IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

INCOME TAX REFERENCE NO. 72(B) OF 1993
AND
INCOME TAX REFERENCE NO. 108 OF 1994

INCOME TAX REFERENCE NO. 72(B) OF 1993

The Commissioner of Income-tax,
Vidarbha, Nagpur. ... APPLICANT

Versus

Vidarbha Weavers Central Co-op.
Society Limited, Nagpur. ... RESPONDENT

INCOME TAX REFERENCE NO. 108 OF 1994

The Commissioner of Income-tax,
Vidarbha, Nagpur. ... APPLICANT

Versus

Vidarbha Weavers Central Co-op.
Society Limited, Nagpur. ... RESPONDENT

Shri S.N. Bhattad, Advocate for the applicant.
…..

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
NOVEMBER 21, 2015.

ORAL JUDGMENT : (PER B.P. DHARMADHIKARI, J.)

In both these matters, vide Reference Applications under Section 256(1) of the Income Tax Act, 1961, the same questions in relation to the very same assessee have been referred to this Court. The first Reference is for the Assessment Year 1983-84 while the later Reference is for the Assessment Years 1970-80 to 1982-83. The order making reference is almost identical.

2. Shri Bhattad, learned counsel for the department has submitted that the matters have remained pending before this court for quite some time and in the meanwhile the issue has been looked into by Rajasthan High Court in its judgment in the case of *Commissioner of Income Tax vs. Rajasthan Rajya Bunkar Sahakari Sangh Ltd*., reported at (2002) 176 CTR 0488. In identical facts, the High Court found federal society or apex society entitled to benefit of deduction in terms of Section 80P(2)(a)(ii) as it was a Cottage industry. The department approached the Hon'ble Apex Court and the Hon'ble Apex Court vide its judgment in the case of *Commissioner of Income Tax vs. Rajasthan Rajya Bunkar Sahakari Samiti Ltd*., reported at (2010) 230 CTR 0011, has found that if in future this question is to be looked into, the Assessment Officer shall call for Bye laws of the society and thereafter decide whether the deduction in terms of said provision can be allowed.

3. With the assistance of learned counsel for the department, we have perused the records. Nobody has appeared for the assessee.

4. It is not in dispute before us that the assessee is a federation i.e. the federal cooperative society. It has got co-operative societies as its members and individuals in turn are members of such primary cooperative societies. The assessee federation receives raw material from the State Government or its agencies and in turn, it makes it over to its member primary cooperative society. The primary cooperative society then distributes it to weavers, who thereafter manufacture yarn or cloth, as the case may be, out of it. They hand it over to their respective primary cooperative society and that society then gives it to the assessee. The Rajasthan High Court has in this situation found that the assessee is involved in manufacturing activity which satisfies ingredients of Cottage industry. The phrase *Cottage industry* is not defined in the Income Tax Act.

5. The Hon'ble Apex Court has found that in this situation, the issue needed to be decided with reference to the Bye laws of the federal society. Thus, the Hon'ble Apex Court

has not disturbed the earlier assessment and has only pointed out how in future the problem should be approached.

6. The facts at hand do not warrant a different course of action. The last of assessment year is over about 32 years back. The arrangement between federal or apex cooperative society and its members which regulate handing over of raw material by the apex society to primary cooperative society or then its receipt back by it, will be decisive to find out whether assessee itself is involved in manufacturing activity.

7. Shri Bhattad, learned counsel has submitted that a primary cooperative society may also claim benefit as a Cottage industry. The facts on record do not show any such apprehension or consideration. However, as laid down by the Hon'ble Apex Court, we find that the issue could not have been resolved without looking at Bye laws.

8. In this situation, we find that the course adopted by the Hon'ble Apex Court in its judgment mentioned supra should be adopted in future even in relation to the respondent – assessee before us. With said direction, we maintain the

assessment as already done. Thus, in future the department shall be required to call for Bye laws of federal/ apex cooperative society and thereafter decide the nature of arrangement between the parties.

9. With these directions, we find that the questions as referred, call for no other answer. Accordingly, Reference proceedings are disposed of. However, there shall be no order as to costs.

JUDGE **JUDGE**

******

*GS.