A UDAIPUR SAHAKARI UPBHOKTA THOK BHANDAR LTD.

v.

COMMISSIONER OF INCOME-TAX

(Civil Appeal No. 4399 of 2009)

JULY 16, 2009

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[S.H. KAPADIA AND AFTAB ALAM, JJ.]

Income Tax Act, 1961 – s.80P(2)(e) – Exemption from income tax – On the income of commission for storage of C *controlled commodities under Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976 – Held: The assessee was not entitled to the exemption as the assessee was storing the commodities as part of its own trading stock.*

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Appellant a Cooperative society was dealing in a composite business. It was a dealer in non-controlled commodities and it was also an authorised holder in respect of controlled commodities under Rajasthan E **Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976. It owned godowns as well as hired godowns for storing the goods. Appellant earned commission on the principle of 'netting' i.e. it set off 'issue price' against 'sale price' and retained fixed commission.**

F **Appellant filed its return for the relevant assessment years claiming deduction on the income of commission for storage of the controlled commodities u/s. 80P(2)(e) of Income Tax Act, 1961. Assessing Officer disallowed the claim. Appellate Authority as well as the Tribunal held the** G **appellant entitled to the deduction. High Court took the view that the appellant was storing the controlled commodities as part of its own trading stocks; and that the appellant acted as a trader in the essential commodities in question. Therefore, he was not entitled**

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to deduction. Hence the present appeal. A

Dismissing the appeal, the Court

HELD: 1. High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock, hence it was not entitled to claim deduction for such margin under Section 80P(2)(e) of the Income Tax Act,1961. [Para 17] [114-E-F] B

2. Under Section 80P(2)(e) of Income Tax Act, 1961, an assessee is entitled to claim special deduction from its gross total income to arrive at total taxable income. It is a special deduction. It is not a charging section. The burden is on the assessee to establish that the income comes within the four corners of Section 80P(2)(e) of the Act. The burden is on the assessee to establish that exemption is available in respect of income derived from the letting of godowns or warehouses, only where the purpose of letting is storage, processing or facilitating the marketing of commodities. If the godown is let out (including user) for any purpose besides storing, processing or facilitating the marketing of commodities, then, the assessee is not entitled to such exemption. [Para 13] [105-E-H] C D E

A. Venkata Subbarao, etc. v. The State of Andhra Pradesh, etc. AIR 1965 SC 1773, relied on. F

Commissioner of Income-tax, Madras v. South Arcot District Co-operative Marketing Society Ltd. (1989) 176 ITR 117 (SC), distinguished. G

Surat Vankar Sahakari Sangh Ltd. vs. Commissioner of Income Tax, Gujarat II (1971) 79 ITR 722 (Guj); *Ramchandra Rathore and Bros. v. Commissioner of Sales Tax, Madhya Pradesh, Nagur* (1957) 8 STC 845 (MP); *Udupi Taluk* H

A *Agricultural Produce Co-operativeMarketing Society Ltd. v. Commissioner of Income-tax* **(1987) 166 ITR 365 (Kar.)**; *M/s. Vishnu Agencies (Pvt.) Ltd. etc. v. CommercialTax Officer and Ors.* **AIR 1978 SC 449, referred to.**

B *Law and Practice of Income-tax by Kanga & Palkhivala,* **Eighth Edition, referred to.**

Case Law Reference:

(1971) 79 ITR 722 (Guj)	**referred to.**	**Para 11**
C **(1957) 8 STC 845 (MP)**	**referred to.**	**Para 14**
(1987) 166 ITR 365(Kar.)	**referred to.**	**Para 14**
AIR 1978 SC 449	**referred to.**	**Para 14**
D **AIR 1965 SC 1773**	**relied on.**	**Para 15**
(1989) 176 ITR 117 (SC)	**distinguished.**	**Para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4399 of 2009.

E From the Judgment & Order dated 02.11.2006 of the High Court of Rajasthan at Jodhpur in DB Income Tax Appeal No. 53 of 2002.

N.M. Ranka, J.K. Ranka, Sushil Kumar Jain, Puneet Jain F and Archana Tiwari for the Appellants.

K. Radhakrishnan, Raghavendra Rao, Y.P. Mahajan and B.V. Balaram Das for the Respondents.

The Judgment of the Court was delivered by

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S. H. KAPADIA, J. 1. Leave granted.

2. The short question which arises for consideration in this civil appeal turns on the interpretation of Section 80P(2)(e) of

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the Income-tax Act, 1961 whose predecessor was Section 14(3)(iv) of the Income-tax Act, 1922.

FACTS

3. The facts giving rise to this civil appeal are few and undisputed and may be briefly stated as follows. Appellant-society is a co-operative society registered under Rajasthan Co-operative Societies Act, 1965. Appellant is running a consumer co-operative store at Udaipur since 1963. It has 30 branches. Appellant is dealing in non-controlled commodities through its branches. In addition, appellant is also doing the work of distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the Government under the Public Distribution Scheme (PDS) for which it is getting commission. The distribution of the controlled commodities is regulated by the District Supply Officer (DSO-Authoriesed Officer) under Rajasthan Foodgrains & Other Essential Articles (Regulation of Distribution) Order, 1976 (for short, "1976 Order"). Appellant claims to be stockist/distributor of controlled commodities. It takes delivery from Food Corporation of India (FCI) and Rajasthan Rajya Upbhokta Sangh as per the directives of the State Government. The price, quantity and the person from whom the delivery is to be taken is fixed by the State Government under the said 1976 Order. After taking the delivery, appellant stores these goods in its godowns, both owned and rented. The storage godowns are open to checking by the concerned officers of the State Government. The stocks stored by the appellant are delivered to the Fair Price Shops (FPS-retailers) as per the directions of the State Government. The quantity, price and the FPS to whom the delivery is to be given is fixed by the State Government. According to the appellant, therefore, the above modus operandi indicates that the State Government exercises total control over the stock of controlled commodities stored in the godowns of the appellant-society. On 28.2.1977 appellant was granted licence for purchase/sale/storage for sale of goodgrains under Rajasthan

A Foodgrains Dealers Licensing Order, 1964.

4. It exercises the powers conferred by Section 3 of Essential Commodities Act, 1955, the Government of Rajasthan issued the 1976 Order. Following are the relevant B provisions, reproduced from the 1976 Order, which read as under:

"Clause 2. Definitions. – In this Order, unless the context otherwise requires :-

C (b) "Authorisation" means an authorization issued under clause 3 of this Order;

(c) "Authorised Fair Price Shop Keeper" means a retail dealer incharge of a shop authorized under clause 3 and shall include a person incharge of a shop where foodgrains D and other essential articles are sold and is under the control of the State Government;

(d) "Authorisation Holder" means an authorized wholesaler or an authorized Fair price shopkeeper;

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(e) "Authorised Officer" means District Supply Officer for the District Headquarter Municipal area, Executive Officer of Municipal Board for rest municipal area and Vikas Adhikari for rural area and any other officer authorized as F such by the State Government;

(f) "Authorised Wholesaler" means a person, a firm, an association of persons or a co-operative society or any other institution authorized appointed as an agent under clause 3 of this Order by the State Government or the G Collector.

Clause 3. Issue of Authorisation. –

(1) The Collector or any other officer authorized by the State Government may issue an authorization to any H

person being an authorized wholesaler/fair price shopkeeper to obtain and supply foodgrains and other Essential Articles in the area specified therein.

(2) No person other than an authorization holder shall *sell* any of the foodgrains or any other essential articles supplied by the Government for distribution under this Order or any other Order.

Clause 20 – Power to issue directions regarding purchase/sale/distribution of foodgrains and other essential articles. – Every authorisation holder shall comply with all general or special directions given in writing, from time to time by the State Government or the Collector in regard to *purchase, sale, storage for sale, distribution and disposal of foodgrains* and other essential articles on permits or ration cards or otherwise and the manner in which the accounts thereof shall be maintained and returns submitted.

4. We also quote hereinbelow the Terms and Conditions annexed to the said 1976 Order which read as under:

"Terms & Conditions – General

Clause (1) No authorization holder shall store Foodgrains & other essential articles at any place other than those specified in this authorization without prior permission in writing of the Collector.

Clause (2) No authorization holder shall refuse to sell Foodgrains and other essential articles during business hours on the presentation to him of a valid permit/indent/ ration card to the extent of the amount of Foodgrains or other essential articles due on the permit/indent/ration card.

Clause (3) No authorization holder shall sell Foodgrains at a price in excess of that fixed by the State Government or the Collector or shall sell any other essential articles at

A a price in excess of that fixed by the Central Government or the State Government or any authority or Officer of such Government or the manufacturer, as the case maybe, in that behalf.

B Clause (5) The authorization holder shall maintain a stock register in Form 'C' showing correctly, the daily receipt and sale of the each Foodgrains and other essential articles. A daily sale register shall also be maintained in Form 'D' by the authorized wholesaler and in Form 'E' by the authorized fair price shopkeeper. All books of accounts, C permits, voucher etc. shall be kept at the business premises specified in the authorization and shall be made available for inspection whenever required.

Clause (6) Every authorization holder shall submit a true D monthly stock and sale return in Form 'F' to the Collector so as to reach him within five days after the close of the month to which it relates.

Clause (8) The authorization holder shall display the E opening balance and prices of each variety of Foodgrains and other essential articles at a conspicuous place at his business premises in bold letters."

5. On 31.8.1990, appellant filed its returns for assessment year 1989-90 claiming deduction under Section 80P(2)(e) of F the 1961 Act on the income of commission received by it from the Government for storage of controlled commodities. On 31.10.1990 appellant filed its returns of income for subsequent assessment years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 inter alia claiming deduction on the income G of commission received by it from the State Government for storage of controlled commodities. Vide Order dated 26.3.92, the A.O. disallowed the claim on the ground that the appellant-society is a wholesaler of foodgrains and it is not a mere stockist as claimed and consequently it was not entitled to H deduction under Section 80P(2)(e) of the 1961 Act. This order

was applied for assessment years in question. Aggrieved by the assessment order(s), appellant filed appeals before CIT (A), on 18.4.92. By order dated 28.10.93, CIT(A) held that the appellant was entitled to deduction under Section 80P(2)(e) of the 1961 Act on the income of commission received from the State Government for stocking and storing the above foodgrains. This decision was affirmed by the Tribunal vide its decision dated 20.10.2000 dismissing the Department's appeal by a common order holding that the appellant was entitled to deduction under the said Section. This view of the Tribunal, however, was overruled by the impugned decision dated 2.11.06 by the Rajasthan High Court which took the view that the appellant-society was storing the said controlled commodities in its godowns as part of its own trading stocks; that the appellant acted as a trader in the essential commodities in question and consequently the appellant was not entitled to deduction under Section 80P(2)(e) of the 1961 Act. Against the impugned decision, appellant has come to this Court by way of petition for special leave.

6. The issue which arises for determination in this civil appeal is: whether, on the facts and the circumstances of this case, "commission" received by the appellant from the State Government was really in the nature of payment for the letting of the godowns maintained by the appellant for storage?

7. At the outset it needs to be noted that appellant has composite business. Appellant is a dealer in non-controlled commodities and it is an Authorisation Holder in respect of controlled commodities under the 1976 Order. It owns godowns and it also hires godowns on rent. It earns commission during the relevant assessment years at the rate of 2.25 per quintal (e.g. for rice). As stated above, under clause 20 of 1976 Order every authorization holder has to comply with general or special directions given in writing, from time to time by the Collector in regard to purchase, sale, storage for sale, distribution and disposal of controlled commodities. At this

A stage, one important aspect needs to be noted. Appellant earns commission on the principle of "netting". In other words, appellant sets-off "issue price" against "sale price" and retains commission fixed at Rs.2.25 per quintal. We quote hereinbelow the rate-fixation mechanism indicated by one of the orders
B issued on 12.3.87 w.e.f.1.5.87 under clause (20) of the 1976 Order:

"S.No./F1:2:1/Rice/Rate/85 Dated 12.5.87

To,

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Subdivisional officer/Tehsildar

Sub.: Regarding rate fixation of rice to be distributed in general areas

D As a result of change in the distribution rate and surcharge of rice by the State Government, the new rates for rice is fixed in the following manner. Order to be operative from 1.5.87.

E **A.** if the godown of the Food Corporation and wholesale dealer is in the same city:

	Common	Fine	Superfine
1. Issue rate of food corporation	239.00	251.00	266.00
F 2. Octroi	0.20	0.20	0.20
	239.20	252.20	266.20
3. Sales tax @ 3%	7.18	7.54	7.99
4. Surcharge on sale tax @20%	1.44	1.50	1.60
G 5. Amount payable to food corporation **[issue price]**	247.82	260.24	275.79
6. Commission/transportation of wholesale dealer	2.25	2.25	2.25
H 7. For upto 10km from godowns	1.00	1.00	1.00

	of Food Corporation ----------			
	Sale Price charged from FPS	251.07	263.49	279.04
8.	Commission of retail dealer	2.50	2.50	2.50
9.	Transportation of retail dealer	2.00	2.00	2.00
		255.57	267.99	283.54
10.	Equalisation amount	6.43	7.01	6.46
		262.00	275.00	80.00

B. if the godowns of the Food Corporation and the wholesale dealer are in different cities:

		Common	Fine	Superfine
1.	Issue rate of food corporation	239.00	251.00	266.00
2.	Octroi	0.20	0.20	0.20
		239.20	252.20	266.20
3.	Sales tax @ 3%	7.18	7.54	7.99
4.	Surcharge on sale tax @20%	1.44	1.50	1.60
5.	Amount payable to food corporation	247.82	260.24	275.79
6.	Commission of wholesale dealer	2.25	2.25	2.25
		250.07	262.49	278.04"

8. The above working indicates that Rs.247.82 (issue price) is treated by the appellant as expense and it is set-off against the sale price of Rs.251.07. In other words, the working indicates cost plus mechanism i.e. Rs.247.82 is the cost plus profit margin which includes Rs.2.25 as commission. Therefore, Rs.2.25 is part of the profit margin. One aspect needs to be highlighted. According to the written submissions, filed by the appellant, it had taken into its books of accounts the

A *consolidated value of the closing stock.* This circumstance reinforces the finding of the High Court in its impugned judgment that the appellant was storing the commodities in its godowns as a part of its own trading stock.

B 9. The question before us is : whether appellant was entitled to claim special deduction under Section 80P(2)(e) of the 1961 Act by claiming that the amount received under the head "commission" is really in the nature of payment for the user of its godowns?

C 10. To answer the above question, we quote hereinbelow Section 14(3)(iv) of the Income-tax Act, 1922, Section 81(iv) and Section 80P(2)(e) of the 1961 Act which read as under:

"Income-tax Act, 1922

D *Section 14. Exemption of a general nature*

(3) The tax shall not be payable by a co-operative society —

E *(iv)* in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;

"Income-tax Act, 1961

F Section 81. *Income of co-operative societies.* – Income-tax shall not be payable by a co-operative society–

(iv) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;"

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"Income-tax Act, 1961

Deduction in respect of income of co-operative societies.-

H *80P.* (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: -

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;"

11. At the outset it may be noted that Sections 81(iv), followed by Section 14(3)(iv) in the 1922 Act, as amended, was a predecessor to Section 80P(2)(e) of the 1961 Act, and it came for consideration before the Gujarat High Court in the case of *Surat Vankar Sahakari Sangh Ltd. v. Commissioner of Income-tax, Gujarat II* – (1971) 79 ITR 722 (Guj.), in which it was held:

"This section is obviously enacted with a view to encouraging and promoting growth of co-operative sector in the economic life of the country in pursuance of the declared policy of the Government. There are five different heads of exemption enumerated in the section. Each is a distinct and independent head of exemption. Whenever a question arises whether a particular category of income of a co-operative society is exempt from tax, it will have to be seen whether such income falls within any of the several heads of exemption : if it falls within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is, therefore, not free from tax under that head of exemption : vide *U. P. Co-operative Bank Ltd. v. Commissioner of Income-tax*.- (1966) 61 ITR 563 (All). The ambit and coverage of clause (iv) of section

A 81 must, therefore, depend on the true interpretation of the language used by the legislature in that clause assisted only by such external aids of construction as are permissible according to well-recognised principles of interpretation.

B Turning first to the language of section *81(iv)*, it exempts a co-operative society from tax in respect of income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities. Two possible constructions of this provision C were suggested before us in the course of the argument, one by the assessee and the other by the revenue. The construction put forward by the assessee was that the words "letting of godowns and warehouses for storage", "processing" and "facilitating the marketing of D commodities" constituted different alternatives and income derived from three different sources was, therefore, sought to be exempted under section *81(iv)*, namely, (1) income derived from the letting of godowns and warehouses for storage; (2) income derived from processing; and (3) E income derived from facilitating the marketing of commodities. The revenue on the other hand urged that income which was sought to be exempted was only income derived from the letting of godowns or warehouses if they were let for any of the three purposes, namely, F storage, processing or facilitating the marketing of commodities. The words "storage, processing or facilitating the marketing of commodities", according to the revenue, were governed by the preposition "for" and they denoted the purposes for which godowns or warehouses G should be let in order that the income derived from such letting should be exempt from tax. Now, on the plain grammatical construction of the language used by the legislature, it appears that the construction suggested on behalf of the revenue is more commendable than that H canvassed on behalf of the assessee. As we read the

words of the clause, it is apparent that there is no break in the continuity of idea after the word "storage"; the idea flows on into the words "processing or facilitating the marketing of commodities". As a matter of fact, if we read the clause as a whole, there is no doubt that the words "storage, processing or facilitating the marketing commodities" constitute one single composite clause governed by the preposition "for" signifying that the letting of godowns or warehouses contemplated by the section is letting for any of the three purposes, namely, storage, processing or facilitating the marketing of commodities. If the intention of the legislature was that "letting of godowns or warehouses for storage", "processing" and "facilitating the marketing of commodities" should be read distinctively as constituting different alternative sources of income, the legislature would have, according to the dictates of plain grammar, used the words "income derived from letting of godowns or warehouses for storage or from processing or from facilitating the marketing of commodities." The introduction of the words "or from" before "processing" and "facilitating the marketing of commodities" would have brought about the disjunctive effect so as to relate the three alternatives to the words "income derived from." But the legislature instead used words which clearly go of to suggest that the words "storage, processing or facilitating the marketing of commodities" are merely purposes for which godowns or warehouses should be let to attract the exemption under section *81(iv)*. The presence of the definite article "the" before letting and its absence before the words "processing" and "facilitating the marketing of commodities" considerably reinforces this conclusion. It is again difficult to see why the legislature should have indiscriminately mixed up in section *81(iv)* widely different sources of income such as "letting of godowns or warehouses for storage, processing and facilitating the marketing of commodities". The conclusion appears to be

A clear on a plain natural construction of the language used in section *81(iv)* that what is exempted under that section is income derived from the letting of godowns or warehouse provided the letting is for any of the three purposes, namely, "storage", "processing" or "facilitating the marketing of commodities".

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12. On interpretation of Section 14(3)(iv) of the 1922 Act it was held by the High Court:

"There is also one other circumstance which is, in our C opinion, quite decisive of the question. Section 81(iv), as we have already pointed out above, *is in identical terms as section 14(3)* and section 14(3) was originally introduced in the Income-tax Act, 1922, by section 10 of the Finance Act, 1955. Section 14(3) when originally D introduced was, however, in a different form and it read as follows :

"14. (3) The tax shall not be payable by a co-operative society, including a co-operative society carrying on the business of banking -

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(i) in respect of profits and gains of business carried on by it;...

(iii) in respect of any income derived from the letting F of godowns or warehouses for storage, processing or facilitating the marketing of commodities;..."

Clause (i) of this unamended section exempted from tax profits and gains of business carried on by a co-operative society. If, therefore, a co-operative society G carried on the activity of processing, profits and gains arising from such activity would be exempt under clause (i). If that be so, why was it necessary to enact in clause (iii) that income derived from processing shall be exempt from tax ? If the construction contended for on behalf of the

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assessee were correct, the word "processing" in clause (iii) would be rendered totally superfluous for income derived from processing would be covered by clause (i). The only way in which full meaning and effect can be given to the word "processing" in clause (iii) is by reading that clause in the manner suggested on behalf of the revenue, namely, that the words "storage", "processing" and "facilitating the marketing of commodities" denoted different alternative purposes of letting of godowns or warehouses. We are, therefore, of the view that on a proper interpretation of section 14(3) (iv) and section 81(iv), separate exemption is not granted in respect of income from the letting of godowns or warehouses for storage, income from processing and income from facilitating the marketing of commodities. But the exemption is available only in respect of income derived from letting of godowns or warehouses where the purpose of letting is storage, processing or facilitating the marketing of commodities."

13. We approve the reasoning given by the High Court on interpretation of Section 81(iv) and Section 14(3)(iv) of the 1922 Act. On reading the above judgment it becomes clear that under Section 80P(2)(e) of the 1961 Act, an assessee is entitled to claim special deduction from its gross total income to arrive at total taxable income. It is a special deduction which is provided for in that Section. It is not a charging section. The burden is on the assessee to establish that the income comes within the four corners of Section 80P(2)(e) of the 1961 Act. The burden is on the assessee to establish that exemption is available in respect of income derived from the letting of godowns or warehouses, only where the purpose of letting is storage, processing or facilitating the marketing of commodities. If the godown is let out (including user) for any purpose besides storing, processing or facilitating the marketing of commodities, then, the assessee is not entitled to such exemption. [See: Law and Practice of Income-tax by

A Kanga & Palkhivala, Eighth Edition, page 995]

14. Coming to the case law on the distinction between contract of sale and contract of agency, we may state that there is no straight-jacket formula. However, some important circumstances do bring out the effect of the transaction. In the case of *Ramchandra Rathore and Bros. v. Commissioner of Sales Tax, Madhya Pradesh, Nagur* – (1957) 8 STC 845 (MP), the terms of the agreement between the assessee, a dealer in bidis, and his agent who was required to sell the goods, under the agreement, at prices fixed by the assessee, indicated that the assessee would not be responsible for any shortage in transit and that the assessee would not be liable to receive any unsold stock if the agreement stood terminated. The accounts of the assessee-dealer also indicated that when despatches were made, the price was debited to the agent and credited to him when the money was received. These circumstances were taken into account by the High Court in judging the real effect of the transactions. Accordingly, it was held that the impugned transaction was a "sale" liable to sales tax under Section 2(g) of C.P. and Berar Sales Tax Act, 1947. In the case of *Udupi Taluk Agricultural Produce Co-operative Marketing Society Ltd. v. Commissioner of Income-tax* - (1987) 166 ITR 365(Kar.), the assessee, a co-operative society, claimed exemption under Section 80P(2)(e) of the 1961 Act in respect of its income derived by way of commission from Karnataka Food and Civil Supplies Corporation for procurement of paddy and rice and reimbursement of transport charges. Following the judgment of the Gujarat High Court in *Surat Vankar Sahakari Sangh Ltd.* (supra), the Karnataka High Court held that under Section 80P(2)(e) of the 1961 Act, exemption is available in respect of income derived only from letting out of godowns or warhouses. The income derived by the co-operative society for the purpose of exemption under clause (e) must be relatable to the letting out or the use of its godowns for any of the three purposes mentioned in clause (e).

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Any income derived by the society unconnected with such letting or use of the godowns would not fall under clause (e). In the case of *M/s. Vishnu Agencies (Pvt.) Ltd. etc. v. Commercial Tax Officer and others* – AIR 1978 SC 449, a seven-judge Bench of this Court held that transaction between the rice-millers on one hand and the wholesalers on the other hand constituted "sales" within the meaning of Bengal Finance (Sales Tax) Act, 1941 and sales tax was leviable on the turnover. In that case Vishnu Agencies was a licensed stockist of cement who was permitted to stock cement in its godown, to be supplied to persons in whose favour allotment orders are issued, at the price stipulated and in accordance with the conditions of permit issued by the authorities concerned. In that case Vishnu Agencies supplied cement to various allottees from time to time in pursuance of the allotment orders issued by Appropriate Authorities and in accordance with the terms of the licence obtained by it for dealing in cement. It was assessed to sales tax by CTO in respect of the said transactions. The main contention of Vishnu Agencies was the measures adopted to control the supply of cement left no option to parties to bargain; that, the transaction in question constituted a "compulsory sale"; that, by virtue of the provisions of the Cement Control Act and Cement Licensing Order no volition or bargaining power was left to the assessee and since there was no element of mutual consent between the stockist and the allottee, the transaction was not a "sale" within the meaning of the Sales Tax Act. This argument was rejected by this Court observing that the limitations placed on the normal rights of the dealer and consumers to supply and obtain the goods by the Cement Control Order do not militate against the position that eventually, the parties must be deemed to have completed the transactions under an agreement by which one party bound itself to supply the stated quantity of goods to the other at a price not higher than the notified price and the other party consented to accept the goods on the terms and conditions mentioned in the order of allotment issued in its favour by the competent authority. It was held that offer and acceptance need not always be in an

A elementary form, nor does the Law of Contract or Sale of Goods Act require that the consent to a contract must be express. It is commonplace that offer and acceptance can be spelt out from the conduct of the parties. This is because law does not require offer and acceptance to conform to any set pattern or formula.

B 15. As can be seen from the discussion hereinabove, two points arise for determination, namely, whether appellant acted as an agent of the Government in the subject transaction and the real nature of payment received by the said Society under the Head "commission". Both the points stand covered by the C judgment of the Supreme Court in *A. Venkata Subbarao, etc. v. The State of Andhra Pradesh, etc.* – AIR 1965 SC 1773. In that case, appellants were owners of rice mills in the Districts of West Godavari, East Godavari and Krishna. Appellant was in the business of purchasing paddy from producers, milling D their purchase in their mills and selling the rice so milled to wholesale dealers in rice. This was prior to 1946-47 when severe restrictions were imposed in the State of Madras on the trade in foodgrains in order to maintain their supplies and ensure proper and equitable distribution of foodgrains to the E community. Accordingly, in 1946, pursuant to the power vested in the State Government under Essential Supplies (Temporary Powers) Act, 1946, two Orders came to be issued, namely, Foodgrains procurement Order, 1946 and Foodgrains Licensing Order, 1946 which prohibited all trades in foodgrains F including rice except by those who held licences and subject only to the terms and conditions of the licence. A. Venkata Subbarao was one such licensee who was authorized to deal in rice under the Licensing Order, 1946. It may be mentioned that the prices at which paddy could be procured as well as G the prices at which the rice could be sold by the licensed dealers, were fixed by Orders, notifications issued under the Essential Supplies Act. While A. Venkata Subbarao (appellant) was carrying on his business subject to the provisions of the above two Orders, the prices at which he could sell rice which

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he milled out of the paddy procured by him stood enhanced on three different occasions – July 1947, December 1947 and November 1948, and on each occasion he was directed to submit a statement indicating the stock of paddy and rice held by him on the day just prior to the date on which the increased prices came into effect and on that basis the Government directed A. Venkata Subbarao to pay a "surcharge" on the amount representing the increase on the stock held by him. This levy of "surcharge" became the point of challenge in the suit filed by A. Venkata Subbarao in the trial court. The principal point in controversy between the parties related to the precise legal relationship between the procuring agent and the Government. It was found by the Supreme Court that the procuring agent had to buy the grain from the producers with their own money. The grain purchased was transported to the godowns at their cost and stored by them at their own risk. The rent of the godown(s) was also paid by the procuring agent. If there was any depreciation in the quality or there was any shortfall owing to driage, action of rodents, insects, moisture, theft, etc. the loss would of the procuring agent. It was also further found by the Court that the procuring agent could pledge his goods to raise loans from banks and lastly the procuring agent had a right to sell the grain to the person authorized by and at the price not exceeding the price fixed under the notification and Orders issued from time to time. In other words, sales at free-market rate were prohibited. On the basis of the aforestated circumstances, this Court held that the property in the goods purchased by the procuring agents vested in them. However, it was urged on behalf of the State that the purchase and sale of commodities by the procuring agent/dealer was on behalf of the Government. In this connection, reliance was placed on the agreement, executed by the procuring agent, in which he undertook to purchase paddy from the areas allotted by the Government; he undertook to store the paddy or rice in a proper godown for which he was responsible for the safe custody of the grain and that the procuring agent further

A undertook to sell the stock of rice to persons nominated by the Government. On these considerations it was urged on behalf of the Government that A. Venkata Subbarao was an "agent" of the Government to buy paddy, to store the grain purchased on behalf of the Government in secure godowns and to sell the B goods purchased on behalf of the Government to such persons nominated by the Government. It was, therefore, submitted that A. Venkata Subbarao was an "agent" who on one hand indemnified the Government from any loss in the *business of agency of purchase and storage and sale on behalf of the* C *Government* and on the other hand he was bound *to make over to the Government such profits* that he might obtain out of the business of the agency. *It was the further case of the Government that the difference between the procurement price and the price which was fixed for sale constituted* D *"commission" or "remuneration" which would belong to the agent.* In other words, two questions arose for determination before this Court, namely, the precise legal relationship between the procuring agent/dealer on one hand and the Government on the other hand as also real nature of payment received by A. Venkata Subbarao. It is interesting to note one E more argument advanced on behalf of the Government. It was urged that the margin between the procurement price and the price at which the rice could be sold constituted "remuneration". This argument found favour with the High Court. However, it was rejected by this Court and while doing so this Court observed F as follows:

> "29. Before proceeding further, it is necessary to clarify two matters. First, though Mr. Agarwala referred to the margin between the procurement price and the price at which the G procured paddy or rice could be sold as "remuneration", a contention which found favour with the High Court, we do not find it possible to accept the submission. *There was a similar margin between the price at which a wholesaler could buy rice and that at which he could sell* and similarly, H it was the case of the retail dealer, but it is hardly possible

to call these as "remuneration". This margin or difference in the purchase and sale price was necessary in order to induce any one to engage in this business and was of the essence of a control over procurement and distribution which utilised normal trade channels. *It would, therefore, be a misnomer to call it "remuneration" or "commission" allowed to an agent and so really no argument can be built on it in favour of the relationship being that of principal and agent."*

(emphasis supplied)

16. Coming to the question of agency, this Court in the case of *A. Venkata Subbarao* (supra) held that the Government can derive no advantage from the works of "Procurement agent" mentioned in the Procuring Order, 1946 whether from the agreement executed by such procuring agent. This Court specifically vide paras 32 to 35 dismissed the argument advanced on behalf of the Government that A. Venkata Subbarao (appellant) had acted as an "agent" on behalf of the Government. We quote hereinbelow paras 32 to 35 which read as under:

"32. No doubt, *the description in the Procurement Order* and the agreement as "agent" is of some value, but *is not decisive* and *one has to gather the real relationship by reference to the entire facts and circumstances.* To start with, it is clear that as the purchases were made by the procuring agents out of their own funds, stored at their own cost, the risk of any deterioration, driage or shortfall fell on them, they were the full owners of the paddy procured and they pledged the goods for raising funds. *This aspect of their full ownership of the grain purchased is highlighted by the fact that they entered into agreements with the Government itself to sell the rice with them to District Supply Officers at the controlled market prices.* Any contention that the procuring agents were not full owners

of paddy or rice procured by them must manifestly fail as being inconsistent with the basis upon which this agreement by them to sell Government was entered into. If further confirmation were needed it is provided by the fact that on the *sales by procuring agents to Government under their Supply agreement sales-tax was payable* which on the terms of the Madras General Sales Tax Act in force at the relevant time would not have been payable if the paddy and rice were that of Government and which they were holding merely as commission agents on behalf of the Government.

33. Next, it may be pointed out that these *plaintiffs held licences* under the Licensing Order under the Madras Foodgrains Control Order, 1947 in *order that they might deal in the rice in their possession.* In the licence which was granted to the plaintiffs which was in statutory form the foodgrains in their possession were referred to as their stocks. It may be pointed out that the form of the licence granted to procuring agents, wholesalers and retailers was the same.

34. Learned Counsel urged that even assuming that the property in the goods purchased passed to the procuring agents that would not by itself negative the relationship of principal and agent. For this purpose reliance was placed on Article 76 of Bowstead on Agency which runs :

> "Where an agent, by contracting personally, renders himself personally liable for the price of goods bought on behalf of his principal, the property in the goods, as between the principal and agent, vests in the agent, and does not pass to the principal until he pays for the goods, or the agent intends that it shall pass."

He also referred us to certain decisions of the Madras and Punjab High Courts in which the principle laid down in this

passage had been applied. We do not consider it necessary to examine this question in its fulness because we are satisfied that the procuring agent, when he bought the goods, was purchasing it for himself and not on behalf of the Government. *The acceptance of the argument addressed on this aspect would mean that if the procurement agent so desired he might contract in the name of the principal, namely, the Government and thus establish privity between the Government and the purchaser and make the Government liable to pay for the price of the goods at which he had purchased.* This situation would, in our opinion, be unthinkable on the scheme of the Procurement Orders and generally of the Food Control Orders under which the procurement and distribution of foodgrains was placed under statutory control. What the Government desired and what was implemented by these several orders was merely the regulation and control of the trade in foodgrains by rendering every activity connected with it subject to licensing and to the directions to be issued in pursuance thereof and not directly to engage in the trade in foodgrains.

35. The respondent can derive no advantage from the obligation on the part of the procuring agents to store the paddy or rice properly - a stipulation on which Mr. Agarwala laid considerable stress - and this for two reasons : (1) The purpose of the clause was to ensure that there was no loss of foodgrains which were then a scarce commodity. That this is so would be apparent from the terms of section 3(2)(d) of the Essential Supplies Act which was effectuated by clause 9 of the licence granted under the Madras Foodgrains Control Order, 1947 which applied to all dealers in foodgrains, be they procuring agents (who also, as stated earlier, had to obtain and obtained these licences), wholesalers or retailers. This clause reads :

A "9. The licensee shall comply with any directions that may be given to him by the Government or by the officer issuing this licence in regard to the purchase sale or storage for sale of any of the foodgrains mentioned in paragraph (1)....."

B The second reason is that the agreement executed by the procuring agents in which this clause as regards storage in proper godowns and undertaking responsibility for the safe-custody of the grain occurs, is one which was a form intended for execution not merely by procuring agents *but also authorised wholesale distributors* i.e., those who purchased their requirements from procuring agents; admittedly *the authorised wholesale dealers were not "agents"* and the fact that this condition was insisted on even in their case is clear proof that it has no relevance to the question now under discussion. If therefore, appears to us that the expression "agent" was used in the Intensive Procurement Order as well as in the agreements merely as a convenient expression to designate this class of dealers."

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17. Applying the judgment of this Court in the case of *A. Venkata Subbarao* (supra) we hold that the High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock, hence it was not entitled to claim deduction for such margin under Section 80P(2)(e) of the 1961 Act.

18. Before concluding, we may refer to the judgment of this Court in the case of *Commissioner of Income-tax, Madras v. South Arcot District Co-operative Marketing Society Ltd.* – (1989) 176 ITR 117 (SC). This judgment is heavily relied upon by the counsel appearing on behalf of the appellant. In that case the facts were as follows. Assessee was a co-operative society under Madras Co-operative Societies Act. In the previous year ending June 30, 1960, the Society entered into an agreement

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with the Government of Madras under which it agreed to hold ammonium sulphate stock of the Government of Madras and it agreed to store the stock on behalf of the Government of Madras and to maintain a true and full account for the stocks received and returned every month for a commission of Rs.5 per ton on the quantity of fertilizer issued by the assessee from the stock. The assessee received Rs.31,316 *on this account.* The said sum of Rs.31,316 was originally included in its turnover, in the case of assessment proceedings, the assessee claimed exemption under Section 14(3)(iv) of the Income-tax Act, 1922. The ITO held that the assessee was not entitled to exemption on the ground that the said amount of Rs.31,316 had been received for services rendered. The assessee appealed to CIT(A) who agreed with the ITO stating that the said amount received was for services rendered and as such the assessee was not entitled to exemption. Before the Tribunal the assessee contended that the receipt was for letting out its godown for storage, and, therefore, the said receipts came directly under Section 14(3)(iv) of the 1922 Act. The Revenue contended that the receipts from letting of godowns, etc, to members alone were exempt and the *receipts in the present case being on a commercial* basis will not fall within the scope of the exemption. The Tribunal, however, held that the assessee was entitled to exemption under Section 14(3)(iv) by observing that the agreement with the Government of Madras clearly indicated that the receipts were for letting of the godowns. The Tribunal further observed that some service element was there which constituted part of the receipts but it was an insignificant part of the whole amount of Rs.31,316. Hence, the Society was entitled to exemption. The Madras High Court analysed the agreement between the parties and came to the conclusion that the assessee was a stock-holder who had agreed to hold ammonium sulphate stock of the Government of Madras and safely store the same on their behalf and to issue the same on certain terms and conditions. Under the Agreement, the fertilizers bags had to be stocked in a manner as directed by

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A the officers of the Government. The stocking and storage of the bags had to be done in the manner indicated by the Government. The assessee had to maintain particulars of fertilizers received, released and held in stock. The assessee had to engage at its own cost, godown-keepers and clerks to
B properly and efficiently carry on its duties under the agreement. The assessee was to get a commission of Rs.5 per ton of the quantity of fertilizers issued from the stocks on the instructions of the Government. On the analysis of the agreement, the High Court came to the conclusion that the assessee was a mere
C stock-holder and that the sum of Rs.5 per ton shown as commission from the Government was only for letting of godowns and though some services provided to were incidental to such storage, the service element and payment thereof constituted an insignificant portion of the amount received. In
D the circumstances, the High Court upheld the view of the Tribunal that the receipt of Rs.31,316 was exempt under Section 14(3)(iv) of the 1922 Act. This view was upheld by this Court.

19. In our view the judgment of this Court in *South Arcot* (supra) has no application to the facts of the present case.
E Firstly, in every case of this nature one has to examine the contract between the parties. One has also to examine the conduct of the parties. In the case before us we are concerned with Rajasthan Foodgrains & Other Essential Articles (Regulation of Distribution) Order, 1976. In the present case we
F are concerned with statutory or compulsory sales. Each contract has to be interpreted on its own terms. In the case of *South Arcot* (supra) statutory or compulsory sale was not in issue. Secondly, in the case before us we have a situation in which there are two sales. The first sale is between the Government
G (through FCI) and the appellant-society, and the second sale is between the appellant-society and Fair Price Shop. The former is the condition precedent to the latter. That situation was not there in the case of *South Arcot* (supra). Thirdly, in the case before us issue price is set-off against the sale price which

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clearly indicates that the netting/difference between the two prices constituted receipt on a commercial basis or net profit. Lastly netting/difference also indicated that the appellant had treated the stock as its own trading stock as correctly held by the impugned judgment. Therefore, in our view the judgment of this Court in the case of *South Arcot* (supra) will not apply to the facts of the present case and consequently the appellant is not entitled to exemption/special deduction under Section 80P(2)(e) of the 1961 Act.

20. For the aforestated reasons, we find no infirmity in the impugned judgment, and, accordingly we hereby dismiss the civil appeal of the appellant-assessee with no order as to costs.

K.K.T. Appeal dismissed.