

Broach Dist Co-Operative Cotton Sales, Ginning and Pressing Society Ltd.

Vs

Commissioner of Income-Tax, Ahmedabad

Civil Appeals Nos. 513 to 515 of 1975

(CJI R. S. Pathak, M. H. Kania JJ)

26.04.1989

JUDGMENT

R. S. PATHAK C.J.I. –

1. These appeals by certificate granted by the High Court of Gujarat are directed against the judgment of the High Court answering the following question in favour of the Revenue and against the assessee:

"Whether, on the facts and in the circumstances of the case, the income of the society from ginning and pressing was exempt under section 81(i)(c) of the Income-tax Act, 1961 as it stood prior to its amendment on April 1, 1968 ?"

The assessee is a co-operative society constituted under the Co-operative Societies Act. The objects of the society intend that it should press cotton and pack the bundles for its individual members as well as other customers, to use its machinery for any useful work of its members, and to sell raw cotton, cotton seeds and other agricultural products. The assessee possessed a ginning and pressing factory to cater to the needs of its members. It gets raw cotton from the members, and gins and presses the cotton for marketing on behalf of its members. For rendering the services of ginning and pressing before selling the goods, the assessee charges the members a certain amount by way of ginning and pressing charges. It also charges commission for the sale of the finished product.

In the course of assessment for the assessment years 1961-62 to 1963- 64, the assessee claimed that the receipts from the ginning and pressing activities were exempt under section 81(i)(c) of the Income- tax Act (as it stood then). The Income-tax Officer, however, declined to accept the claim on the ground that the assessee had been carrying out the process of ginning and pressing with the aid of power. The Appellate Assistant Commissioner confirmed the orders of the Income- tax Officer. In second appeal, the Income-tax Appellate Tribunal held that having regard to the circumstance that the receipts were from members only, that there was a general market for ginned and pressed cotton only and that no evidence appeared of any dealing in raw cotton, the ginning and pressing activities were to be regarded as an integral part of the marketing activity, and therefore the receipts from those activities were not liable to tax by virtue of section 81(i)(c). At the instance of the Revenue, the Appellate Tribunal referred the question of law set out earlier to the High Court of Gujarat for its opinion.

For the purpose of the contentions raised before the High Court, and again before us, the following provisions of section 81 seem relevant:

"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 it if it is...

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

(e) a society engaged in the processing without the aid of power of the agricultural produce of its members; or ...

Provided that, in the case of a co-operative society which is also engaged in activities other than those mentioned in 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."

The High Court proceeded on the view that if a society carries on certain activities which are exempted according to clauses (a) to (f) of section 81(i) and certain other activities which are not exempted, the profits and gains attributable to such non exempted activities must necessarily be taxed. The High Court observed that the assessee carried on ginning and pressing of cotton with the aid of power and even if those activities are regarded as ancillary or incidental to its marketing activity they would not come within the category of exempted activities in view of the proviso and therefore they would have to be taxed. We find ourselves unable to accept the view taken by the High Court. It is apparent that the ginning and pressing was part of the integral process of marketing. It was an activity incidental or ancillary to the marketing of the produce of its members. The ginning and pressing of the raw cotton was never regarded as a distinct process. When they delivered the raw cotton was never regarded as a distinct process. When they delivered the raw cotton to the assessee for marketing, ginning and pressing was regarded as part of that process. The members did not take back the cotton after it was ginned and pressed. They paid only the cost of ginning and pressing. All the raw cotton so treated by the assessee was received from its members and it was only such cotton of its members which was marketed by the assessee. The sale of the cotton was effected by the assessee to the outside world and not to its members. The object of section 81(i) was to encourage and promote the growth of co-operative societies, and consequently a liberal construction must be given to the operation of that provision. The proviso to section 81(i) operates to exclude from the exemption those activities which can be regarded as separate and distinct from the activities enumerated in clauses (a) to (f) of section 81(i). If the activity in question is incidental or ancillary to one of the activities mentioned in those clauses, the proviso in our opinion, will not apply. We may refer in this connection to the observations of the Karnataka High Court in *Addl CIT v. Ryots Agricultural Produce Co-operative Marketing Society Ltd.* [1978] 115 ITR 709, where reference has been made to the broad meaning of the expression "marketing" appearing in clause (c) or section 81(i) and it has been explained that in order to make agricultural produce fit for marketing, the activities involved in enabling that to be done must be regarded as involved in the activity of marketing itself. Reference may also be made to *CIT v. Kajan Co-op Cotton Sale Ginning and Pressing Society Ltd.* [1981] 129 ITR 821 (Guj), where the concept of "marketing" was given a meaning which included the ginning and pressing of raw cotton and was not confined to the selling activity alone.

An attempt was made by learned counsel for the Revenue to raise the point that ginning and pressing into cotton bales changed the character of the cotton and therefore, what was marketed was not the agricultural produce of the assessee. This point was not raised at any earlier stage by the

Revenue and cannot be permitted to be taken now.

We are of opinion that the assessee is entitled to the exemption of the profits and gains derived from the activity of the entire business of ginning and pressing of cotton and marketing it by virtue of clause (c) of section 81(i) of the Income-tax Act, and that the High Court erred in holding to the contrary.

In the result, the appeals are allowed and the question referred by the Income tax Appellate Tribunal to the High Court must be answered in affirmative in fact of the assessee and against the Revenue. The assessee is entitled to its costs.

Appeals allowed.

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