IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.2.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.131 of 2019

Principal Commissioner of Income Tax
D.P.Thottam, Muthialpet,
Puducherry. Appellant/Appellant

Vs.

NLC Indcoserve,
Old MMC Complex,
Opp to Thermal Power Station,
Neyveli 607 801, Cuddalore Division,
PAN: AAAAN 0095 M Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 18.6.2018 made in ITA No.2539/Chny/2017, for the assessment year 2010-2011. against the order of the Commissioner of Income Tax (Appeals) puducherry dated 29.06.2017 made in ITA No.115/CIT(A)-PDY/2016-17 for the assessment year 2010-2011, against the order of the Income Tax Officer Ward 2, Cuddalore dated 31.08.2016 made in PAN No.AAAAN0095M for the assessment year 2010-2011.

For Appellant : Mr.T.R.Senthilkumar

Senior Standing Counsel

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case (Appeal) under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal dated 18.6.2018 for the Assessment Year 2010-2011:-

"Whether the Appellate Tribunal is right in deleting the addition made under Section 80P when the Society had violated the proviso to clause (vi) of Section 80P(2)(a) of the Income Tax Act which is not limited to voting rights in elections in General Body alone, but extends to the entire gamut of the functioning of the Co-operative Society including the Board of Directors?"

2. The Tribunal held in favour of the respondent/Assessee following its own order for the Assessment Year 2012-2013 that the Respondent/Assessee Co-operative Society did not violate any condition for grant of deduction under Section 80P of Chapter VI-A of the Act and therefore, it was eligible to avail the deduction under Section 80P of the Act.

3. Section 80P(2)(a)(vi) of the Act provides for deduction to the extent of 100% of its income under such Head. It says 'the collective disposal of the labour of its members'. The Proviso to this section 80P(2) of the Act provides that if the voting rights of the specified class of persons in the said Proviso are not restricted, then, it will not be eligible for the said exemption. The relevant provisions are quoted below for ready reference :

"Section 80P. Deduction in respect of income of co-operative societies—

(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) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

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

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities:

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;"

4. The findings of the learned Tribunal in the previous year viz, Assessment Year 2012-2013 as quoted in the impugned order are extracted below for ready reference:-

"7. From the above, it is clear that the board of the assessee society is responsible for the affairs of the assessee society and not the NLC board. The ultimate authority of its administration is vested with the General Body of the members. NLC or its nominated members, if any, do not have voting rights in elections of the assessee society as per Rule 22 of its Byelaws. NLC has been co-opted as a member only for operational ease and convenience to assist the board of the assessee society in administration, without which the smooth running of the assessee society will be practically difficult. Further, the registration of the society has not been revoked under law for violation of the provisions of TNSCA, 1983. On such facts and circumstances, the order of the CIT(A) does not require any interference and hence the revenue's appeal is dismissed."

5. The learned counsel for the Revenue could not point out any distinction of facts from the Assessment Year 2012-2013 in the present Assessment Year 2010-2011 as far as the restriction of the voting rights of the three categories of persons in the Proviso is concerned. This finding of facts rendered by the Tribunal for the Assessment Year 2012-2013 has been allowed to become final as the Appeal filed by the Revenue was withdrawn in

view of the low tax effect as stipulated in CBDT Circular 3 of 2018 which provides that if the tax effect is lesser than Rs.50 lakhs, then Appeals shall not be filed by Revenue before the High Court and if already filed, they shall be withdrawn.

6. Prima facie, we find that the tax effect in the present Appeal is also less than Rs.50 lakhs as the Assessment Order itself raised a demand of Rs.49,49,309/- only including the interest under Section 234B and therefore, the Appeal preferred by the Revenue could have been withdrawn by the Appellant/Revenue.

7. Be that as it may, we are of the clear opinion that the finding of facts rendered by the Tribunal in respect of the previous year viz., Assessment Year 2012-2013, without there being any change of facts for the present Assessment Year viz., 2010-2011, does not require any different consideration under Article 260A of the Act in the present appeal.

8. The finding of facts, based on relevant materials, does not give any rise to any substantial question of law requiring our consideration under Section 260-A of the Act. Therefore, the Tax Case (Appeal) filed by the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

ssk.

To
1. Principal Commissioner of Income Tax
D.P.Thottam, Muthialpet,
Puducherry.

2. Income Tax Appellate Tribunal,
Madras 'B' Bench, Chennai

3. Income Tax Officer
Ward 2, Cuddalore,
Neyveli 607 807.

+1cc to Mr.T.R.Senthilkumar, Advocate SR.No.14682

T.C.(Appeal) No.131 of 2019

VBA(CO)
GMY(22/03/2019)