

A COMMISSIONER OF INCOME TAX
TAMIL NADU-V MADRAS

v.

KOTAGIRI INDUSTRIAL CO-OPERATIVE
TEA FACTORY LTD., KOTAGIRI

B MARCH 5, 1997

[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.]

C *Income Tax Act, 1961 : Sections 72, 80P and 80B(5)—Cooperative Society—Carried forward losses—Deduction claimed under sec.80P—Losses—Set-off—Losses in excess of income—Deduction claimed not allowed by Income Tax Officer, but allowed by the Appellate Assistant Commissioner and Tribunal—On appeal, held : Income Tax Officer rightly set off carried forward losses of earlier year—Justified in not allowing deduction as losses exceeded income.*

D *Interpretation of statutes :*

Statutory Construction—Principle—Applicability of.

E *Words & Phrases :*

"Gross total income"—Meaning of in the context of sec. 80-P and 80-B(5) of the Income Tax Act, 1961.

F The respondent Co-operative Society was engaged in manufacture and sale of tea. In the previous year there were certain losses which had been carried forward to the relevant assessment year. The assessee claimed deduction under sec. 80P(2) of the Income Tax Act, 1961 from the total income earned. The Income-Tax Officer first set off the losses of previous years that had been carried forward against the income and since the losses were in excess of the income, he held that no deduction was permissible under section 80-P of the Income Tax Act, 1961. The view of the Income Tax Officer was not accepted by the Appellate Assistant Commissioner who held that deduction under section 80-P should first be made out of the income and thereafter the losses of the previous years were to be set off. It was affirmed in appeal by the Income Tax Appellate Tribunal.

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H On reference, High Court held against the Revenue. Hence this appeal.

The contention of the appellant Revenue was that the High Court was in error in proceeding on the basis that the deduction under section 80-P must be made before the adjustment of the losses of the previous year under section 72 of the Act.

The contention of the respondent-assessee on the other hand was that since the matter relates to a co-operative society and it was the policy of the legislature to encourage the co-operative movement the provisions of section 80-P must be liberally construed in favour of the assessee.

Allowing this appeal, this Court

HELD : 1. Before considering the matter of deduction under section 80-P(2) of the Income Tax Act, 1961, the Income Tax Officer had rightly set off the carried forward losses of the earlier years in accordance with section 72 of the Act and on finding that the said losses exceeded the income, he rightly did not allow any deduction under section 80-P(2) and the Appellate Assistant Commissioner as well as the Tribunal and the High Court were in error in taking a contrary view. [744-G]

Distributors (Baroda) Pvt. Ltd. v. UOI of India & Ors., 155 ITR 120 and *H.N. Sir Rama Varma v. Commissioner of Income Tax*, (1994) 205, ITR 433, relied on.

2. Section 80-P(1) read with definition of the expression "gross total income" contained in section 80B(5), indicates that for the purpose of making deduction under section 80-P it is necessary to first determine the gross total income in accordance with the other provisions of the Act. Accordingly for the purposes of the present case, the gross total income must be determined by setting off against the income the business losses of the earlier years as required under section 72 of the Act. [742-E]

3. The principle of statutory construction has no application in construing the expression "gross total income" in sub-section (1) of section 80-P. In view of the express provision defining the said provision in section 80-B(5) for the purpose of Chapter VI-A, there is no scope for construing the said expression differently in section 80-P. [744-H, 745-A]

Cloth Traders (P) Ltd. v. Additional Commissioner of Income Tax, (1979) 118 ITR 243 and *Commissioner of Income Tax v. Venkatachalam*, (1971) ITR 688, held inapplicable.

- A *Cambay Electric Supply Industrial v. Commissioner of Income Tax, (1978) 113 ITR 84, referred to.*

Broach Distt. Co-operative Cotton Sales Ginning and Pressing Society Ltd. v. Commissioner of Income Tax, Ahmedabad, (1989) 177 ITR 418, cited.

- B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5912 of 1983.

From the Judgment and Order dated 22.1.82 of the Madras High Court in T.C. No. 407 of 1977.

- C Dr. V. Gauri Shankar, S. Rajappa and C. Radhakrishna for the Appellant. :

Ms. Janki Ramachandran for the Respondent.

The Judgment of the Court was delivered :

- D This appeal, by certificate, is directed against the judgment of the Madras High Court dated January 22, 1982 in Tax Case No. 407 of 1977. The Kotagiri Industrial Co-operative Tea Factory Ltd., respondent (hereinafter referred to as 'the assessee') is a co-operative society. It carries on business in manufacture and sale of tea from brought tea leaves and the purchase and supply of agricultural manure to members. It is also deriving income from dividend from investments with other co-operative societies. In the previous year relevant to the assessment year 1972-73 the assessee earned a total income of Rs. 85,150. The losses of the earlier year which had been carried forward to the said assessment year were Rs. 1,82,744. The assessee claimed a deduction of Rs. 53,386 under Section 80-P(2) from the income of Rs. 85,150. The Income Tax Officer first set off the losses of previous years that had been carried forward against the income and since the losses were in excess of the income, he held that no deduction was permissible under Section 80-P of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The said view of the Income Tax Officer was not accepted by the Appellate Assistant Commissioner who held that deduction under Section 80-P should first be made out of the income and thereafter the losses of the previous year were to be set off. The said decision of the Appellate Assistant Commissioner was affirmed in appeal by the Income-tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal referred the following question for the
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opinion of the High Court :-

"whether, on the facts and in the circumstances of the case, the Appellate Tribunal was wright in law in holding that the deduction under Section 80-P of the Income Tax Act should be allowed before set off of unabsorbed losses of earlier year ?"

The said question has been answered by the High Court against the Revenue. In the impugned judgment the High Court has followed its earlier decision in *Commissioner of Income Tax v. Katpadi Co-operative Timber Works Ltd.*, (1982) 135 ITR 287, wherein the High Court had held that so long as the gross total income of a co-operative society includes income referable to the activities mentioned in Section 80-P(2) the assessee would be eligible for the deduction and it is only if there is any amount left thereafter that could be the subject of consideration of set off of carried forward losses. The High Court followed the decision of this Court in *Cloth Traders (P) Ltd. v. Additional Commissioner of Income Tax*, (1979) 118 ITR 243, as well as its own decision in *Commissioner of Income Tax v. Venkatachalam*, (1971) 120 ITR 688.

Dr. V. Gaurishankar, the learned senior counsel appearing for the Revenue, has submitted that the High Court was in error in proceeding on the basis that the deduction under Section 80-P must be made before the adjustment of the losses of the previous year under Section 72 of the Act. The learned counsel has placed reliance on definition of the expression "gross total income" contained in Section 80-B(5) and has contended that the decision in *Cloth Traders (P) Ltd.* (supra) has since been reversed by a Constitution Bench of this Court in *Distributors (Baroda) Pvt. Ltd. v. Union of India & Ors.*, 155 ITR 120. Dr. Gaurishankar has also invited our attention to the recent decision in *H.H. Sir Rama Varma v. Commissioner of Income Tax*, (1994) 205 ITR 433.

Ms. Janaki Ramachandran, the learned counsel appearing for the assessee, has also placed reliance on certain observations in *Distributors (Baroda) Pvt. Ltd.* (supra) and has submitted that since the matter relates to a co-operative society and it is the policy of the Legislature to encourage the co-operative movement the provisions of Section 80-P, which have been enacted in furtherance of this policy to encourage and promote the growth of co-operative societies, must be liberally construed in favour of the assessee. The learned counsel has placed reliance on the decision of this

- A Court in *Broach Distt. Co-operative Cotton Sales Ginning and Pressing Society Ltd. v. Commissioner of Income Tax, Ahmedabad*, (1989) 177 ITR 418.

- B Reference may be made at this stage to the provisions of Section 80-P which falls in Chapter VI-A of the Act. Sub-section (1) of Section 80-P, which is relevant for the purpose of the case, provides as follows :-

- C "80-P(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 same specified in sub-section (2), in computing the total income of the assessee."

For the purpose of Chapter VI-A the expression "gross total income" is defined in clause (5) of Section 80-B in the following terms :-

- D "Gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

- E If Section 80-P(1) is read with definition of the expression "gross total income" contained in Section 80-B(5), it has to be held that for the purpose of making deduction under Section 80-P it is necessary to first determine the gross total income in accordance with the other provisions of the Act. This means that for the purposes of the present case the gross total income must be determined by setting off against the income the business losses of the earlier years as required under Section 72 of the Act.

- F In *Distributors (Baroda) Pvt. Ltd.* (supra) this Court has dealt with the question whether deduction of income by way of dividends under Section 80-M has to be made from the income computed in accordance with the provisions of the Act, i.e., after deducting interest on monies borrowed for earning such income or from total income of dividends without so deducting the interest amount. In the earlier decision in *Cloth Traders Pvt. Ltd.* (supra) a three Judge Bench of this Court had held that the deduction required to be allowed under Section 80-M must be calculated with reference to the full amount of dividends received from a domestic company and not with reference to the dividend income as
- H computed in accordance with the provisions of the Act, i.e., after making

deduction as provided under the Act. In the said decision in *Cloth Traders Pvt. Ltd.* (supra) the Court did not notice the earlier decision of a two Judge Bench of the Court in *Cambay Electric Supply Industrial Co. Ltd. v. Commissioner of Income Tax*, (1978) 113 ITR 84, wherein, in the context of Section 80-E, it was held that for the purpose of allowing deduction under the said provision it was necessary to first compute the total income of the assessee in accordance with the other provisions of the Act, i.e., in accordance with all the provisions except Section 80-E. The decision in *Cloth Traders Pvt. Ltd.* (supra) has been overruled by the Constitution Bench in *Distributors (Baroda) Pvt. Ltd.* (supra) wherein it has been observed :-

"The opening words describe the condition which must be fulfilled in order to attract the applicability of the provision contained in sub-section (1) of Section 80-M. The condition is that the gross total income of the assessee must include income by way of dividends from a domestic company. "Gross total income" is defined in Section 80-B, clause (5), to mean the 'total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A or under Section 280-0'. Income by way of dividends from a domestic company included in the gross total income would therefore obviously be income computed in accordance with the provisions of the Act, that is, after deducting interest on moneys borrowed for earning such income. If income by way of dividends from a domestic company computed in accordance with the provisions of the Act is included in the gross total income, or in other words forms part of the gross total income, the condition specified in the opening part of sub-section (1) of Section 80-M would be fulfilled and the provision enacted in that sub-section would be attracted." [p. 135]

We are unable to hold that the observations made in the judgment while construing the words "such income by way of dividends" in any way detract from the above quoted observations inasmuch as this Court has clearly said :-

"It is obvious, as a matter of plain grammar, that the words "such income by way of dividends" must have reference to the income by way of dividends mentioned earlier and that would be income

- A by way of dividends from a domestic company which is included in the gross total income. Consequently, in order to determine which is "such income by way of dividends", we have to ask the question : what is the income by way of dividends from a domestic company included in the gross total income and that would obviously be the income by way of dividends computed in accordance with the provisions of the Act. [p. 136]
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- It may also be pointed out that while considering the provisions of Section 80-T of the Act this Court has followed the decision in *Distributors (Baroda) Pvt. Ltd.* (supra) in *H.H. Sir Rama Varma v. Commissioner of Income Tax* (supra). In that case it has been held that a long term capital loss brought forward from earlier assessment years had to be first set off against the long term capital gains of the current assessment year before deduction contemplated by Section 80-T of the Act is allowed and the relief under Section 80-T is to be given only for the amount of long term capital gains of the current assessment year after the long term capital loss of the earlier years brought forward is set off.
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- It is no doubt true that the decision of the Madras High Court in *Commissioner of Income Tax v. Venkatachalam*, (supra) has been affirmed in appeal by this Court in *Commissioner of Income Tax v. Venkatachalam*, (1993) 201 ITR 737. That decision was also given in the context of Section 80-T of the Act. It has been taken note of by this Court in *H.H. Sir Rama Varma v. Commissioner of Income Tax*, (supra). B.P. Jeevan Reddy, J. was a party in both decisions. In *Venkatachalam* (supra) this Court has emphasised that the deduction under Section 80-T had to be made from out of capital gains and no question would arise of the business loss being set off against the amount of capital gains.
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- Having regard to the law as laid down by this Court in *Distributors (Baroda) Pvt. Ltd.* (supra) and *H.H. Sir Rama Varma* (supra), it must be held that before considering the matter of deduction under Section 80-P(2) the Income Tax Officer had rightly set off the carried forward losses of the earlier years in accordance with Section 72 of the Act and on finding that the said losses exceeded the income, he rightly did not allow any deduction under Section 80-P(2) and the Appellate Assistant Commissioner as well as the Tribunal and the High Court were in error in taking a contrary view.
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- H The principle of statutory construction invoked by Ms.

Ramachandran has no application in construing the expression "gross total income" in sub-section (1) of Section 80-P. In view of the express provision defining the said expression in Section 80-B(5) for the purpose of Chapter VI-A, there is no scope for construing the said expression differently in Section 80-P. A

The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the question referred for the opinion is answered in the negative, i.e., in favour of the Revenue and against the assessee. In the circumstances, there will be no order as to cost. B

S.V.K.I.

Appeal allowed