

SUPREME COURT OF INDIA

Commnr. of Income Tax, Jaipur

Vs.

Rajasthan Rajya Bunkar S. Samiti Ltd.

C.A.No.9485 of 2003

(S.H. Kapadia and Aftab Alam JJ.)

16.02.2010

ORDER

1. Heard learned counsel on both sides.

2. Assessee-Society is an Apex Society. It carries on the activity of manufacturing of cloth by supplying raw- material, i.e., yarn, to the weavers, who are the members of the primary societies, which, in turn, are the members of the Assessee-Society. The weavers produce cloth strictly in accordance with the directions given and under the control of the assessee. The assessee pays weaving charges to the weavers and thereafter markets and sells goods so produced.

3. During the relevant assessment years, cloth was manufactured and sold under Janata Cloth Scheme of the Government of India.

4. For the relevant assessment years, the assessee claimed a deduction of Rs.30,87,212/- under *Section 80P(2)(a)(ii) and Section 80P(2)(a)(vi) of the Income Tax Act, 1961* ['Act', for short].

5. The narrow question which arises for determination in these cases is - whether the assessee-Society could be said to be engaged in a Cottage Industry under Section 80P(2)(a)(ii) of the Act or whether it could be said to be engaged in the collective disposal of labour of its members under Section 80P(2)(a)(vi) of the Act? It is the contention of the Department that the weavers are not the members of the Apex Society. They are the members of the primary Societies. Therefore, the assessee is not entitled to claim benefit of deduction under Section 80P(2)(a)(vi) of the Act.

6. In our opinion, on both these questions, the Assessing Officer ought to have called for the Bye-laws. It appears that Bye-laws were not produced before the Assessing Officer. It appears that the Bye-laws have not been examined by the Assessing Officer. Further, it is not clear as to whether a weaver could or could have become a member of the Apex Society

under the Bye-laws. Even to answer the question whether the assessee-Society is engaged in the Cottage Industry, the Department ought to have called for the Bye- laws. This exercise has not been done. In the circumstances, for the relevant assessment years, we do not wish to interfere with the findings given by the Courts below. However, we make it clear that this Order will not come in the way of Department in making assessment for the future assessment years. However, in such an event, the Department will decide the applicability of Section 80P of the Act [including the proviso to Section 80P(2)] keeping in mind the provisions of the Bye-laws. The said provisions of the Bye-laws will point to the nature of the business of the assessee as also entitlement of the weavers to become members of the Apex Society. The Department will examine the Janata Scheme of the Central Government to decide whether payments made thereunder would be entitled to deduction under Section 80P(2)(a)(ii) and Section 80P(2)(a)(vi) of the Act.

7. Accordingly, the civil appeals are disposed of with no order as to costs.