing in agricultural produce would also become entitled to exemption which could never have been the intention of the Parliament. The agricultural produce produced by the agriculturist can legitimately be called agricultural produce in his hands but in the hands of traders, 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 produced by its members namely, the Primary Co-operative Society, the assessee cannot claim the benefit of the said exemption. The High Court was right in holding that the benefit of the said sub-clause is not available to the assessee herein.

8. Mr. Parekh then contended that wherever the Act wanted to provide that it should be the produce raised by the members of such society, it has provided so expressly, as in Sub-clause (f), which speaks of "milk raised by its members". Counsel says that no such words are found in Sub-clause (c), which is an indication of the intention of the Parliament. It is not possible to agree. Sub-clause (f) speaks of a Primary Co-operative Society engaged in supplying milk to a federal milk Co-operative Society. Evidently, the Parliament did not want to use the words "milk of its members" which would have been in appropriate and awkward, and that is why it used the words "milk raised by its members." The idea again was to provide an exemption only in favour of the base-level society.

9. For the reasons stated above, the appeal fails and is dismissed. No order as to costs.