COMMISSIONER OF Income Tax Vs WANDOOR JUPITER CHITS (P.) LTD. (IN LIQUIDATION).

Original Petition No. 3348 of 1992-S

Court: High Court Of Kerala

Date of Decision: Oct. 6, 1994

Acts Referred:
Income Tax Act, 1961 â€" Section 256

Citation: (1995) 123 CTR 410 : (1995) 213 ITR 73 : (1995) 80 TAXMAN 345

Hon'ble Judges: T.L. Viswanatha Iyer, J; T. L. Vishanatha Iyer, J

Bench: Division Bench

Judgement

T. L. VISWANATHA IYER J. - The Revenue seeks to have the following questions referred to this court u/s 256(2) of the Income Tax Act,

1961, namely :

1. Whether, on the facts and in the circumstances of the case, the entire expenditure or any one of the eight items of expenditure has any nexus

with the earning of interest income on the principal amount collected and is an allowable deduction ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in equating nexus with the principal amount collected with the

interest earned on the principal amount and in allowing the expenditure in view of the nexus (if at all) with the principal amount in deposit ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and in fact in holding that the legal process, salaries and

allowances to the staff, establishment charges for the purpose of pursuing the legal process are highly necessary expenses for earning the interest on

the principal collection by the assess ?

The assessee-company is now in liquidation and the only income that it received during the year was interest of Rs. 99,168 earned on funds

invested in fixed deposit. The official liquidator claimed deduction of various items of expenditure which had been incurred by him in the

administration. The Tribunal, by the order impugned, allowed the deductions following an earlier order of theirs and dismissed the application for

reference u/s 256(1). The Department has thereupon filed this application for compelling a reference u/s 256(2) of the Act.

Standing counsel for the Department points out that the questions arising in this case are really covered in favour of the Revenue by the decision of

the Supreme Court in Vijaya Laxmi Sugar Mills Ltd. v. CIT : [1991]191ITR641(SC) . That was also a case of a company under liquidation, in

which the liquidator claimed various items of expenditure incurred by him as deductible expenditure. Since the activity for which the company had

been formed, namely, manufacture of sugar, was not being carried on during the relevant accounting year, the Supreme Court held that the

liquidator does not carry on the business of the company merely because he realised the assets of the company in the course of its winding up, and

banked the proceeds in fixed deposits. The interest received on the deposits could, therefore, be computed only under the head ""Income from

other sources.

Prima facie this decision applies to the case on hand. We are, therefore, satisfied that the following question of law arises out of the order of the

Tribunal, and that it is liable to be referred, namely :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing deduction of the various items of expenditure

from the income of the assessee for purposes of assessment.

We are of the view that this question, as to whether the items of expenditure incurred by the assessee, and in respect of which he claims deduction,

are deductible or not could have been decided by us with reference to the aforesaid decision of the Supreme Court and others, if we had power to

do so. Essentially this a question of law on which a decision could be rendered even now without the aid of any other materials. However, the

limited scope of the jurisdiction u/s 256(2) precludes us from dealing with the question, and rendering a final decision. Instead, we are required to

call upon the Tribunal to state a case and refer the matter to this court for adjudication. Needless to say, this involves avoidable expenditure of

time, and delay. If really this question could have been dealt with by us even at this stage, a few years of time could have been saved, and the

parties could also have had the satisfaction of having a final adjudication in the matter, without being left in a state of uncertainty for long.

Necessarily, the Tribunal will take its own time to make the reference and it will take a few more years for this court to deal with the matter finally.

If, as the Department contends, the matter is really covered by the decision of the Supreme Court, all this will be cruel waste of time of this court,

the Tribunal and of the parties. The delay occurs only because of the circuitous procedure prescribed by section 256 to get a decision of this court

on the correctness or otherwise of the decision of the Tribunal. Unfortunately, the section, as it stands, does not enable this court, while exercising

jurisdiction u/s 256(2), to bring finality to the proceedings, even if the matter is concluded by any decision of this court or of the Supreme Court

unless the decision is adverse to the applicant. This courts power is only to call for reference of a question of law formulated by it. This court could

have dealt with this matter with all expedition and renders a final decision if the matter is dealt with in a direct revision on questions of law, instead

of a reference. If a revision is allowed as the remedy in such matters, the aggrieved party could approach this court with a petition to deal with the

order of the Tribunal on any question of law that may arise out of it, and it will be open to this court to render a final decision on the point with all

expedition. In fact, such a procedure will also have the added advantage of weeding out frivolous matters at the very threshold by a process of

preliminary hearing. All this, we are precluded from doing because of the peculiar and what we may call, archaic procedure provided by section

256. We may point out in this connection that the Kerala Legislature had, realising the difficulties in such a procedure, replaced it while re-enacting

the Agricultural Income Tax Act in 1991, by providing a revision petition to this court as the remedy in such cases. That reduces the time lag

between the decision of the Tribunal and the decision of this court, which could be rendered with all expedition, and questions of law settled to the

advantage of all. It is necessary that the appropriate authorities take a fresh look on this question, as to whether the procedure of reference

prescribed u/s 256 should be persisted in or whether it may not profitably be replaced by a direct revision to this court on a question of law.

The original petition is disposed of as above.

Communicate a copy of this judgment under the seal of this court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin

Bench, for information and compliance.

Communicate a copy of this judgment to the Law Commission of India as also to the Ministry of Finance, Government of India, for information.