
(1990) 01 KL CK 0032

In the High Court Of Kerala

Case No : Income-tax Reference No. 129 of 1986

MEENACHIL RUBBER MARKETING AND PROCESSING CO-
OPERATIVE SOCIETY LTD.

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Income Tax Act, 1961 — Section 10, 80P, 81

Citation : (1992) 193 ITR 108 : (1992) 65 TAXMAN 121

Hon'ble Judges : Varghese Kalliat, J

Bench : Division Bench

Judgement

VARGHESE KALLIATH J. - At the instance of the assessee, the Income Tax Appellate Tribunal, Cochin Bench, has referred the following question for the decision of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is not entitled to the relief u/s 80P(2)(a)(iii) of the Income Tax Act, 1961 ?"

The assessment year is 1979-80. The assessee is a co-operative society. It purchased raw latex from its members and processed the same by the centrifugal method and sold the commodity. The assessee contended that the income derived by it by the sale of the latex of the members of the society sold after the centrifugal method is exempt u/s 80P(2)(a)(iii) of the Income Tax Act, 1961. The Income Tax Officer declined to accept this claim of the assessee. The Officer held that when the assessee purchased latex from its members and effected the sale after some processing, what was sold by the assessee is its own commodity and so section 80P(2)(a)(iii) of the Act has no application. Since section 80P(2)(a)(iii) is not applicable, the Income Tax Officer held that the assessee is not entitled to the deduction of the income the assessee earned by the sale of the raw rubber purchased from the members of the society and sold after processing.

The assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) held that the assessee is engaged in the marketing of agricultural produce of its members and entitled to exemption u/s 80P(2)(a)(iii) of the Act in respect of the income earned from this activity. The Commissioner of Income Tax (Appeals) allowed the appeal.

The Revenue appealed before the Tribunal. The Tribunal held that the assessee was the owner having purchased raw latex from its members and, after processing it by the centrifugal method, sold the same on its own behalf but not on behalf of its members. Section 80P(2)(a)(iii) of the Act deals with the case of marketing of the agricultural produce of the members of a co-operative society. If the agricultural produce of the members is marketed, then only the exemption can be allowed u/s 80P(2)(a)(iii) of the Act. The Tribunal held that, in the instant case before it, the assessee, though a co-operative society, has sold its own produce but not that of the members and hence the assessee is not entitled to exemption u/s 80P(2)(a)(iii) of the Act. The Tribunal has followed the decision of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Kisan Co-operative Rice Mills Ltd., . The Tribunal allowed the appeal. The assessee wanted two questions to be referred to this court by the Tribunal. The Tribunal has referred to this court the question set out in the first paragraph of this judgment. We heard counsel for the Revenue, Sri. N. R. K. Nair, and counsel for the assessee, Sri B. S. Krishnan.

From the narration of the facts, it is clear that the only question that has to be considered on the facts unfolded in the case is, whether section 80P(2)(a)(iii) of the Income Tax Act is applicable to a case where the members of a society have sold raw latex to the co-operative society and the society processed it and effected sale thereafter. We feel that it is apposite in this circumstance to quote section 80P(2)(a)(iii) of the Income Tax Act, 1961 :

"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 the agricultural produce of 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 :"

Counsel for the Revenue submitted before us that the exemption u/s 80P(2)(a)(iii) of the Act is applicable only if the goods remained the property of the members of the society till they were sold to a third party by the assessee, the co-operative society. In short, he contended that the exemption is intended only to a society which derives income by way of commission or brokerage.

Counsel for the assessee submitted before us that a true and correct interpretation of section 80P(2)(a)(iii) of the Act would take in its fold income derived by the co-operative society by marketing the agricultural produce of the members of the society; even if the society has purchased the agricultural produce from its members and effected sale of the same and the society itself came to be the owner of the agricultural produce when it was sold to a third party. Counsel for the Revenue also contended that the finding of the Tribunal that "raw latex which is processed by the centrifugal method and sold by the assessee is still an agricultural produce" is not a correct finding of the Tribunal.

It is to be noted that the assessee purchased the real latex from its members and the processing made by the assessee by the centrifugal method was only to preserve the latex so as to enable it to effect a proper sale. In a case where latex was converted into crepe rubber sheets, this court held that the processing of such conversion was only a step taken by the agriculturist to render the natural produce fit to be taken to market and, therefore, the sale of the end product, viz., the smoked rubber sheet or crepe rubber would only be treated as agricultural income (see Commissioner of Income Tax Vs. Woodland Estates Ltd.,). We feel that there is no difficulty to hold that what was ultimately sold is agricultural produce in this case.

Counsel for the Revenue then submitted that the section mandates that the assessee should effect sale of agricultural produce of the members of the society. Though what is sold can be treated as agricultural produce, counsel contended that it never remained the agricultural produce of the members of the society at the time of sale by the assessee and so the section is not attracted.

Section 80P allows deduction of certain income of a co-operative society from the gross total income for the purpose of computing the taxable income. For obtaining the deduction, certainly certain conditions stipulated in section 80P(2)

have to be satisfied. It is stated that the income that can be deducted as far as we are concerned is the whole of the amount of profits and gains of the assessee attributable to any one or more of the activities enumerated in section 80P(2)(a). One of the enumerated activities is "the marketing of the agricultural produce of its members", viz., members of the co-operative society. Further, it has to be noted that section 80P(2)(a) makes it clear that the provision is attracted only in regard to a co-operative society engaged in the marketing of the agricultural produce of its members. The words that are important in understanding the intention of the Legislature in allowing deduction to a co-operative society under the above provision are "society engaged in" "the marketing of" "agricultural produce" "of its members" "profits and gains of business" "one or more of such activities".

Under the provisions of section 80P, co-operative societies are entitled to deduct from their taxable income the whole of their income from specified business activities, namely, banking, cottage industry, marketing of agricultural produce of their members; supply of agricultural implements, seeds, etc., to their members; processing without the aid of power, of the agricultural produce of the members; and in the case of a primary co-operative society, the income from supplying milk raised by its members to a federal milk co-operative society.

Activities in relation to agricultural produce have been divided into three categories : (a) marketing of members agricultural produce, (b) purchase of agricultural implements, seeds, livestock, etc., and (c) processing of members agricultural produce. We are concerned only with the marketing of members agricultural produce, u/s 80P(2)(a)(iii) of the Act. If a co-operative society earns income from the marketing of the agricultural produce of its members, then the profits and gains of business attributable to that marketing activity would be available as a deduction u/s 80P(2)(a)(iii). What is intended to be exempted is the amount of marketing profit. The expression "marketing" is an expression of wide import. "Marketing" generally means "the performance of all business activities involved in the flow of goods and services from the point of initial agricultural production until they are in the hands of the ultimate consumer". The marketing functions involve exchange functions, such as, buying and selling, physical functions, such as, storage, transportation, processing and other commercial functions, such as standardisation, financing, market intelligence, etc. The term "marketing" is now commonly used in a wide sense to refer to the performance of business activities directed towards, and incidental to, the flow of goods and services from producer to consumer or user. Activities like transporting, storing and selling goods are all marketing activities (see U.P. State Warehousing Corporation Vs. Income Tax Officer, A-Ward and Another,). In *Corpus Juris Secundum*, Vol. 55, p. 785, the term "marketing" has been defined as follows (see U.P. State Warehousing Corporation Vs. Income Tax Officer, A-Ward and Another,) :

"Marketing signifies a bringing or sending to market, and includes buying as well

as selling."

This would show that buying and selling is an activity which is included in the term "marketing". In "Principle and Practice of Marketing in India" by Dr. C. B. Mamoria and B. L. Joshi, it has been stated 94 ITR 138 :

"Marketing includes all activities involved in the creation of place, time and possession utilities. Place utility is created when goods and services are available at the places they are needed, time utility when they are needed; and possession utility when they are transferred to those who need them. The process of marketing makes goods and services much more valuable when they are wanted and transferred to the people and place who want them". The authors have made in the classification of marketing the functions of (a) buying, (b) selling.

In U.P. State Warehousing Corporation Vs. Income Tax Officer, A-Ward and Another, , the Allahabad High Court said that (at p. 139) "section 10(29) of the Income Tax Act, 1961, uses the term marketing of commodities simpliciter. If the legislative intent was to confine it to buying and selling, then, in view of the well-understood wider meaning of the term marketing, Parliament would have used the words buying and selling of commodities. The legislative history also suggests that the term marketing has been used to include, inter alia, warehousing, transporting and other similar activities which would constitute marketing. If a corporation has been established to carry on any one or more of these essential activities of marketing, it will be an authority constituted by law for marketing of commodities within the meaning of section 10(29)."

The content of the word "marketing", we feel, would take in buying and selling. We also feel that since the section uses the words "a co-operative society engaged in marketing", the meaning to be given to the word "marketing" will significantly include buying and selling. This is so since the intention of the provision is to exempt profits and gains of the business viz., the marketing of agricultural produce of the members of the society. The contention that the agricultural produce should remain as the agricultural produce of the members when it was sold by the co-operative society will not stand a closer scrutiny of the section, since obviously "marketing" includes buying of the agricultural produce of the members of the society. When once the co-operative society buys the agricultural produce of the members of the society, that buying is the first activity in the several links of the activities to constitute marketing by the co-operative society and so we are of the view that, in this case, the co-operative society is marketing the agricultural produce of the members of the society and the income earned as profits and gains of the business of marketing of the said agricultural produce is liable to be exempted. The scheme and purpose of the provision is to encourage co-operative activities and so Parliament thought that an incentive by way of tax exemption has to be granted to the co-operative societies. So it is necessary to understand the scope of the section adopting the principle of purposive interpretation.

In interpreting any provision of a statute, precedents are replete with meaningful discourses between two rival schools of thought. One school looked at what the Act was intended to do while the other looked at what it said. It is a battle between the literal approach and the purposive approach to statutory interpretation. In *Seaford Court Estates Ltd. v. Asher* [1949] 2 KB 481 : [1949] 2 All ER 155, Lord Denning suggested not only that judges should interpret legislation according to the mischief which the statute was passed to remedy, but when a defect appears in any Act, should look to the purposes of the legislation and remedy the defect. "Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity... A judge must not alter the material of which it is woven, but he can and should iron out the creases".

In *Asher v. Seaford Court Estates Ltd.* [1950] 1 All ER 1018 : [1950] AC 508, Lord MacDermott expressed his dissent against the view taken by Lord Denning in *Seaford Courts Estates Ltd. v. Asher* [1949] 2 KB 481. The House of Lords upheld the decision of the Court of Appeal in *Seaford Court Estates Ltd. v. Asher* [1949] 2 All ER 155; [1949] 2 KB 481. Perhaps, encouraged by the fact that the majority of the House of Lords has approved the decision in *Seaford Court Estates Ltd. v. Asher* [1949] 2 KB 481 : [1949] 2 All ER 155, Lord Denning again said in *Magor and St. Mellons Rural District Council v. Newport Corporation* [1950] 2 All ER 1226 thus :

".... I have no patience with an ultra-legalistic interpretation which would deprive them (the appellants) of their rights altogether. I would repeat what I said in *Seaford Court Estates Ltd. v. Asher* [1949] 2 All ER 155 : [1949] 2 KB 481. We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

This approach of statutory interpretation which is now known as the purposive approach has been supported by Lord Diplock in *Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd.* [1971] AC 850 : [1970] 2 All ER 871 and also in *R. V. National Insurance Commissioners* [1972] AC 944. One of the requirements of this approach, according to Lord Diplock, is that the 1971 AC 881 "Judge must impute to Parliament an intention not to impose a prohibition inconsistent with the objects which the statute was designed to achieve though the draftsman has omitted to incorporate in express words any reference to that intention". In *Carter v. Bradbeer* [1975] 3 All ER 158, Lord Diplock observed that over the last thirty years, the House of Lords has increasingly moved away from the purely literal approach to statutory interpretation towards the purposive approach. Indeed, in the case of *Nothman v. Barnet London Borough Council* [1978] 1 WLR 220, Lord Denning makes the claim that the literal approach has

been superseded by the purposive approach. Lord Denning said (at p. 228) :

"The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the purposive approach.... In all cases now in the interpretation of statutes we adopt such a construction as will promote the general legislative purpose underlying the provision. It is no longer necessary for the judges to wring their hands and say : There is nothing we can do about it. Whenever the strict interpretation of a statute gives rise to an absurd or unjust situation, the judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done, had they had the situation in mind."

The Supreme Court is now more prone to accept the new approach, viz., the purposive approach in preference to the literal approach - vide *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, and *Union of India (UOI) and Another Vs. Rajdhani Grains and Jaggery Exchange Ltd. and Others*,

The benevolent purpose of the exemption scheme is to encourage a vital national activity in the interest of rural economy. We feel that the term "marketing" has to be construed in a manner which would achieve this benevolent purpose of exemption rather than defeat the said purpose, of course, applying the settled rules of construction. We are certainly not forgetting that the provision is an exemption created by the statute and must be construed strictly. In the case in *Addl. Commissioner of Income Tax, Karnataka Vs. Ryots Agricultural, Produce Co-operative Marketing Society Ltd.*, the facts are not similar to the case we are now considering. It was a case of a co-operative society marketing the agricultural produce of its members after some processing. Of course, in this decision also, it is emphasised that the expression "marketing" appearing in clause (c) of section 81(i) (now section 80P) of the Income Tax Act, 1961, is of wide import and generally means "the performance of all business activities in the flow of goods and services from the point of initial agricultural production until they are in the hands of the ultimate consumer". It has to be noted significantly that *Venkataramaiah J.*, as he then was, observed that (at p. 713). "The marketing functions involve exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial functions such as standardisation, financing, market intelligence, etc." It is difficult for us to hold that "marketing" includes only selling particularly in view of the provision that what is exempted is the profit and gains of the business activity of "marketing". In this view, we have to hold that the order of the Tribunal is not in accordance with law. In the result, we answer the question referred to us in the negative, against the Revenue and in favour of the assessee.

Reference is disposed of as above.

A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.