

PETITIONER:
JACKSON CO-OPERATIVE CREDIT SOCIETY LIMITED

Vs.

RESPONDENT:
CO-OPERATIVE BANKS & SOCIETIES EMPLOYEES FEDERATION & ORS.

DATE OF JUDGMENT 31/03/1989

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
DUTT, M.M. (J)

CITATION:
1989 AIR 1398 1989 SCR (2) 266
1989 SCC (3) 89 JT 1989 (2) 31
1989 SCALE (1) 965

ACT:

Payment of Bonus Act, 1965--Section 6(d) and Third Schedule Item No. 4---For rate of Bonus--Sums deductible from gross profits--What are--In respect of a Co-operative Society.

HEADNOTE:

The appellant--Co-operative Society has filed this appeal by special leave against the High Court's order passed in a writ petition filed by it whereby the High Court set aside the award of the Industrial Tribunal. The High Court in the impugned order held that the appellant is liable to pay to its employees bonus at the rate of 20 per cent of its total annual earnings for the years 1975-76, 1976-77 and 1977-78.

The appellant contends that the High Court went wrong in directing the appellant to pay bonus with regard to various amounts invested by it as permitted by the relevant provisions of the Maharashtra Cooperative Societies Act 1960, and the amounts carried forward to its reserve fund. According to the appellant, the High Court neither read the provisions of Sec. 6(d) of the Bonus Act 1965 correctly nor was it justified in relying on the Explanation to the 3rd Schedule to the Bonus Act.

Dismissing the appeal subject to the modification indicated in the judgment hereinbelow, this Court,

HELD: The expression "capital" is not defined under the Bonus Act. It must therefore be understood in the sense in which that expression is generally understood. That means all amounts which are classified as capital in contrast to revenue must qualify for deduction subject to the limit of 8.5 per cent, provided such capital is invested by the Society in its establishment as evidenced by its books of accounts at the commencement of the accounting year. Any such capital upto 8.5 per cent is thus deductible. Furthermore, all sums which have been carried forward in respect of the relevant accounting year to a reserve fund as required under any law applicable to Co-operative Societies for the time being in force are also deductible from gross profits.

[269B-D]

Accordingly all such amounts held by the Society as reserve fund in terms of Sec. 66 of the Co-operative Societies Act must qualify for deduction. [269H]

If larger amounts are carried forward to the reserve fund in terms of Sec. 66, all such amounts will come within the ambit of item (4) of the 3rd Schedule to the Bonus Act and qualify for deduction. [270A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4042 of 1988.

From the Judgment and Order dated 17.12. 1987 of the Bombay High Court in W.P. No. 1048 of 1982.

S.C. Gupta and M.N. Shroff for the Appellant.

Anil Dev Singh, Ms. Nayana Buch, M.J. Paul, Kailash Vasdev, Ms. Subhashini and Mrs. Kitty Kumarmangalam for the Respondents.

The Judgment of the Court was delivered by

THOMMEN, J. This civil appeal by special leave is directed against judgment dated 17.12.1987 of the High Court of Bombay in Writ Petition No. 1048 of 1982 instituted by the appellant, which is a Co-operative Credit Society. The 1st respondent is a Federation representing the employees of the appellant amongst others.

Setting aside the award of the Industrial Tribunal, the High Court held that the appellant was liable to pay its employees bonus at the rate of 20 per cent of its total annual earnings for the years 1975-76, 1976-77 and 1977-78.

The principal contention urged at the Bar against the impugned judgment is that the High Court went wrong in directing the appellant to pay bonus without regard to various amounts invested by it as permitted under the relevant provisions of the Maharashtra Cooperative Societies Act, 1960 (the "Co-operative Societies Act") and other amounts carried forward to its reserve fund. The appellant's counsel contends that the High Court did not correctly read the provisions of Section 6(d) of the Payment of Bonus Act, 1965 (The "Bonus Act") and item (4) of the Third Schedule to the said Act. Counsel further contends that the High Court was not justified in placing reliance on the Explanation to the Third Schedule to the Bonus Act as

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it has no relevance to co-operative societies. The Explanation, he says, is relevant only to items (1), (2) and (3) of the Third Schedule to the Bonus Act.

We shall now read the relevant provisions. Section 6 of the Bonus Act refers to various sums which are deductible from gross profits. It reads:

"6. Sums deductible from gross profits. The following sums shall be deducted from the gross profits as prior charges, namely:

(d) such further sums as are specified in respect of the employer in the Third Schedule."

The employer in question being a co-operative society, it is item (4) of the Third Schedule to the Bonus Act that is applicable. That reads:

Item NO.	Category of employer	Further sums to be deducted
(2)	(3)	
4.	Co-operative Society	(i) 8.5 per cent of the capital invested by such society

in its establishment as evidenced from its books of accounts at the commencement of the accounting year;

- (ii) such sums as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.

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In column (3) of item (4), two types of amounts are deductible from the gross profits as prior charges. Firstly, 8.5 per cent of the capital invested by a co-operative society in its establishment is deductible. Secondly, amounts carried forward to a reserve fund in compliance with any provisions of law relating to co-operative societies are also deductible. (The expression 'capital' is not defined under the Bonus Act. It must, therefore, be understood in the sense in which that expression is generally understood. That means all amounts which are classified as capital in contrast to revenue must qualify for deduction subject to the limit of 8.5 per cent, provided such capital is invested by the society in its establishment as evidenced by its books of accounts at the commencement of the accounting year. Any such capital upto 8.5 per cent is thus deductible. Furthermore, all sums which have been carried forward in respect of the relevant accounting year to a reserve fund as required under any law applicable to co-operative societies for the time being in force are also deductible from gross profits.) This means that reserve fund created in terms of Section 66 of the Co-operative Societies Act is deductible under item (4) of the Third Schedule to the Bonus Act. Section 66 reads.

"66. (1) Every society which does, or can, derive a profit from its transactions shall maintain a reserve fund.

(2) Every society shall carry at least one-fourth of the net profits each year to the reserve fund; and such reserve fund may subject to the rules made in this behalf, if any, be used in the business of the society or may, subject to the provisions of section 70, be invested, as the State Government may by general or special order direct, or may, with the previous sanction of the State Government, be used in part for some public purpose likely to promote the objects of this Act, or for some such purpose of the State, or of local interest:

Provided that, the Registrar may, having regard to the financial position of any society or class of societies, fix the contribution to be made to the reserve fund under this sub-section at a lower rate, but not lower than one-tenth of the net profits of the society or societies concerned."

Accordingly, all such amounts held by the society as reserve fund in terms of Section 66 of the Co-operative Societies Act must qualify for deduction. The minimum reserve fund that is required to be

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maintained by Section 66 of the Co-operative Societies Act

is one fourth of the net profits of each year. (If larger amounts are carried forward to the reserve fund in terms of Section 66, all such amounts will come within the ambit of item (4) of the Third Schedule to the Bonus Act and qualify for deduction.) Accordingly, we hold that 8.5 per cent of the capital invested by the society in its establishment as disclosed by its books of accounts, together with amounts carried forward to a reserve fund in compliance with Section 66 and other provisions of the Co-operative Societies Act read with the rules made thereunder (See Rule 54 of the Maharashtra Co-operative Societies Act, 1954) will be deductible in terms of Section 6 of the Bonus Act.

We must, however, point out that the High Court was not justified in placing any reliance on the Explanation to the Third Schedule to the Bonus Act for that has, as tightly pointed out by the appellant's counsel, no relevance to a co-operative society.

In this connection, we place on record that counsel on both sides agree that reference to 20 per cent in paragraph 11 of the judgment was wrong in respect of the year 1975-76. They agree that for that year, the correct figure is 18.78 per cent. Accordingly, we hold that reference to 20 per cent in paragraph 11 of the impugned judgment must be read as 18.78 per cent for the year 1975-76 and 20 per cent for the succeeding two years.

Subject to what we have stated above, we hold that the High Court was right in directing the appellant society to pay bonus to its employees. The society is liable to pay bonus at the rate of 20 per cent for the years 1976-77 and 1977-78 and 18.78 per cent for the year 1975-76.

In the circumstances, the appeal must fail and is accordingly dismissed. The parties shall bear their respective costs.

Y. Lal
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Appeal dis-