(2008) 01 KL CK 0068

High Court Of Kerala

Case No: None

Vallabhdas Kanji Ltd.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: Jan. 10, 2008

Acts Referred:

- Income Tax Act, 1961 - Section 80HHC

Hon'ble Judges: T.R. Ramachandran Nair, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

C.N. Ramachandran Nair, J.

The appellant is engaged in manufacture and export of spices and allied products. During the assessment year relevant for 1996-97, the appellant took on lease certain machinery, storage tank, etc. for the purpose of the business. The total lease rent payable was Rs. 19,09,748. The assessee could not utilise the leased equipments for their own use for the whole year and therefore sub-leased some of the items which earned them an income of Rs. 5,98,774. In the computation of business income the assessee reduced the earning on sub-lease from the lease rent payable and remitted only the net lease rent paid. Based on this, the assessee computed their eligibility for deduction u/s 80HHC of the Income Tax Act on the export incentives. However, while making the assessment, the assessing officer held that the income earned on sub-lease is in the nature of income from other sources assessable u/s 56 of the Act. Consequently, the entire lease rent payable by the appellant was set off against the business income and accordingly computed the business income. Thereafter, income from other sources was separately assessed u/s 56 of the Act. The assessee filed appeal against the assessment and having failed, has approached this Court by filing appeal u/s 260A of the Act.

2. We have heard Shri K.R. Sudhakaran Pillai, learned Counsel appearing for the appellant, and learned standing counsel appearing for the respondent.

3. Learned Counsel appearing for the appellant contended that the rental received on sub-lease goes to reduce appellants liability towards lease charges and therefore the appellant rightly debited net lease rentals in the P&L a/c while computing business income. According to the learned Counsel, if sub-lease rentals have gone to reduce their liability in the computation of business income, no income is left to be assessed u/s 56 of the Act. Learned standing counsel for the respondent, on the other hand, contended that sub-lease income is income from other sources u/s 56 of the Act and therefore, the same is rightly assessed under the Act and upheld by two appellate authorities including the Tribunal. According to him, the appellant was not justified In reckoning the sublease rentals in the computation of business income. While learned Counsel for the appellant relied on the decision of the Supreme Court in Commissioner of Income Tax, West Bengal-III Vs. Rajendra Prasad Moody, , learned standing counsel for the respondent relied on the decision of the Supreme Court in Commissioner of Income Tax Vs. V.P. Gopinathan, . Admittedly, the rented equipments were leased out by the appellant for business purposes and all the equipments were in fact used in the relevant previous year for the business of the appellant. The appellant was therefore entitled to deduction of entire lease rentals against business income. In fact, the officer has allowed the entire lease rentals paid in the computation of business income. We are of the view that the appellant was not justified in reckoning sub-lease rentals received in the computation of business income, though for all practical purposes and in effect, sub-lease rentals went to reduce appellants liability towards lease rentals. The rent received by the appellant on sub-lease is certainly an income in the hands of the appellant and appellant has no case to the contrary. Therefore, the question to be considered is as to what is the nature of income and on this question also, there can be no dispute that it is income from other sources. When the assessing officer treated the income received on sub-lease of equipments as income from other sources, necessarily the appellant was entitled to get eligible deductions. In fact, proportionate lease rent paid by the appellant should have been allowed while computation of income from other sources, as provided u/s 57(iii) of the Act. However, in tiiis case, we find that the appellant did not maintain the accounts to justify such a claim. In fact, if the appellant had furnished such details, the assessing officer was bound to make proportionate disallowance of lease rent in the computation of business income and such amount should have been set off against the income from other sources. At this stage, we are not in a position to order any set off of the lease rent paid by the appellant against the income assessed under income from other sources, because there is nothing on record to prove the rent paid which are attributable to the income earned on sub-lease. Both the decisions cited above by the parties do not deal with the same issue, even though the decisions may have a bearing on the question raised. Therefore, we find that the assessment of sub-lease rentals received by the appellant as income from other sources, is perfectly justified and we answer the question raised accordingly.

4. The appeal is therefore dismissed as devoid of any merit.