

strengthen his claim. The learned Additional Sessions Judge was not justified in setting aside the same.

(9) In view of the legal position as explained above, the order of the learned Additional Sessions Judge is not justified. It is set aside and the case is remanded back to him to decide the revision filed by Jaswant, respondent against Jagdish, petitioner and his brother Onkar Chand on merits, as the proceedings under section 145 of the Code are competent. With these observations, this revision stands disposed of.

P.C.G.

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LTD.,—*Respondent.*

Income Tax Reference No. 58 of 1982

April 4, 1989.

Income Tax Act (XLIII of 1961)—S. 81(1)(c)—Exemption—Society earning income from sale of agricultural produce by purchase from its members—Income of society—Whether agricultural income—Such members not producers—Amount of subsidy received by assessee—Such income—Whether can be exempted.

Held, that even if a member is not a producer of agricultural produce the income derived from purchase and sale of agricultural produce from a member is exempt from levy of income tax, and such income is to be deducted in computing the total income of the assessee.

(Para 6)

Held, that the character of the receipt is to be considered and if subsidy was given towards the purchase price of foodgrain it will partake the character of reducing purchase price by the amount of subsidy with the result that the income will go up by the amount of subsidy. Even if the income of the assessee goes up by Rs. 40,000, since this relates to the sale and purchase of agricultural produce

Commissioner of Income Tax, Patiala v. Punjab State Cooperative Supply and Marketing Federation Ltd. (G. C. Mital, J.)

from its members, this would also be deducted while computing the total income of the assessee.

(Para 7).

Reference under section 256 (1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal, Chandigarh Bench, Chandigarh to the Hon'ble High Court of Punjab and Haryana for opinion of the following question of law arising out of the Tribunal's order dated 30th October, 1981 in R.A. No. 9/Chd/82—in ITA No. 855/Chd/1974-75, Assessment year 1967-68:—

“Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in holding that the income from the purchase and sale of wheat, paddy etc. amounting to Rs. 40,44,844 and the subsidy of Rs. 40,000 incidental to such business received from National Cooperative Development Corporation was exempt from tax under section 81(1)(c) of the Income-tax Act, 1961?”

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Appellant.

R. S. Aulakh, Advocate, for the Respondents.

JUDGMENT

Gokal Chand Mital, J.

(1) The Punjab State Cooperative Supply and Marketing Federation Ltd, a cooperative society (hereinafter the called 'the assessee') carried on business of purchase and sale of wheat, paddy and other agricultural produce from its members. During the year relevant to the assessment year 1967-68, the assessee had income of Rs. 40,44,844. Since the aforesaid income was derived from the marketing of the agricultural produce of its members, it was claimed that under section 81 (1) (c) of the Income Tax Act, 1961 (for short 'the Act'), which provision stands omitted with effect from 1st April, 1968 and is incorporate in section 80 P (2) (a) (iii) with effect from the same date, the same had to be deducted in computing the income.

(2) The Income Tax Officer did not allow the deduction on the ground that the agricultural produce was not raised by the members of the society

(3) On appeal, the Appellate Assistant Commissioner allowed the deduction in view of the majority decision of the Appellate Tribunal, Delhi Bench, in the case of National Agricultural Cooperative Marketing Federation Ltd, wherein it was held that words 'agricultural produce of' means agricultural produce belonging to members and not agricultural produce raised by the members. The Tribunal confirmed the decision of the Appellate Assistant Commissioner.

(4) Another point which cropped up for consideration was about the receipt of Rs. 40,000 by the assessee from National Cooperative Development Corporation by way of subsidy to compensate the assessee by 2 per cent of the purchases to meet the loss, which the assessee may have incurred on account of price fluctuation. According to the assessee it was a capital receipt but the Income Tax Officer took the view that the receipt was incidental to carry on the business, and, therefore, formed part of taxable income. However, on appeal, the Appellate Assistant Commissioner took the view that as he had held that the income from purchase and sale of agricultural produce was exempt from payment of income tax, the subsidy of Rs. 40,000 was also exempt. However, he held that the amount be clubbed with income for rate purposes only. The Tribunal upheld this view of the Appellate Assistant Commissioner.

(5) Some more points were agitated before the Tribunal but it has referred the following question on the facts noticed above :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in holding that the income from the purchase and sale of wheat, paddy etc. amounting to Rs. 40,44,844 and the subsidy of Rs. 40,000 incidental to such business received from National Cooperative Development Corporation was exempt from tax under section 81 (1) (c) of the Income-tax Act, 1961."

(6) So far as the first part of question relating to the income derived from the purchase and sale of foodgrain from members, we have held in *C.I.T. v. Haryana State Cooperative Supply and Marketing Federation Limited* (1) that even if member is not a producer of agricultural produce, the income derived from purchase

(1) I.T. Ref. No. 95 of 82 decided on 21st March 1989.

Commissioner of Income Tax, Ludhiana v. M/s. Amritsar Swadeshi
Woolen Mills, Amritsar (G. C. Mital, J.)

and sale of agricultural produce from a member is exempt from levy of income tax, and such income is to be deducted in computing the total income of the assessee. We follow that view.

(7) As regards the second point regarding receipt of subsidy, in *Ludhiana Central Co-operative Consumers, Stores Ltd. v. C.I.T., Patiala* (2), and *V.S.S.V. Meenakshi Achi and another v. C.I.T., Madras* (3), it has been held that the character of the receipt is to be considered and if subsidy was given towards the purchase price of foodgrain it will partake the character of reducing purchase price by the amount of subsidy with the result that the income will go up by the amount of subsidy. Even if the income of the assessee goes up by Rs. 40,000, since this relates to the sale and purchase of agricultural produce from its members, this would also be deducted while computing the total income of the assessee.

(8) For the reasons recorded above, we answer the question in favour of the assessee in the affirmative. No costs.

S.C.K.

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, Ludhiana,—Applicant.

versus

M/S AMRITSAR SWADESHI WOOLLEN MILLS, AMRITSAR,—
Respondent.

Income Tax Reference No. 17 and 18 of 1981

April 11, 1989.

Income Tax Act (XLIII of 1961)—S. 147(b)—Assessment framed—Entire material available on record—Change of opinion by I.T.O.—Whether entitling I.T.O. to make reassessment—Nature of advance not ascertained—Remand of case by Tribunal—Such remand—Whether legal.

(2) 12 I.T.R. 942.

(3) 1 I.T.R. 253 at 260 (S.C.).