
Jwala Prasad Radha Krishna Vs Commissioner of Income Tax

Income-tax Reference No. 178 of 1979

Court: Allahabad High Court

Date of Decision: Jan. 8, 1992

Citation: (1992) 107 CTR 1 : (1992) 198 ITR 415

Hon'ble Judges: M. Katju, J; A.N. Verma, J

Bench: Division Bench

Advocate: Vikram Gulati, for the Appellant; B. Dayal, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Verma, J.

At the instance of the Revenue, the following questions have been referred by the Income Tax Appellate Tribunal, Delhi

Bench "C", in pursuance of the direction issued by this court u/s 256(2) of the Income Tax Act, 1961 :

1. Whether, on the facts and circumstances of the case, there was material before the Tribunal to hold that there was no agreement to charge

interest from the parties?

2. Whether, on the facts and circumstances of the case, the Tribunal was legally justified in holding that no interest accrued to the assessee in the

assessment year in question?

2. The relevant assessment year is 1974-75, The assessee is the sole selling agent of Raza Textiles Ltd., Rampur. As per its balance-sheet, the

following amounts were found to have been advanced to three companies indicated below which incidentally happen to be under the same

management as Raza Textiles Ltd. :

Rs.

1. Sir J. P. Srivastava and Sons Rampur Ltd. 3,26,774

2. Sir f. P. Srivastava and Sons (P.) Ltd., Rampur 70,592

3. Messrs. Cawnpur Dyeing and Cloth Printing Co., Kanpur 3,78,497

3. The amount shown against Sir J. P. Srivastava and Sons Rampur Ltd. was advanced by the assessee in instalments between March 10, 1965,

and April 14, 1969. The debtor-company credited the assessee with interest up to the period ending June 30, 1969, whereafter no interest was

charged nor credited nor was the same claimed by the debtor company as deduction in the computation of its own income. Similarly, advances

were made in favour of J. P. Srivastava and Sons Pvt Ltd., Kanpur, and interest was charged on the advances made only up to June 30, 1969,

whereafter again no interest was charged in the subsequent years including the year in question. The position in regard to the third company was

also the same. Accordingly, the assessee did not show any interest from any of these debtor-companies in its return for the relevant assessment

year.

4. The Income Tax Officer held that as the assessee-company was following the mercantile system of accounting and as the assessee was charging

interest in the previous years, the interest should be added to the income of the assessee on the same basis for the year in question also. This

finding was affirmed in appeal by the Appellate Assistant Commissioner. On a further appeal by the assessee, the Income Tax Appellate Tribunal

set aside the orders of the Income Tax Officer and the Appellate Assistant Commissioner and held that there was no material on the record to

show that any agreement, whether written or otherwise, existed between the assessee and the debtor-companies for payment of interest. The

Tribunal further held that the interest had neither legally nor actually accrued in favour of the assessee and, consequently, the assessee rightly did

not show the same in its return. The Tribunal went on to observe that unless the Department could establish that the interest has legally and actually

accrued in favour of the assessee on amounts advanced by it to the debtor-companies, the same could not be added to the assessee's income. The

appeal was, accordingly, allowed.

5. We are clearly of the view that in the absence of any agreement, whether in writing or otherwise, whether express or implied, interest could not

be added to the income of the assessee. Broadly, interest can accrue in favour of the assessee either under or by virtue of some statute or under

agreement which may be either express or implied. The position in the present case is that there is no material whatever to show that any such

agreement existed. On the contrary, from the correspondence exchanged between the assessee and the Department and other material on the

record, it is apparent that the assessee and the debtor-companies were sister concerns and that the assessee had stopped charging interest from

the debtor-companies with effect from June 30, 1969, for the simple reason that the debtor-companies had run into financial straits and,

consequently, the assessee had stopped charging any interest on the advances. The debtor-companies had also stopped claiming any interest by

way of deduction.

6. Further, the fact that the assessee had been paid interest by the debtor-companies for a few years could not by itself and without more justify

the inference that there was some agreement between the parties for payment of interest. That being so, interest could not be said to have accrued

in favour of the assessee. The Tribunal, therefore, rightly set aside the orders of the Income tax Officer and the Appellate Assistant Commissioner.

7. Sri Bhupeshwar Dayal, learned standing counsel for the Revenue, however, submitted that the agreement to pay interest to the assessee should

have been presumed by the Tribunal in view of the fact that interest was being charged by the assessee in the previous years. We are unable to

agree. The assessee is admittedly not a money-lender. In the case of money-lenders, perhaps, such a presumption might be raised. No such

presumption is, however, available in the case of other assesseees, there being no material pointing to a contrary conclusion.

8. In the premises, we answer both the questions in the affirmative, in favour of the assessee and against the Revenue. The assessee will be entitled

to its costs which we assess at Rs. 250.