(2001) 09 P&H CK 0132

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax A. No. 1 of 2000 and Income Tax Reference No''s. 3 and 119 of 1998

Commissioner of Income Tax		APPELLANT
	Vs	
Escorts Dealers Development Association Ltd.		RESPONDENT

Date of Decision: Sept. 19, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 256(2), 28

Citation: (2002) 253 ITR 305

Hon'ble Judges: Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: R.P. Sawhney and Rajesh Bindal, for the Appellant; G.C. Sharma A.K. Mittal, Atul Gandhi, Akshay Bhan and Anjali Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

Has the Income Tax Appellate Tribunal erred in applying the principle of "mutuality" and in thus allowing deduction of the amounts received by the assessee on account of entrance fee, contributions and forfeiture of the payments made by the ex-members ? This is the short question that arises in the appeal filed by and the two references made at the instance of the Revenue.

2. Mr. R.P. Sawhney, counsel for the Revenue, has referred to the facts in Income Tax Reference No. 3 of 1998. These may be briefly noticed.

3. The assessee filed its return of income for the assessment year 1983-84. It declared a loss of Rs. 19,21,534. This amount consisted of the loss of Rs. 10,81,580 for the year under question and the unabsorbed loss of Rs. 8,39,954 for the earlier year. The accounting period tallied with the calendar year and ended on December 31, 1982.

4. The assessee claimed to be a mutual benefit association. It was constituted to advance, promote and protect the interests of dealers of motor-cycles and tractors, etc., manufactured by Escorts Ltd. The amounts received from the members by way of entrance fee or contributions and the forfeited amounts of ex-members were claimed to be not liable to tax on the basis of the principle of "mutuality". An amount of Rs. 2,37,753 was disclosed as income from interest. It was offered as taxable income. An expenditure of Rs. 13,23,802 was claimed. Thus, there was a loss of Rs. 10,81,580.

5. The Assessing Officer held that the surplus of the total receipts over expenditure is chargeable to tax as the amounts were received by the assessee for specific services so as to be exigible to tax u/s 28(iii) of the Income Tax Act, 1961. The income was accordingly assessed at Rs. 3,88,904. The order was confirmed by the Commissioner of Income Tax (Appeals). On second appeal by the assessee, the Tribunal held that the entrance fee as also the contribution for members was outside the purview of income for specific services. Similarly, the claim of the Revenue regarding the forfeited amount of former members was negatived.

6. Aggrieved by the order, the Revenue sought reference u/s 256(1) of the Act. The application having been dismissed, it filed a petition u/s 256(2). In pursuance of the directions of this court, the Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the learned Tribunal is right in law in holding that the surplus of the company on account of entrance fee, contribution from the members and forfeited amount of ex-members was not liable to tax as income from business thereby deleting the addition of Rs. 3,88,904?"

7. On behalf of the Revenue, it has been contended that the assessee is a company. It is totally distinct from the members. Therefore, the principle of mutuality cannot be invoked. Learned counsel has placed reliance on the decision in COMMISSIONER OF Income Tax, A. P. Vs. DHARMAVARAM MUTUAL BENEFIT PERMANENT FUND LTD., . Secondly, it has been submitted that the principle of mutuality could not have been invoked as the contributions were charged from the dealers at the rate of Rs. 10 per motor-cycle and Rs. 40 per tractor, respectively. A corresponding contribution was made by the manufacturer. AH the funds were used for advertisement and, thus, for the benefit of manufacturers. Similarly, the forfeited amounts were retained by the company and were not used for the benefit of the members. Thus, the authorities under the Act had erred in allowing the deductions.

8. On the other hand, Mr. G.C. Sharma contended that the assessee is not a company of shareholders. It is a company limited by guarantee. With reference to the articles and memorandum of association, counsel pointed out that it was a mutual benefit association. The contributions by the members were used for their benefit only. The company was not working for profit. At the time of winding up, the

assets are to be shared equally amongst the members on that date. Counsel pointed out that the Revenue had not claimed that the assessee was an entity different from its members. In particular, counsel referred to an affidavit filed on behalf of the Revenue in C.W.P. No. 6397 of 1987. In paragraph 12, it had been specifically admitted that the company was a mutual benefit association. On these premises, counsel contended that the claim of the Revenue cannot be sustained.

9. Mr. Sawhney contended that the respondent-assessee is a company. It is distinct from its members. Therefore, the principle of mutuality cannot be invoked. Is it so ?

10. The articles of association have been placed on record. One of the main objects was "to organise the company as a mutual benefit association . . .". Article 11 of the memorandum of association further, provides that "the income and property of the company whenever derived shall be applied solely for the promotion of its objects as set forth in the memorandum". It was also laid down that "no portion of this income or property aforesaid shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to persons who, at any time are/or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them." In view of these provisions in the memorandum of association, the Tribunal has recorded a firm finding in favour of the assessee. There appears to be no ground to take a different view.

11. Another fact which deserves mention is that C.W.P. No. 6397 of 1987 had been filed by the assessee. A copy of an affidavit filed on behalf of the Revenue is on record in I.T.A. No. 1 of 2000. In para. 12, it has been cate- gorically admitted by the Revenue that the company was a mutual benefit association. Thus, the Revenue cannot take a different position in the present case.

12. It also deserves mention that it was never the Revenue''s case that the asses-see was different from its members. No such question was raised by the Revenue at any stage. In fact, a perusal of the order passed by the Assessing Officer shows that it had proceeded on the basis that the assessee is a mutual benefit association. Even the Commissioner of Income Tax (Appeals) had assumed a similar posih''on. Thus, the Tribunal has rightly observed in para. 15 of its order that it cannot travel beyond its jurisdiction "to investigate as to whether the assessee is a mutual benefit association or not". Still further, it may also be noticed that even on earlier occasions, the claim of the assessee that it is a mutual benefit association had been accepted. Why has the Revenue taken a different position now ? There is no answer.

13. Mr. Sawhney contended that the question as now sought to be raised is just another aspect of the issue as referred by the Tribunal. Thus, it can be examined by the court.

14. It is true that while examining the question as referred by the Tribunal, the court can go into various aspects of the matter. However, in the present case, we find overwhelming evidence to show that the assessee is a mutual benefit association.

The authorities have proceeded on that basis. Thus, it cannot be said that the assessee is different from its members.

15. Mr. Sawhney referred to the decision of the Andhra Pradesh High Court in the case of COMMISSIONER OF Income Tax, A. P. Vs. DHARMAVARAM MUTUAL BENEFIT PERMANENT FUND LTD., . In this case, it was found as a fact that the element of mutuality was absent. The members who contributed to the profits were different from the beneficiaries. Such is not the position in the present case. Thus, counsel can derive no advantage from this decision.

16. In view of the above, we hold that the assessee is a mutual benefit association. The Revenue having not raised the question that the assessee is different from its members, the argument as now sought to be raised cannot be accepted.

17. Mr. Sawhney then contended that the manufacturer and the dealers are members of the assessee-company. They make separate contributions at Rs. 10 for every motor-cycle and Rs. 40 for every tractor, respectively. A corresponding contribution is made by the manufacturer. Thus, the principle of mutuality cannot be applied. The dealers and the manufacturer have a commonality of interest. If the goods are advertised and the sales are promoted, the interests of both are served. The association of the dealers and the manufacturer does not destroy the principle of mutuality. There being a complete identity of interests, mutual contributions only serve the common cause.

18. Factually, it is the admitted position that the amount in dispute relates to the entrance fee, the contributions made by the members and the forfeited amounts of ex-members. None of these is shown to be an income "from specific services". Thus, the view taken by the Tribunal that the addition was illegal, is unexceptionable.

19. Mr. Sawhney submitted that the forfeited amount of ex-members remains with the company. It may be so. Since it is utilised for the benefit of the members, it cannot be said that it is income within the meaning of Section 28(iii) of the Act. Since the assets are to be shared equally at the time of winding up, the principle of mutuality has been rightly applied.

20. It deserves mention that counsel for the Revenue did not refer to any evidence to show that a specific service had been provided to any member. Thus, it cannot be said that the amount represented income from specific services.

21. In view of the above, we find no merit in the claim of the Revenue. The question is answered in favour of the assessee and the appeal filed by the Revenue is dismissed. In the circumstances of the cases, the parties are left to bear their own costs.