(1965) 58 ITR 848

High Court Of Punjab And Haryana At Chandigarh

Case No: Income-tax Reference No. 54 of 1962

MUNICIPAL COMMITTEE, SIMLA		APPELLANT
	Vs	
COMMISSIONER OF Income Tax, PUNJAB.		RESPONDENT

Date of Decision: Sept. 28, 1964

Acts Referred:

- Income Tax Act, 1961 - Section 66(1)

Citation: (1965) 58 ITR 848

Judgement

This order will dispose of Income Tax References Nos. 54 and 55 of 1962. They arise out of two separate assessment orders for the years 1946-47 and 1947-48. The question of law that arise in both these references is the same and, therefore, will be answered in this single order which will dispose of both the references.

The Income Tax Appellate Tribunal, Delhi Bench, has referred the following question of law for our opinion u/s 66(1) of the Indian Income Tax Act ï¿½(hereinafter referred to as the Act :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 6,81,316 being the excess of expenses over receipts in providing services in respect of education, medical attendance, public health and municipal works to the citizens of the municipality is to be deducted from the income of the assessee arising outside the Koti State while determining the total world income or total income of the Assessee ?"

The assessee is the Municipal Committee of Simla. It had income in the erstwhile Koti State, which is now part of Himachal Pradesh, from forest contracts, octroi and other sources. The Income Tax Officer, Koti State, computed the income of the municipal committee in the State for the year 1946-47 at Rs. 35,457 and in the year 1947-48 at Rs. 21,337. For the purpose of rate, the Income Tax Officer computed the income of the

assessee outside the Koti State at Rs. 11,47,407 in the year 1946-47 and Rs. 8,31,845 in the year 1947-48. It is common ground that for the purposes of rate, the total world income of the assessee had to be computed which according to the Income Tax Officer came to Rs. 11,47,407 plus Rs. 35,457 (= Rs. 11,82,864 for the year 1946 -47) and Rs. 8,31,845 plus Rs. 21,337 (= Rs. 8,53,182) for the year 1947-48. So far as we are concerned, there is no dispute now as to the figures. Before the Income Tax Officer, Koti State, a dispute arose whether the assessee was a local authority and retained that status outside its jurisdictio ? However, the counsel for the assessee took the stand that the assessee was not a local authority for purposes of assessment of tax in the Koti State, but for purpose of the Sanjauli octroi post receipts, the assessee was a local authority because the octroi receipts related to collections which should have been made within the Jurisdiction of the appellant irrespective of the fact that it was actually collected at Sanjauli within the Koti State. It may be mentioned at this stage that the Income Tax Act in the Koti State is in pari materia with the Indian Income Tax Act. The initial assessment made by the Income Tax Officer, Koti State, was set aside by the Appellate Assistant Commissioner of Income Tax, Koti State, with a direction to make a fresh assessment after giving allowances for the items mentioned in the appellate order. The Income Tax Officer, Himachal Pradesh-Bilaspur-Simla, by his order dated the 10th July, 1950, while adding income outside the Koti State for the purposes of rate, observed as follow :

"The status of the Committee has been held in appeal to be that of an association of persons and so its income outside Koti State is to be taken for purposes of rate. The income outside Koti State has been determined at Rs. 11,47,407 by the Income Tax Officer, Koti State, in his original order dated the 22nd December, 1947."

Thus the total world income for purposes of rate was determined at Rs. 11,82,862. An appeal was taken against this order u/s 31 of the Act to the Appellate Assistant Commissioner. Contentions were raised before the Appellate Assistant Commissioner with regard to depreciation on electricity, water plant, Sanjauli octroi post collections and income from forests, but without any ï¿½success. With regard to the question of determination of total world income, it was contended that while determining the world income outside Koti State at Rs. 11,47,407, the Income Tax Officer had failed to consider the losses under the heads "education, medical relief, public health, etc.", on the ground that these were of a charitable nature, the income from which would be exempt from tax u/s 4(iii), The total expenses, capital expenses and receipts with regard to education, medical relief and public health, etc. were worked as follow :

Total expenses	Capital expenses included therein	Receipts

(1)	(2)	(3)	(4)
Education	1,11,469	5,085	31,295
Medical	2,69,843	14,620	59,640
Public health	3,33,880	21,462	32,260
Municipal works including buil-dings and roads	1,62,155	31,294	375
Total	8,77,347	72,461	1,23,570

Thereafter the Appellate Assistant Commissioner proceeded to deal with the appeal with regard to the determination of total income outside Koti State and reduced the same from Rs. 11,47,407 to Rs. 4,66,091. Thus the total world income was computed at Rs. 5,01,548. It will be proper at this stage to set out this part of the order of the Appellate Assistant Commissioner, which is in these term :

"Setting off the capital expenses of Rs. 72,461 and the receipts of Rs. 1,23,570 against the expenses of Rs. 8,77,347, there would be a net loss of Rs. 6,81,316 under the four different heads mentioned above. Shri A. L. Sarda, Income Tax Officer, who appeared on behalf of the department, has scrutinised these figures and agrees that they were not allowed as a deduction in computing the total income of the company. As these losses were incurred due to the heavy expenditure prescribed by law they are clearly admissible for determining the total income. These losses related to the municipal Jurisdiction of the appellant outside the Koti State and will therefore be set off against the income of Rs. 11,47,407 which accrued outside the Koti State. It is reduced to Rs. 4,66,091."

The department preferred an appeal against this order of the Appellate Assistant Commissioner to the Appellate Tribunal, Delhi Bench. The Tribunal restored the order of the Income Tax Officer and it will be proper to set out the reasons for the same in their own word :

"The point for consideration is as to whether or not the deficits in the accounts mentioned above can be taken into account while computing the total world income of the assessee. According to section 2(15) total world income includes all profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 4, the Income Tax Act does not apply. It would thus be seen that if any income us exempt ï¿½under section 4(3) it shall not be included in the total world income. According to section 4(3) all income of a local authority is to be excluded from total income except the income which is derived from a trade or business carried on by the local authority from the supply of a commodity or service outside it jurisdictional area, that can be taken

for purposes of assessment to tax. All other income of a local authority is to be excluded from total income by virtue of the provisions of section 4(3)(iii). According to the definition of total world income, any income of a local authority which has to be excluded from total income will also be excluded from total world income. The receipts and disbursements of the assessee in respect of education, medical relief, public health and municipal works do not arise from any trade or business carried on by the assessee outside its jurisdictional area and as such these items cannot be taken into account while computing the total income or the total world income of the assessee. The Appellate Assistant Commissioner was in the circumstances wrong in directing the Income Tax Officer to deduct the deficits in these accounts while calculating the total world income of the assessee."

It may be mentioned that the Tribunal proceeded on the basis that the assessee was a local authority and not on the basis that the assessee was an association of persons as was the case before the two authorities below.

The assessee who was dissatisfied with this order made an application to the Tribunal for referring the question of law, already set out for the opinion of this court and that is how the matter has been placed before us. In the order of reference against, the Tribunal proceeded on the basis that the assessee is a local authority.

After hearing the learned counsel for the parties we are of the view that the question of law referred to us for our opinion by the Tribunal does not arise. It is fairly well-settled and so far as this court is concerned, it is settled tha :

"The High Court is confined to the statement of the case drawn up by the Commissioner so far as the substance of the question is concerned and can decide that question only which is raised thereby" (vide the Full Bench decision of the Lahore High Court in Seth Gurmukh Singh v. Commissioner of income tax).

In the present case, the question of law referred to would only arise if the Tribunal had proceeded on the basis that the assessee was not a local authority but an association of persons. That was the case of the assessee both before the Income Tax Officer as well as the Appellate Assistant Commissioner, but the Tribunal while dealing with the appeal by the department decided the matter on the basis that the assessee was a local authority. If the assessee is treated as a local authority, the provisions of section 4(3)(iii) of the Act will come into play, with the result that the income of the local authority cannot be included in the total income of that authority for purposes of tax. Section 4(1) deals with the income that are taxable. Section 4(3) with which we are concerned excludes certain incomes from being included in the total income and is in the following term :

"4. (3) Any income profits or gains falling within the following classes shall not be included in the total ï¿½income of the person receiving the :...

(iii) The income of local authorities except income from a trade or business carried on by the authority swo far as that income is not income arising from the supply of a commodity

or service within its own jurisdictional area...."

The income of local authorities which is sought to be taken into account for purposes of rate admittedly did not arise within the taxable territories and the income which is sought to be taken into account for purposes of total world income by the department is not "income from a trade or business carried on by the authority. It is also not income arising from the supply of a commodity or service outside its own jurisdictional area." This income which is now sought to be taken into account for the purposes of rate is exempted for that purpose by the aforesaid section 4(3)(iii). This court is bound by the statement of the facts found by the Tribunal and on those facts the question of law which has been referred for our opinion does not arise. It is not a case where we can ask for further facts or reframe the question ourselves or even without reframing the question answer the same. As we are of opinion that on the facts found by the Tribunal the question of law does not arise, the same is not accordingly answered. In the peculiar circumstances of this case, there will be no order as to costs.