

Ludhiana Co-operative Marketing Society Ltd. v. Commissioner of
Income Tax, Ludhiana (S. S. Sodhi, J.)

(6) Adverting to the facts of the case, it is clear that the entire premises were being used by the assessee for running its factory but due to heavy losses, the production was reduced with the result to minimise losses the rear portion was temporarily leased out as a commercial asset. Hence, the Tribunal was right in considering the income as business income. Moreover, on the peculiar facts of this case we are of the opinion that hardly any question of law arises and largely it is a question of fact.

(7) Accordingly, we answer the question in affirmative, i.e., against the revenue, but with no order as to costs.

S.C.K.

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

LUDHIANA CO-OPERATIVE MARKETING SOCIETY
LTD.,—*Petitioner.*

versus

COMMISSIONER OF INCOME TAX, LUDHIANA,—*Respondent.*

Income Tax Reference No. 32 of 1979.

November 16, 1988.

Income Tax Act (XLIII of 1981)—Ss. 10(29), 80 P—Co-operative Societies Act, 1912—Preamble—Society registered under the Co-operative Societies Act—Whether an authority under S. 10(29) of the Act—Rental income derived by the assessee/society—Whether exempt from tax.

Held, that a plain reading of the preamble would show that the Co-operative Societies Act, 1912 was not a law enacted by the legislature to create an 'Authority', but was enacted to facilitate the formation of Co-operative Societies for the purposes mentioned therein. The fact that Co-operative Societies have been specifically dealt with under the provisions of S. 80 P of the Income Tax Act, 1961 is a clear pointer to the legislative intent in not having Co-operative Societies fall within the ambit of S. 10(29) of the Income Tax Act. Hence it has to be held that the assessee/co-operative society is not an 'Authority' within the meaning of S. 10(29) of the Income Tax Act, and therefore not entitled to claim exemption for whole of its income. (Paras 3, 4 and 5).

Reference Under Section 256(1) of the Income-tax Act, 1961 (Assessment year 1973-74) praying that the following question of law arises out of the decision of Tribunal, be referred to the Hon'ble High Court of Punjab and Haryana at Chandigarh for its considered opinion.

"Whether the Tribunal was justified in holding that the Applicant is not an authority within the meaning of Section 10(29) under the circumstances of the case ?"

B. S. Gupta, Advocate with Sanjay Bansal, Advocate, for the petitioner.

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

JUDGMENT

S. S. Sodhi, J.

(1) The assessee—The Ludhiana Co-operative Marketing Society Limited is a Co-operative Society registered under the Co-operative Societies Act, 1912. The controversy here is with regard to its claim for exemption for the whole of its income on the ground that it was covered by the provisions of Section 10(29) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

(2) The Tribunal held that the assessee-Society — could not be held to be an "Authority" as envisaged by the said Section 10(29) of the Act and this is what led to the reference of the following question of law :—

"Whether the Tribunal was justified in holding that the applicant is not an authority within the meaning of Section 10(29) under the circumstances of the case."

(3) Following judicial precedents, this reference has clearly to be answered in the affirmative in favour of revenue and against the assessee. In *Singhal Brothers P. Ltd. vs. Commissioner of Income-Tax, West Bengal-I* (1980) 124 I.T.R. 147, the question arose — whether a Company incorporated under the Companies Act, for carrying on the business of manufacture and sale of edible oils and owning factory and godowns was an 'Authority' under Section 10(29) of the Act and the rental income derived by it from letting out of its godowns, was consequently exempt. In dealing with this matter, the Court accepted the position that the assessee-Company could not be said to be an "Authority constituted under any law for the time

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being in force", as all that it could be said was that its existence was permissive under the Companies Act and no more. Further, it was held that a Joint Stock Company incorporated primarily for carrying on ordinary business of commercial activities cannot come within the definition of 'Authority' under the said sub-section.

(4) Turning to the present case, it would be pertinent to advert to the preamble of the Co-operative Societies Act, 1912, under which the assessee-Society was formed. This preamble reads as under :—

"Whether it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means, and for that purpose to amend the law relating to Co-operative Societies, it is hereby enacted as follows

(5) A plain reading of this preamble would show that the Co-operative Societies Act, 1912 was not a law enacted by the legislature to create an "Authority", but was enacted to facilitate the formation of Co-operative Societies for the purposes mentioned therein.

(6) Another relevant aspect of the matter here are the provisions of Section 80 P of the Act which deals specifically with deductions in respect of income of Co-operative Societies. The fact that Co-operative Societies have been specifically separately dealt within this manner, is a clear pointer to the legislative intent in not having Co-operative Societies fall within the ambit of Section 10(29) of the Act.

(7) The Tribunal thus rightly held that the assessee-Society was not an "Authority" within the meaning of Section 10(29) of the Act. The reference is answered accordingly. There will, however, be no order as to costs.
