

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Bombay State Co-Operative Bank

(V Desai, Y Tambe)

10.02.1965

JUDGMENT

Desai, J.

1. The assessee in this case is a co-operative society registered under the Bombay Co-operative Societies Act, 1925. It carries on the business of banking and in the course of its business it holds government securities as its stock-in-trade. It also derives income from interest on securities, property and other sources. During the assessment years 1953-54 and 1954-55, for which the corresponding accounting years were the years ending 30th June, 1952, and 30th June, 1953, respectively, the assessee's income included interest on Government securities amounting to Rs. 9,32,657 in the assessment year 1953-54 and Rs. 6,26,610 for the assessment year 1954-55. The assessee claimed that those amounts were parts of its profits, which were exempted from tax under the notification issued under section 60 of the Indian Income-tax Act by the Central Government of the 25th August, 1925. The claim of the assessee for exemption was disallowed by the departmental authorities on the ground that the said amounts were not profits, which were exempted under clause (2) of the said notification, but, on the other hand, they fell under item No. 1 of the Explanation to the said clause, and were excluded from the exemption. In the appeal before the Income-tax Appellate Tribunal, the Tribunal allowed the appeal of the assessee holding in its favour that the said amounts were exempted from tax under clause (2) of the notification and the exemption was not excluded under item No. 1 of the Explanation to the said clause. Thereafter at the instance of the department the Tribunal has drawn up a statement of the case and referred the following question to this court :

"Whether, on the facts and circumstances of the case, the income from interest on Government securities held as stock-in-trade by the assessee for the assessment years 1953-54 and 1954-55 is exempt from tax under the Explanation to the Government Notification F. D. (C. R.) Notification R. Dis. No. 291-I. T./25 dated 25th August, 1925,

as amended, under section 60 of the Indian Income-tax Act ?"

2. Section 60 of the Indian Income-tax Act empowers the Central Government, by notification in the official gazette, to make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons. The power given by this section has been exercised by the Central Government by issuing certain notifications and the one with which we are concerned in the present case is as follows :

3. The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purpose of the said Act :

(1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, provided that the exemption shall apply only to interest on securities so held on account of any one assessee up to a face value of Rs. 22,500 (Finance Department Notification No. 878-F, dated the 21st March, 1922). (This shall cease to have effect in respect of interest paid after the 31st March, 1939, vide Government of India, Finance Department (Central Revenues) Notification No. 6 - Income-tax, dated 18th March, 1939).

(2) The profits of any co-operative society other than the Sanikatta Salt-Owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925) or the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), or the dividends or other payments received by the members of any such society out of such profits."

4. Explanation. - For this purpose the profits of a co-operative society shall not be deemed to include any income, profits or gains from -

(1) Investments in (a) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (b) property of the nature referred to in section 9 of that Act, (2) Dividends, or (3) The 'other sources' referred to in section 12 of the Income-tax Act."

5. It is the assessee's contention that all income, profits and gains of a co-operative society, such as is mentioned in clause (2), exempted from tax except such of it as is included in the 3 items of the Explanation. The assessee being admittedly a dealer in Government securities, the interest on securities is a part of its profits from its activity of business, and qualifies for exemption under clause (2) of the notification. It is not excluded from the said exemption under item No. 1 of the Explanation because that item is only restricted to the exclusion from exemption of interest on

securities, which are held by a co-operative society as investments and not as stock-in-trade. The assessee, therefore, is entitled to the exemption as claimed by it.

6. The argument of the department, on the other hand, is that the notification having been issued in respect of classes of income, the two classes of the notification have reference to definite classes of income. Clause (2), which refers to the profits of a co-operative society, is in respect of the class of income, profits and gains of the business. The purpose of the Explanation, which is appended to clause (2), is only the profits and gains of business computable under section 10 of the Indian Income-tax Act and nothing more.

7. It is further argued on behalf of the department that at any rate under item No. 1 of the Explanation, all income, profits and gains arising from moneys laid out by co-operative societies in securities of the nature referred to in section 8 of the Indian Income-tax Act, whether the said securities are held as stock-in-trade or as capital investments, are excluded from the exemption granted under the notification. The amounts claimed by the assessee, therefore, are not entitled to exemption under the notification.

8. In our opinion, the argument advance on behalf of the department cannot be sustained. The expression "class of income", as used in section 60 of the Indian Income-tax Act or in the opening part of the notification under consideration, is not intended to be the same thing as income under the heads as specified in section 6 of the Indian Income-tax Act. Mr. Joshi has argued that section 6 of the Indian Income-tax Act classifies income, and, as observed by Shah J. in *Commissioner of Income-tax v. Chugandas and Co.*, the heads of income described in section 6 of the Indian Income-tax Act, 1922, and further elaborated for the purpose of computation in section 7 to 10 and 12A, 12AA and 12B are intended merely to indicate the classes of income. The expression "class of income" as used in section 60 of the Indian Income-tax Act and in the opening part of the notification must, therefore, be understood as meaning income under the specific heads of income as specified in section 6 of the Act. In our opinion, although the heads of income as specified in section 6 indicate different classes of income, the expression "class of income" is not necessarily synonymous with income under heads of income. As it held in *Commissioner of Income-tax v. B. B. & C. I. Railway Co-operative Mutual Death Benefit Society for Indian Staff Ltd.*, that expression really means a category of income and it is a much wider expression than a head of income. The different clauses of the notification deal with different categories of income and clause (2), with which we are concerned, deals with income derived by a co-operative society as a class or category of income. It may be that the expression "class of income" may be capable of being used as having the same meaning as income under a specific head of income. There is, however, no doubt that the expression has not been used as synonymous with heads of income either in section 60 or in the notification. The expression

"heads of income" had been used in section 6 of the Act and the legislature was fully apprised of the languages used in that section when it used the expression "class of income" in section 60. If by that expression was intended to mean only the heads of income, the said expression would have been easily used in section 60 also. As has been pointed out in *Commissioner of Income-tax v. Chugandas and Co.*, the provisions of the Indian Income-tax Act will show that where the legislature intended to refer to a specific head of taxation under section 6 of the Act as a condition for imposing an obligation or claiming a right, the legislature has in terms referred to such a head. Instances can be found in the provisions of section 18(2), 18(3) and 24, etc. In section 60, however, the legislature has deliberately omitted the use of the expression "heads of income" and used another expression, viz., "class of income", which is an expression of a wider connotation. It is, therefore, not possible to argue that the power given under section 60 to the Central Government is only to grant exemption in respect of specific heads of income and, consequently, the notifications issued in exercise of that power must have a necessary reference to the heads of income. That the notification issued by the Central Government is not confined to incomes under specific heads but has dealt with categories of income is evident from the contents of the notification itself. The first clause of the notification exempts interest on Government securities held in the manner and to the extent as specified therein. Interest on Government securities is a specific head of income under section 6, which is dealt with for the purposes of computation under section 8. It may, therefore, be possible to say that so far as the first clause is concerned, it has reference to income under a specific head. When we, however, come to the second clause, the position is entirely different. What is exempted under the second clause are profits of a co-operative society of the kind mentioned therein. Now, profits of a co-operative society mean all profits and not necessarily profits which are computable under a specific head, such as profits and gains of business under section 10. There is nothing in this clause to warrant that the word "profits" as used in this clause is restricted to profits and gains computable under section 10 of the Act, or profits falling under any other head. There can be no doubt whatsoever that the expression "profits" of a co-operative society will mean all profits of the co-operative society from whatever sources derived and not necessarily profits under any one head. If clause (2) was to be restricted only to profits and gains computable under section 10, nothing was simpler than to so specify in the said clause. Mr. Joshi has argued that clause (2) cannot be read in isolation but has got to be read along with the Explanation which is appended to it and when it is so read, it will be abundantly clear that by the word "profits" in that sub-clause, only profits and gains computable under section 10 of the Act are intended. Now, the Explanation is as follows :

"For this purpose the profits of a co-operative society shall not be deemed to include any income, profits or gains from the three items specified therein."

9. It seems to us that if by the word "profits" used in clause (2) only the profits and gains as computable under section 10 were intended, there was no necessity whatsoever to give the Explanation. Moreover, the very wording of the Explanation itself would show that the word "profits", but for the said Explanation, would include not only the profits computable under section 10 but all profits. The Explanation proceeds to say "profits... shall not be deemed to include" something. In other words, but for the deeming brought in by the Explanation, the profits would have included what the Explanation says, they would not include. We do not, therefore, think that Mr. Joshi is right in his submission that clause (2) is only confined to the profits and gains computable under section 10 of the Act. What seems to us on reading the clause along with the Explanation is that all profits of a co-operative society, except such as are excluded by the Explanation, are exempted under the notification. The view that we are taking is supported by a decision of this court in Commissioner of Income-tax v. B. B. & C. I. Railway Co-operative Mutual Death Benefit Society for Indian Staff Ltd., which we have already referred to, where it has been held that the expression "class of income" used in notification means a category of income, which is a much wider expression than a head of income and the exemption, which is granted under clause (2) of the notification, is of that category of income, which is the income of a co-operative society. In Surat Peoples' Co-operative Bank Ltd. v. Commissioner of Income-tax Mr. Justice Tendolkar, in dealing with the notification with which we are concerned, observed :

"Now, turning to the notification, it is clear that under sub-clause (2), the profits of any co-operative society registered under the Bombay Co-operative Societies Act are exempt from tax, and since the assessee is a society registered under that Act, all its profits are exempt from tax."

10. The word "profits" used in clause (2), therefore, is not restricted only to profits computable under section 10 of the Act.

11. It is argued by Mr. Joshi that having regard to the items included under the Explanation, it is evident that what is intended to be exempted are the profits from business and the word "profits" in clause (2), therefore, would only mean profits and gains of business computable under section 10. It must, however, be remembered that the profits from an activity, which is business, are not only profits, which are computable as profits and gains of business under section 10, but would also include other profits. As has been observed in Commissioner of Income-tax v. Chugandas & Co. :

"The heads described in section 6 and further elaborated for the purpose of computation of income in sections 7 to 10 and 12, 12A, 12AA and 12B are intended merely to indicate the classes of income : the heads do not exhaustively delimit sources from which income

arises. This is made clear in the judgment of this court in United Commercial Bank Ltd.'s case, that business income is broken up under different heads only for the purpose of computation of the total income : by that break up the income does not cease to be the income of the business, the different heads of income being only the classification prescribed by the Indian Income-tax Act for computation of income."

12. Even assuming, therefore, that Mr. Joshi is right in his submission that what is intended under clause (2) of the notification is to exempt income from business, it is not the same thing as saying that what is intended under the said clause is only exempting the income computable under section 10 of the Act. The argument of the department that by the expression "class of income", the notification is confined to heads of income, does not appear to be right when reference is made to another notification also issued under section 60 of the Indian Income-tax Act. That notification, which is Finance Department Notification No. 878-F, dated 21st March, 1922, is also issued for allowing exemption from tax to certain classes of income. A large number of items, which are specified by the clauses of the notification, will show that by the expression "class of income", which has been used in the opening part of the notification in the same manner in which it is used in the notification before us, the expression has not been used in the same sense as heads of income. In our opinion, therefore, the first argument advanced on behalf of the department that the exemption granted under clause (2) of the notification is only restricted to the profits computable under section 10 of the Indian Income-tax Act, cannot be accepted.

13. The further argument of the department is that the income, in respect of which exemption is claimed by the assessee, falls under item No. 1 of the Explanation and is, therefore, excluded from the exemption.

14. Now, what is excluded under item No. 1 so far as is relevant for the present case is any income, profits and gains from investments in securities of the nature referred to in section 8 of the Indian Income-tax Act. What has got to be considered is whether the income of the assessee, in respect of which it has claimed exemption, is income from investments in Government securities. Admittedly, the Government securities, from which the income is derived by the assessee, were securities held by it as its stock-in-trade and the activity of the purchase and sale of the Government securities was a part of the ordinary business activity carried on by the assessee. Unless the laying out of money for the purchase of the stock-in-trade could be regarded as investment, the come derived by the assessee in the present case could not fall under item No. 1.

15. It is argued by Mr. Joshi that the word "investments" used in item No. 1 has been used in the sense of merely laying out money and not in the sense of investment of capital or capital investment. He has pointed out that in the case of concerns, which are carrying on banking

business and deal in Government securities, all moneys laid out in Government securities are referred to as investments. In the balance-sheets of banking concerns under the Banking Companies Act as well as under the Companies Act, Government securities held by the concerns, whether as stock-in-trade or investments, are all shown under the head of investments. The word "investments", therefore, as used in item No. 1 is not confined to investments as capital investments, but covers all laying out of money including moneys laid out in purchasing securities, as stock-in-trade. He has invited out attention to the first proviso to section 8 of the Indian Income-tax Act, under which deductions is allowed in respect of interest payable on moneys borrowed for the purpose of investment in the securities by the assessee. Mr. Joshi points out that this deduction is allowed whether the investment is in securities, which are held as capital or as stock-in-trade.

16. We are unable to accept the argument which is advanced by Mr. Joshi. In the first place, if the word "investments" in item No. 1 of the Explanation was intended to cover or include all layings out of money, it was not necessary to use the word altogether. It should have been enough if item No. 1 had merely stated "securities of the nature referred to in section 8 of the Indian Income-tax Act....." It would appear that the word "investments" has been deliberately used in order to make it clear that not all income, profits and gains from securities but only such income, profits and gains from securities which are held as investments, that is excluded from the exemption. In item No. 2 all dividends are excluded from the exemption. That would include not only dividends on shares held as capital investments but even on shares which are held as stock-in-trade. If a total exclusion of all income, profits and gains from securities was intended, the word "investments" would not have been in item No. 1. It is no doubt true that the word "investments" is capable of being employed for any lay-out of money, but that is clearly not the meaning in which the word has been used in item No. 1. In *Surat Peoples' Co-operative Bank Ltd. v. Commissioner of Income-tax*, this court had to consider what is meant by "investments" in item No. 1 of the Explanation to the notification. It was held that the word "investments" in the Explanation to the notification related only to such securities as did not form part of the stock-in-trade of the co-operative society. Mr. Justice Tendolkar observed :

"It is true that the word "investment" in itself literally means nothing more or less than to lay out money; and, therefore, where a person purchases securities whether as his stock-in-trade or by way of capital investment, he is in either case investing in securities. But under income-tax law it makes all the difference whether an assessee has purchased securities as an investor or a dealer. If he was an investor and he sold shares and made profits on such sale, this would be a case of capital appreciation and it may attract 'capital gains' tax if applicable, but profits made are not income and are not liable to tax; whilst if he was a dealer in shares, the profits made by a sale of shares are liable to tax as income.

Therefore, although in both the cases there is an investment in shares, under the income-tax law, there is all the difference between a person being an investor in shares and a dealer in shares; and it appears to us that the word 'investment' in sub-clause (1) is used in the sense of an investment which is in the nature of a capital investment and which is not as investment in securities or property, which is its stock-in-trade. If there is investment in popular sense in securities or property, which is its stock-in-trade, it is not investment in the sense in which that word is used in the notification....."

17. In our opinion, therefore, since the Government securities were admittedly held by the assessee in the present case as its stock-in-trade, the interest derived from them was not any income, profits or gains from investment in securities under item No. 1 of the Explanation.

18. In the result, therefore, the Tribunal, in our opinion, was right in upholding the assessee's claim for exemption in respect of the amounts of interest received by the assessee on Government securities held by it as its stock-in-trade in the relevant assessment years.

19. Our answer, therefore, to the question referred to us is in the affirmative. The department will pay the costs of the assessee.

Question answered in the affirmative.

