

(2000) 12 MAD CK 0087

Madras High Court

Case No: Tax Case No"s. 1017, 1082, 1083 and 1107 of 1988 (Reference No"s. 782, 844, 845 and 869 of 1988)

Commissioner of Income Tax

APPELLANT

Vs

S.P. Balasubramaniam

RESPONDENT

Date of Decision: Dec. 6, 2000

Acts Referred:

- Income Tax Act, 1961 - Section 256

Citation: (2001) 250 ITR 127

Hon'ble Judges: R. Jayasimha Babu, J; K. Gnanaprakasam, J

Bench: Division Bench

Advocate: Chitra Venkataraman, for the Appellant; V. Ramakrishnan, for the Respondent

Judgement

R. Jayasimha Babu, J.

The assessee is a music director and playback singer and according-to him, he is also occasionally involved in film production. It is his case that he had entered into a business venture with one Charan Chitra, a, partnership firm on February 28, 1977, under which he was to receive 5 per cent, of the amount realised from the film called "Charitra Hennulu" after the amount borrowed by that firm from Vijaya Pictures in a sum of Rs. 2 lakhs for which the assessee has stood guarantee, was repaid from the earnings of the movie. The fact that the assessee had stood surety for the monies lent by Vijaya Pictures to Charan Chitra had come to light after a search in the assessee's premises on June 28, 1980. At that search certain diaries were also recovered, on the basis of which additions were made to the assessee's income.

2. The assessee in his returns for the assessment years with which we are concerned, 1975-76, 1976-77, 1977-78 and 1981-82, claimed that no addition to his income was warranted and also that the interest paid by him on the monies which he had borrowed for the purpose of paying Vijaya Pictures by reason of the default

committed by Charan Chitra was required to be allowed as a business loss.

3. Though the Income Tax Officer declined to accept the claims so made by the assessee, on appeal the Commissioner agreed with the assessee. The order of the Commissioner having been affirmed by the Tribunal, the Revenue is now before us seeking answers to the questions concerning the correctness of the Tribunal's view that no addition could be made to the professional income in the assessment for those years, and also the correctness of the Tribunal's holding that the interest payment made by the assessee on the loan taken for the purpose of discharging the liability incurred as the guarantor of the loan given by Vijaya Pictures to Charan Chitra, is allowable as deduction.

4. It is the case of the Revenue that in the light of the answers which the assessee had given at the time of the search, the additions to the income were warranted, and that the Tribunal was wrong in affirming the Commissioner's view that the additions to the professional income after taking into account the entries made in the diaries which were secured at the time of seizure did not justify such additions.

5. The Tribunal has only affirmed the view of the Commissioner after examining the record which showed that there was no specific evidence to show that there was any suppression of receipts. It has also affirmed the Commissioner's finding that the Income Tax Officer had not pointed out any investments or other specific outgoings which had not been accounted for by the assessee in the diaries furnished by him. The addition in the sum of Rs. 30,000 in the assessee's income for these years was therefore deleted by the Commissioner and that deletion was upheld by the Tribunal. The question as to whether the addition was warranted is primarily a question of fact. The Commissioner found that there was no material to justify such addition. The Tribunal after examining the record has affirmed that finding. We do not see any error in the finding of the Tribunal. As pointed out by the apex court in the case of [Commissioner of Income Tax, Madras Vs. M. Ganapathi Mudaliar](#), the reference court is not an appellate court. What we are required to consider is whether there was any material to support the finding of the Tribunal and not whether the finding was justified.

6. The Revenue has not been able to show any material which was available in the record to substantiate the addition made to the assessee's income, which had been ignored by the Commissioner or the Tribunal. There was in fact no material to justify the addition. The finding recorded by the Tribunal that the addition was not justified is required to be and is upheld.

7. In so far as the question relating to the admissibility of the deduction claimed by the assessee for the amount paid by him as interest on the borrowing effected for the purpose of discharging the liability which he had incurred as the surety for loan obtained by Charan Chitra from Vijaya Pictures is concerned, the submission for the Revenue is that the assessee was not engaged in the business of film production

and that this one time adventure was more in the nature of help rendered to a friend on considerations of friendship and cannot be regarded as a business venture. It was submitted that the assessee is not engaged in the business of film production and the guarantee given by him to help a friend and the loss resulting therefrom cannot be regarded as a business loss.

8. The submission so made by the Revenue ignores the findings recorded by the Tribunal which are clearly findings of fact. The Tribunal has found that the assessee had entered into an agreement on February 28, 1977, with Charan Chitra under which the assessee was to receive 50 per cent, of the amount in excess of Rs. 2 lakhs from the exploitation of the film which was then under production. It was in consideration of that agreement that the assessee had stood guarantee to Vijaya Pictures as he had arranged the finance, and the financier had insisted upon the assessee standing guarantee for the loss. It is the case of the assessee, and the case which had been accepted by the Tribunal, that the assessee was desirous of making profit and since he had not the capital to become a film producer himself, he had thought of entering into an arrangement under which he would share in the profits of the film under production by helping the producer to secure the finance from persons known to the assessee and for securing which the assessee would stand guarantee.

9. The film flopped and it is the finding of the Tribunal that the negatives of the film were made over to the assessee by the producers, that the film had in fact been exploited in subsequent years by the assessee from which he had derived some income. It is also the finding of the Tribunal that by reason of the default committed by Charan Chitra the assessee became liable for and paid the amount which had been lent by Vijaya Pictures to Charan Chitra.

10. In the light of these facts it is difficult to accept the submission for the Revenue that the transaction which resulted in the loss was not in the nature of business. It is beyond dispute, that even a single adventure in the nature of trade or business is sufficient to constitute trade or business, and it is not necessary that there must be a series of transactions before the activities are characterised as a trade or business. The fact that the assessee entered into this transaction in the hope of making money but burnt his fingers losing the amount for which he had stood guarantee, does not on that score make it any less a business transaction.