

PETITIONER:  
HOSHIARPUR CENTRAL CO-OPERATIVE BANK LTD.

Vs.

RESPONDENT:  
COMMISSIONER OF INCOME-TAX, SIMLA.

DATE OF JUDGMENT:  
02/08/1960

BENCH:  
HIDAYATULLAH, M.  
BENCH:  
HIDAYATULLAH, M.  
DAS, S.K.  
SHAH, J.C.

CITATION:  
1960 AIR 1303

ACT:  
Income-tax--Co-operative Society--Profits earned in business with non-members--Whether exempt from tax--Income-tax Act, 1921 (IX of 1921), s. 60, notification.

HEADNOTE:

The assessee Bank, which was a co-operative society, did business is controlled commodities with the approval of the Registrar of Co-operative Societies and earned profits. it claimed that these profits were also exempt from taxation under F. D. (C. R.) Notification R. Dis. NO. 291-1. T./25 dated August 25, 1925, as subsequently amended, issued under s. 60 of the income-tax Act. This notification exempted "the profits of any co-operative society " from tax. It was urged for the Department that these words referred to profits made by a co-operative society in its business as a pure co-operative society, i.e., in business with its own members within the four corners of the Cooperative Societies Act, 1912, and the bye-laws made thereunder.

Held, that the said profits were exempt from tax. The words of the Notification were wide enough to include profits of business of a co-operative society in transactions with non-members also. It was always open to the appropriate Government to allow a society to extend its business operations to trading with persons other than its members. Once there was such

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extension, the profits of the society from such business fell within the general words of the Notification and it required more than a supposed underlying intention to negative the exemption.

The Madras Central Urban, Bank Ltd. v. Commissioner of Income-tax, (1929) I.L.R. 52 Mad. 640, F. B., The Madras Provincial Co-operative Bank Ltd. v. Commissioner of Income-tax, (1933) I.L.R. 56 Mad. 837 F. B. and Commissioner of Income-tax, Burma v. The Bengalee Urban Co-operative Credit Society Ltd., (1933) I.L.R. 11 Ran. 521, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 238 of 1955. Appeal from the judgment and order dated May 27, 1953, of the Punjab High Court in Civil Reference No. 3/1952.

Deva Singh Bandhava and K. L. Mehta, for the appellant.

M. C. Setalvad, Attorney-General for India, K. N. Rajagopal Sastri and D. Gupta, for the respondent.

1960. August 2. The Judgment of the court was delivered by HIDAYATULLAH J.-This is an appeal against the judgment and order of the High Court of Punjab with the certificate of the Court granted under s. 66A(2) of the Indian Income-tax Act.

The Hoshiarpur Central Co-operative Bank, Ltd., Hoshiarpur, hereinafter referred to as the Bank, is the appellant., and the Commissioner of Income-tax, Simla, is the respondent. For the assessment years 1948-49 and 1949-50, the Income-tax Officer included in the assessment of the Bank certain income which had accrued to the Bank as profits from trading in controlled commodities like sugar, cloth, kerosene, etc., which the Bank was allowed to deal in, with the approval of the Registrar of Co-operative Societies conveyed in a letter dated September 28, 1954. The Bank claimed exemption under a notification issued Under s. 60 of the Income-tax Act, but the contention was not accepted. On appeal, the Appellate Assistant Commissioner reversed the decision, which, on further appeal, was reversed by the Appellate Tribunal, Delhi Branch. The Appellate Tribunal, however, raised, 109

and referred the following question to the High Court under s. 66(1) of the Income-tax Act:

" Where a co-operative Bank deals in sugar and standard cloth with special permission of the authorities and earns income from such activities, is such income exempt from tax under item 2 of the Government of India Notification F. D. (C. R.) Notification R. Dis. No. 291-1. T/25 dated 25th August, 1925, as subsequently amended (Income-tax Manual, 10th Edition, Part II, pages 257-258) ?"

The High Court answered the question against the Bank, but certified the case as fit for appeal to this Court, and hence this appeal.

It is admitted on all bands that the profits were made from trading in certain commodities with the approval of the Registrar of Co-operative Societies. The quantum and the manner in which those profits were made, are not in dispute. The short question in this appeal is whether the exemption granted by the notification covers the case. The notification reads as follows:

" Income included in total income but exempt from both income-tax and super-tax:

The following classes of income shall be exempted from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act:-

1.....

2. The profits of any Co-operative Society other than the Sanikatta Saltowners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (11 of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927) 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.

Explanation:For this purpose the profits of a Co-operative Society shall not be deemed to include any income, profits or gains from:-

(1) Investment 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;

(ii) dividends, or

(iii) the 'other sources' referred to in Section 12 of the Indian Income-tax Act."

The Income-tax Officer held that the profits made by the Bank were not the profits in a co-operative venture but from trading with outsiders, and that, therefore, para 2 of the notification did not cover them. He also held that this income fell within 'other sources' referred to in item (iii) of the Explanation. The Appellate Assistant Commissioner held that these were profits of a Co-operative Society, and were within para 2, and were, therefore, exempt from tax. Both the Tribunal and the High Court accepted the reasoning of the Income-tax Officer with regard to para 2, but the High Court did not express any opinion as to whether the third item of the Explanation applied to the case or not.

Before us, the learned Attorney-General appearing for the Department did not put his case on the Explanation, and nothing more need be said about it. It may, however, be mentioned that "other sources" there has reference to the scheme of s. 6 of the Indian Income-tax Act, and profits from business of whatever kind, are dealt with under s. 10 of the Act. The short question thus is whether para 2 is confined only to profits made by a Co-operative Society from transactions with its own members and does not cover profits made in business with outsiders.

It may be pointed out that there are some cases to be found, in which it was held, before the notification was amended by the addition of the Explanation, that the second para exempted profits made by a Cooperative Society in transaction with its members and not to profits made in any other way. The question is whether such a restricted meaning can be imputed to the very wide and general terms in which para 2 is couched.

The question is plainly one of construction of the notification. In support of the case of the Department, 111

the learned Attorney-General relies on two arguments. He first refers to the opening words of the second para of the notification, viz., "The profits of any Cooperative Society". These words, it is argued, refer to profits made by a Co-operative Society in its business as a pure Co-operative Society, or, in other words, in business with its own members within the four corners of the Co-operative Societies Act, 1912 and the byelaws made under that Act.

No doubt, a Co-operative Society primarily exists for business with members and not for business with non-members; but the words of the notification and even those more specifically relied upon, are wide enough to include any business whether of the one kind or other. It cannot be denied that the Bank is a Co-operative Society and is claiming the exemption only as such, and further that it is claiming the exemption in respect of profits from a business carried on by it. It was for this reason that the attempt to bring the profits within "other sources" covered by s. 12 of the Indian Income-tax Act was rightly abandoned in this Court. If this is the obvious position, it follows that the words "the profits of any Co-operative Society" are wide enough to cover profits from any business, and there is nothing to show that the profits there mentioned are only

the profits from business with members.

It is next argued that a Co-operative Society exists for business with members, and that the Co-operative Societies Act and the bye-laws of the Bank reflect this character of the business undertakings. This intention underlying the Co-operative Societies Act and the bye-laws, it is urged, is the key to the interpretation of the notification, and it must, therefore, be limited to profits from business with members only. In support of this argument, reference is made to observations in *The Madras Central Urban Bank Ltd. v. Commissioner of Income-tax (1)*, *The Madras Provincial Co-operative Bank Ltd. v. Commissioner of Income-tax(2)* and *Commissioner of Income-tax, Burma v. The Bengalee Urban*

(1) (1929) I.L.R. 52 Mad. 640 F.B.

(2) (1933) I.L.R. 56 Mad. 837 F.B.

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*Co-operative Credit Society, Ltd. (1)*, where it was pointed out that the notification covered only profits from business with members. The first two cases were of interest derived from moneys invested in Government Securities to comply with orders of Government to the Societies to keep 40 per cent of the total liabilities always ready at hand, and it was said that the profits were not from business with members. In the last of the three cases, it was pointed out that the exemption was grounded on the principle that a person cannot make a loss or profits out of himself', and strictly speaking, only such profits as were made in business with members were exempt.

The position since these cases were decided has been materially altered by the addition of the Explanation. The Explanation now takes us back to the kinds of income to be found in s. 6 of the Indian Income-tax Act where business profits are, in a category by themselves, more exhaustively treated in s. 10. There are other heads of income of distinct characteristics which are treated separately, and then there is a residuary head which includes income from 'other sources' which for that reason are innominate. The Explanation cannot be said to imply a general approval of the earlier decisions. Such a conclusion does not necessarily follow, because if the paragraph of the notification was clear enough there was hardly any need for the Explanation. The addition of the Explanation clears once for all any doubt that might have arisen as to the ambit of the word "profits". After the addition of the Explanation and even before it, the word denoted profits from business and not income which arose, apart from business.

It must not be overlooked that at the time when the notification was first issued and also when it was amended, it was not even contemplated that Co-operative Societies would be permitted to deal in commodities in short supply with a view to ensuring their equitable distribution among the consumers. It was, however, always open to the appropriate Government to allow a Society to extend its business operations to

(1) (1933) I.L.R. 11 Ran. 521

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trading with persons other than its members subject to conditions and restrictions, vide s. 31 of the Co-operative Societies Act. This has, in fact, been done here.

Once there is this extension of the business of a Co-operative Society, the general words of the notification include the profits from such business within the exemption, and it would require more than a supposed underlying intention to negative the exemption. To gather the meaning of the notification in the light of an alleged intention is

to reverse the well-known canon of interpretation. In our opinion, the profits were exempt under the notification, and the answer to the question ought to have been in the affirmative.

In the result, we allow the appeal with costs here and in the High Court.

Appeal allowed.

JUDIS