

COMMISSIONER OF INCOME TAX, CHENNAI

v.

M/S. MODERN ENGINEERS CONSTRUCTION
COOPERTIVE SOCIETY LTD.

(Civil Appeal No.5497 of 2008)

SEPTEMBER 4, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]

*Income Tax Act, 1961 – s.80P(2)(a)(i) – Deduction under
– Claim for – High Court did not consider matter in proper
perspective – Matter remitted to High Court for fresh
consideration.*

The assessee-respondent made a claim for deduction under s.80P(2)(a)(i) of the Income Tax Act, 1961, which was rejected by the Assessing Officer. The aggrieved assessee filed appeal which was allowed by the Commissioner (Appeals). The Tribunal and High Court upheld the same. Hence the present appeal.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: The High Court proceeded on the factual premises as if the dispute related to interest received from members. This confusion arose because the High Court mixed up the factual position of some other case which related to credit society engaged in Banking. On that score alone, the High Court's order is indefensible. Apart from that, the decision of this Court in *Madras Autorickshaw Drivers** which has *prima facie* relevance, was not noticed by the High Court. [Paras 5, 6] [65-A-C]

Madas Autorickshaw Drivers v. Commissioner of Income Tax (2001) 10 SCC 175 – referred to.

A Case Law Reference

(2001) 10 SCC 175 referred to. Para 6

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B From the final Judgment and Order dated 26.2.2007 of the High Court of Judicature at Madras in T.C. (A) No. 136 of 2007

C V. Shekhar, Ranbir Chandra and B.V. Balaram Das for the Appellant.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

D 2. In the instant appeal, challenge is to the judgment of a Division Bench of the Madras High Court dismissing the appeals filed under Section 260-A of the Income Tax Act, 1961 (in short 'the Act'). The issue related to the claim of deduction made by the respondent under Section 80P (2)(a)(i) of the Act. The assessing officer negatived the claim on the ground that the income reflected by the assessee can neither be attributed to actual labour of the members nor can be treated as arising out of collective disposal of its labour. The Commissioner of Income Tax (Appeals) following the earlier orders, allowed the appeal. The Revenue filed appeals before the Income Tax Appellate Tribunal, Chennai-'A' Bench (in short the 'Tribunal') which dismissed the appeals.

E 3. Learned counsel for the appellant submitted that the assessing officer had rightly observed that the claim of deduction in terms of Section 80P(a)(i) is not allowable. Unfortunately, the Commissioner (Appeals) and the Tribunal held otherwise. The High Court failed to notice that the profit earned by the Society in executing the work was retained by the members themselves.

G 4. There is no appearance on behalf of the assessee in H spite of service of notice.

5. The High Court seems to have proceeded on the factual premises as if the dispute related to interest received from members. This confusion appears to have arisen because the High Court mixed up the factual position of some other case which related to credit society engaged in Banking. On that score alone, the High Court's order is indefensible.

6. Apart from that we find that the decision of this Court in *Madas Autorickshaw Drivers v. Commissioner of Income Tax* (2001 (10) SCC 175), which has prima facie relevance, was not noticed by the High Court. We, therefore, set aside the impugned order of the High Court and remit the matter to it for a fresh consideration in the light of the aforesaid decision, keeping in view the correct factual position. We make it clear that we have not expressed any opinion on the merits of the case.

7. The appeal is disposed of accordingly.

D.G.

Appeal disposed of.