(1991) 04 AHC CK 0051

Allahabad High Court

Case No: Income-tax Reference No''s. 42, 236 and 1092 of 1979

Commissioner of Income Tax		APPELLANT
	Vs	
Allahabad Milling Co. Pvt. Ltd.		RESPONDENT

Date of Decision: April 2, 1991

Acts Referred:

- Income Tax Act, 1961 - Section 256, 28, 56

Citation: (1992) 195 ITR 325

Hon'ble Judges: B.P. Jeevan Reddy, C.J; S.R. Singh, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

B.P. Jeevan Reddy, C.J.
u/s 256(2) of the Income Tax Act, 1961, the following two identical questions are stated in these three references. The questions are as under :

"Whether, on the facts and in the circumstances of the case and on a true interpretation of the lease agreement and the memorandum of association of the assessee-company, the Tribunal was legally correct in holding that the income earned by the assessee from leasing out of the cold storage and ice plant to M/s. Rajendra Prasad Kishanlal, should he assessed as profits and gain of business and not under the head ''Other sources ?''

Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the income from leasing out of the cold storage and ice plant should be assessed as profits and gains of business in spite of the fact that such income was assessed under the head ''Other sources'' till the assessment year 1959-60 ?"

2. The assessee is a private limited company. Till the year 1949, it was running a flour mill. In that year, it started an ice factory and cold storage. It did business

during the two previous years relevant to the assessment years 1951-52 and 1952-53. With effect from March, 1952, the assessee was leasing out the cold storage and ice plant with all its accessories to Rajendra Prasad Kishan Lal, a partnership firm. The lease amount was Rs. 72,000 for one season. Up to the assessment year 1959-60, the income so received was assessed under the head "Other sources". In the assessment proceedings relating to the assessment year 1960-61, however, the assessee raised the contention that the said income should be treated as business income. This was rejected by the Income Tax Officer whereupon the assessee filed an appeal unsuccessfully. Further appeal to the Tribunal, however, met with success. The Tribunal held, on consideration of terms of the lease and other relevant circumstances, that the assessee had never abandoned his intention of using the said plant as a business asset and, therefore, the income derived therefrom should be assessed under the head "Profits and gains from business". It is thereupon that the present reference was obtained by the Revenue.

3. The assessee was giving a lease every year but for the relevant season only. He had not entered into any long-term lease. The lease deed discloses that the plant was to be insured by the lessor himself though at the cost of the lessee. Furthermore, the lessor had undertaken to supply to the lessee hydrous ammonia and salt for the first deficiency required for the purpose of running the plant. Any extra requirement was of course to be met by the lessee at their own cost.

4. Having regard to the fact that the lease was only for a portion of the year, i.e., for the relevant season and also having regard to the above terms of lease, the Tribunal was of the opinion that the assessee cannot be said to have abandoned his intention of using the said plant as a business asset. It is well settled by several decisions of the courts in India including the decision of the Supreme Court in Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd., , that in such cases, what is relevant is the intention of the assessee. It has to be ascertained, whether the assessee intended to use the asset as a business asset or otherwise during the relevant period. Particularly in a case where the asset was used for some years as a business asset (as in the present case), the question would be whether the assessee can be said to have abandoned his intention to use the said asset as a business asset. It is essentially a question of fact. The inference is to be drawn from the relevant material placed before the authorities; so far as this reference is concerned, we cannot interfere with the finding recorded by the Tribunal unless it is shown to us that the finding of the Tribunal is vitiated on any of the recognised grounds, viz., non-consideration of the relevant material, consideration of inadmissible material or the finding being perverse. We cannot say that the finding of the Tribunal in this case suffers from any of the above defects. We, therefore, see no reason to disturb the Tribunals'' finding. Accordingly, we answer the questions referred in the affirmative, i.e., in favour of the assessee and against the Revenue.

5. No order as to costs.