Catholic Bank of India Ltd. Vs Commissioner of Income Tax

Court: High Court Of Kerala

Date of Decision: Aug. 10, 1964

Acts Referred: Banking Regulation Act, 1949 â€" Section 35

Citation: (1964) KLJ 862

Hon'ble Judges: M.S. Menon, C.J; M. Madhavan Nair, J

Bench: Division Bench

Advocate: K.S. Paripoornan and K. Srinivasan, for the Appellant; C.T. Peter, for the Respondent

Judgement

M.S. Menon C.J.

1. This is a reference by the income tax Appellate Tribunal, Madras Bench, u/s 66 (1) of the Indian income tax Act, 1922. The assessee is the

Catholic Bank of India Limited, Changanacherry. The assessment year is 1958-59; and the accounting period, the twelve months ended on 31-

12-1957. The question referred is:

Whether on the facts and in the circumstances of the case, the addition of Rs. 38,5007-to the assessee''s income for the assessment year 1958-59

was justified?

The quantum of the addition is not challenged. The controversy is as to the right to make an addition on the facts and in the circumstances of the

case.

2. The addition represents interest not included in the profits and loss account of the assessee in pursuance of a direction from the Reserve Bank of

India. The interest concerned represented the interest due, but not received, on what are termed the ""sticky"" advances of the assessee.

3. The Reserve Bank of India conducted an inspection into the affairs of the assessee u/s 35 of the Banking Companies Act, 1949, and as a result

of that inspection imposed certain conditions on it. One of those conditions, as can be seen from Annexure A to the Statement of the case, was

that the assessee should not credit to its profit and loss account unrealised interest on advances which are considered by it as bad or doubtful of

recovery. Annexure A also said that if the assessee violated any of the conditions embodied therein, of which the Reserve Bank of India will be the

sole judge, the Reserve Bank of India may proceed to pass, without any further notice, the necessary orders refusing the grant of a licence to the

assessee in terms of the first proviso to sub-section (2) of section 22 of the Banking Companies Act, 1949.

4. The real question for determination is whether the non-inclusion of the interest on the ""sticky"" advances in pursuance of the direction of the

Reserve Bank of India will exonerate the assessee from liability to pay income tax in respect of that amount. The assessee was all along following

the mercantile system of accounting and the Department held that it should have credited the interest due on all its advances, whether actually

received or not, on the accrual basis; and that no direction of the Reserve Bank of India could possibly take out of the net of taxation any interest

which had actually accrued to the assessee during the accounting period relevant to the assessment year concerned. The Tribunal in dealing with

the matter said:

The assessee''s representative produced before us the correspondence that passed between the assessee and the Reserve Bank.. The Reserve

Bank had directed the assessee bank not to credit the amount of interest to the Profit and loss account. This direction cannot over-ride the

requirements of the income tax Act. It has not that statutory binding force.

We are in agreement with the conclusion reached by the Tribunal.

5. The charge of income tax under the Indian income tax Act, 1922, is in respect of the total income of an assessee. Section 4 defines the gamut of

total income. Section 2(15) which purports to define total income merely says that total income means total amount of income, profits and gains

referred to in subsection (1) of Section 4 computed in the manner laid down in the Act.

6. Section 13 of the Indian income tax Act, 1922, provides;

Income, profits and gains shall be computed for the purposes of Ss. 10 and 12, in accordance with the method of accounting regularly employed

by the assessee :

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the income tax

Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such

manner as the income tax Officer may determine.

Sarupchand v Commissioner of income tax (1936-4 ITR 420) and Indo-Commercial Bank Ltd. v Commissioner of income tax (1962-44 ITR 22)

are, as pointed out by Kanga, authorities for the proposition that it is open to an assessee ""to make a clean change of the regular method adopted

by him up to that time, provided he satisfies the Department on proper evidence that he has in fact changed the regular basis of accounting and has

not merely abandoned or changed it for a casual period to suit his own purposes"" (5th Edition, Volume I, Page 666).

7. In this case the assessee has not changed his method of accounting at all; but only omitted to make certain entries which it should have made on

the accrual basis under the mercantile system of accounting. Kanga deals with such cases as follows:

The assessee cannot escape liability to tax by omitting to make an entry or making a wrong entry in the accounts. The date of taxability of income

is the date when the appropriate entries are made or should be made in the accounts in accordance with the method of accounting regularly

employed by the assesse. The substantive part of the section makes it clear that the income is to be computed "in accordance with the method of

accounting regularly employed." The income tax officer may include in the computation of income an amount which does not figure in the accounts

but the inclusion of which is required by the assessee"s method of accounting; that is to say, the income tax Officer may, without deviating from the

assessee"s method, make such adjustments in the profit and loss account as are necessary for giving full and true effect to that method itself.

Having adopted a regular method of accounting, the assessee cannot be allowed to change it or depart from it for a particular year or for part of

the year or in respect of particular transactions.

8. In the light of what is stated above the question referred has to be answered in the affirmative; that is, in favour of the Department and against

the assessee. We do so; but without any order as to costs. A copy of this judgment under the seal of the High Court and the signature of the

Registrar will be forwarded to the Appellate Tribunal as required by sub-section (5) of Section 66 of the Indian income tax Act, 1922.