

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 473 of 2015 (O&M)

Date of Decision: 25.4.2016

M/s Jai Amba Co-op Labour & Construction Society, Panchkula

....Appellant.

Versus

Commissioner of Income Tax, Panchkula and another

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

PRESENT: Ms. Rinku Dahiya, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 18 days in refiling the appeal is condoned.
2. The present appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 28.5.2015 (Annexure A-5) passed by the Income Tax Appellate Tribunal, Chandigarh Benches "SMC", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 24/Chd/2015 for the assessment year 2008-09, claiming the following substantial question of law:-

Whether in facts and circumstances of the case, the
Income Tax Appellate Tribunal was correct in law in

denying the benefit of deduction under Section 80P(2)

(a)(vi) of the Income Tax Act to the appellant?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was registered as a Labour and Construction Society with the Assistant Registrar, Cooperative Society, Naraingarh on 26.9.2005 and is following its Bye Laws dated 26.9.2005 (Annexure A-1). The assessee filed its return of income on 21.10.2008 for the assessment year 2008-09 claiming deduction under Section 80P(2)(a)(vi) of the Act. The case was taken up for scrutiny under CASS. A notice dated 25.5.2010 under Section 143(2) of the Act was issued and vide letter dated 26.11.2010, the assessee was asked to explain the reason for exemption under Section 80P(2)(a)(vi) of the Act. The assessee submitted detailed written submissions on 10.6.2010 (Annexure A-2). The Assessing Officer vide order dated 7.12.2010 (Annexure A-3) framed the assessment at ₹ 4,42,340/-. The Assessing Officer disallowed the deduction claimed under Section 80P(2)(a)(vi) of the Act and made addition of ₹ 4,05,733/- on that account. Besides this, the Assessing Officer also made disallowances amounting to ₹ 75,000/- relating to consumable stores and ₹ 5,000/- on account of labour and welfare. Further, 1/6th of the travelling and conveyance expenses were also disallowed by the Assessing Officer. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 12.11.2014 (Annexure A-4) upheld the order of the Assessing Officer and dismissed the appeal. The assessee assailed the order, Annexure A-4, in appeal before the Tribunal. The Tribunal vide order dated 28.5.2015 (Annexure A-5) dismissed the appeal by upholding the

orders of the CIT(A) and the Assessing Officer. Hence, the present appeal.

4. We have heard learned counsel for the appellant-assessee.

5. Learned counsel for the appellant submitted that the orders of the authorities below are not sustainable in law as the society fulfilled the conditions enumerated under Section 80P(2)(a)(vi) of the Act and as such was entitled for deduction thereunder. In support of her submission, learned counsel has relied upon the judgment of the Apex Court in **Kerala State Co-operative Marketing Federation Ltd. and others v. Commissioner of Income Tax (1998) 231 ITR 814 (SC)** and of this Court in **Commissioner of Income Tax v. Punjab State Cooperative Bank Ltd.(2008) 300 ITR 24 (P&H)**.

6. The point that arises for consideration in this appeal relates to the scope of Section 80P(2)(a)(vi) of the Act.

7. Section 80P(2)(a)(vi) of the Act, which is the bone of contention in this appeal, reads thus:-

“Deduction in respect of income of cooperative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a) (i) to (v) XX XX XX XX

(vi) the collective disposal of the labour
of its members, or

(viii) XX XX XX XX

(b) to (f) XX XX XX XX”

8. Sub-section (1) of Section 80P of the Act provides that where the gross total income, of an assessee being cooperative society, includes any income referred to in sub-section (2) thereof, deduction shall be allowed to the assessee in computing its income in accordance with and subject to the provisions of this Section.

9. The eligibility to earn deduction under clause (vi) of sub-section (2) of Section 80P of the Act, is where the entire amount of profits and gains of the cooperative society is attributable to 'the collective disposal of the labour of its members'. There is no ambiguity in the words used as they are very clear to mean that the earning of society must have been through utilization of the actual labour of its members. The Orissa High Court in **Nila Giri Engineering Cooperative Society Ltd. v. Commissioner of Income Tax (1994) 208 ITR 326 (Orissa)** was considering the case of the assessee-cooperative society of graduate engineers undertaking labour contracts in the State of Orissa who had claimed benefit of Section 80P(2)(a)(vi) of the Act. The claim of the assessee was negated as there was no direct proximate connection between the work executed and the speciality of the members of the society as diploma holders or graduate engineers. It was held that a mere overall supervision by them would not entitle them to the benefit of this provision. The relevant observations recorded therein are quoted below:-

“This brings us to the consideration of the proper meaning of the provision of section 80P(2)(a)(vi). It is candidly admitted by learned counsel for both sides that there are no decided cases on the question. The eligibility to earn exemption is where the whole amount of profits and gains of a business is attributable to the collective disposal of the labour of its members. The words are very clear and only mean that the earning of the society must have been through utilization of the actual labour of its members. We agree with learned counsel for the petitioner that the labour need not always be manual. But then, be it manual or otherwise, the guiding factor must be that the earning of the society must be through utilization of the particular kind of labour in which the members are specialized. An example would illustrate this. If there is a co-operative society of unemployed mathematics graduates who form a society, write out text books of mathematics and earning is made out of the text books, the earning may be said to be attributable to dispensation of labour of the members directly. Similarly, if the members belong to any other discipline, the work executed in actual application of the discipline would be disposal of labour of the members. On the other hand, if the members are manual labourers as a labour contract service co-operative society, and the work undertaken is

executed by the manual labour of the members, the whole of its income would be exempted. A power of disposal always pre-supposes the possession of something to be disposed of. It is only when collective disposal is made of such a disposable commodity over which the society has control as inhering in its members that the income is directly attributable and to such disposal by the society the benefit is earned. The society cannot be said to have at its disposal, in that manner, the labour of paid employees as they are not its members. Since the members themselves did not exert their own labour in the execution of the work but as has been found by the statutory forums, they only confined themselves to overall supervision mostly at the office like any other prudent businessmen, it has to be taken that the speciality of their discipline was never put to labour in the execution of the work. In other words, as has been rightly submitted by Mr. Roy, learned standing counsel, there has been no direct proximate connection between the work executed and the speciality of the members of the society as diploma holders or graduate engineers. Mr. Dash has brought to our notice that the question was raised before the two-member Tribunal even earlier to the order, annexure-3, in the appeals relating to the assessment years 1974-75 to 1978-79. The order is annexure-2

to the writ petition. There the two-member Tribunal held that Section 80P(2)(a)(vi) would restrict the exemption to the income earned from the labour of its members. It further explained:

“....In other words, if besides the labour of its members the income has been earned from labour employed by the society or out of the benefit of any capital available with the society it would not come under clause (vi) though it may fall under any other clause so that in the present case, the income actually derived from the labour of the members of the assessee would be exempt but not any income derived as a result of investment of capital or execution of any jobs by employed labour.”

10. Applying the aforesaid legal principles to the facts in hand, herein the main object of the appellant-society is to promote the economic interest of manual labourers, skilled workers for the purpose of obtaining and execution of contracts of public or private work. The assessee claimed deduction under Section 80P(2)(a)(vi) of the Act being a cooperative society engaged in the collective disposal of the labour of its members. The assessee-society had executed work contract of Government and Semi Government Organization during the year under consideration. The contract work undertaken by the society was not solely executed by the members of the society but by engagement of Supervisors, Chowkidars and daily wages earning labourers who were not members of the society. As per the income and expenditure account,

the assessee had paid labour charges amounting to ₹ 11,14,862/- which indicated that substantial amount on account of labour charges were paid to labourers engaged on daily basis and who were not members of the appellant-society. Therefore, the income derived by the appellant-society could not be considered as income derived by the labour cooperative society from the activity of collective disposal of labour of its members.

11. Thus, the Tribunal had rightly held that the profits and gains earned by the assessee is not attributable to the collective disposal of labour of its members as all the members were not engaged in the labour work and the work done by the assessee was through outside employees and labourers who were not members of the society nor they had any voting rights of the society. Accordingly, the disallowance under Section 80P(2)(a)(vi) of the Act was upheld. The approach of the Tribunal is in conformity with the law enunciated by the Orissa High Court in **Nila Giri Engineering Cooperative Society Ltd's case (supra)**.

12. Adverting to the judgment of the Apex Court in **Kerala State Co-operative Marketing Federation Ltd.** and of this Court in **Punjab State Cooperative Bank Ltd Ltd's cases (supra)** relied upon by the learned counsel for the assessee, suffice it to notice that the principle of law enunciated therein, is well recognized. However, the issue before the Apex Court was relating to clause (iii) of Section 80P(2) whereas this Court on facts had held the assessee entitled to benefit of Section 80P(2)(a)(vi) of the Act. Thus, no benefit can be derived by the appellant from any of the said authorities referred to above being distinguishable factually.

13. It being concurrently recorded by the authorities below on appreciation of material on record that the profit earned by the assessee cannot be regarded as profit derived by the labour cooperative society from the activity of collective disposal of labour of its members, the assessee had rightly been held not entitled to claim deduction under Section 80P(2)(a)(vi) of the Act. No ground for interference by this Court is made out. Accordingly, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

April 25, 2016
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(DARSHAN SINGH)
JUDGE