

(1978) 03 MP CK 0013

Madhya Pradesh High Court

Case No: Miscellaneous Civil Cases No's. 439 of 1972 and 35 of 1976

ADDL. COMMISSIONER OF
Income Tax, M. P.

APPELLANT

Vs

NATIONAL NEWSPRINT AND
PAPER MILLS LTD.

RESPONDENT

Date of Decision: March 23, 1978

Acts Referred:

- Income Tax Act, 1961 - Section 14, 22, 28, 56

Citation: (1982) ILR (MP) 901 : (1978) 114 ITR 398 : (1978) 23 MPLJ 607

Hon'ble Judges: A. P. Sen, C.J

Bench: Division Bench

Judgement

A. P. SEN C.J. - This case as well as Miscellaneous Civil Case No. 35 of 1976 (Commissioner of Income Tax v. National Newsprint and Paper Mills Ltd.) raise a common question and, therefore, they are disposed of by this common order.

In Miscellaneous Civil Case No. 439 of 1972, the Additional Commissioner of Income Tax, Madhya Pradesh, Bhopal, has applied u/s 256 (2) of the Income Tax Act, 1961, for requiring the Income Tax Appellate Tribunal to refer a certain question of law said to arise from its order in Income Tax Appeal No. 3052 (Bom) of 1968-69, pertaining to the assessment year 1965-66, to the High Court for its opinion, viz. :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the receipts from hire of furniture amounting to Rs. 14,212 should be assessed as the assessee's income from business and not as income either from property or from other sources ?"

In Miscellaneous Civil Case No. 35 of 1976, the Commissioner of Income Tax, Madhya Pradesh-I, Bhopal, has applied u/s 256(2) of the Income Tax Act, 1961, for requiring the Income Tax Appellate Tribunal, Indore Bench, Indore, to refer certain questions said to arise from its order in Income Tax Appeal No. 992 (Ind) of 1973-74,

dated November 26, 1974, pertaining to the assessment year 1966-67, to the High Court for its opinion, viz. :

"(1) Whether, on the facts and in circumstances of the case, the Tribunal was justified in law in holding that the rents received by the assessee from outsiders are taxable as receipts from business not as income from property ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the receipts from hire of furniture amounting to Rs. 6,865 should be assessed as the assessee's income from business and not as income from other sources ?"

The assessee, the National Newsprint & Paper Mills Ltd., Nepanagar, is a Government undertaking in the public sector and incorporated under the Companies Act, 1956, engaged in the manufacture and sale of the newsprint. Nepanagar has huge industrial complex. The assessee not only built residential quarters for its employees but also made available to the Government accommodation for locating a branch of the State Bank of India, post office, police station, Central excise office and railway staff quarters, as it required these facilities for carrying on its business efficiently. During the relevant accounting years ended on 31st March, 1965 and 1966, the assessee made available furniture on hire, both to its employees as well as to the Government departments. The Income Tax officer in both the years in question assessed the receipts from hire of furniture as the assessee's income from other sources u/s 56 of the Income Tax Act, 1961. On appeal, the Appellate Assistant Commissioner upheld the order of the Income Tax Officer and rejected the contention of the assessee that receipts from hire of furniture should be treated as the assessee's income from business in the assessment year 1965-66. On further appeal, the Income Tax Appellate Tribunal, however, upheld the contention of the assessee, observing :

"It will be seen that so far as the rent received by the assessee either from the members of its staff or from Government departments, the same has been held to be the assessee's income from business. As the furniture is given on hire either to the employees of the assessee-company or to the other Government departments, there is no justification to classify this amount of Rs. 14,212 as the assessee's income either from property or from other sources and we direct that even the amount of Rs. 14,212 should be assessed as the assessee's income from business. We direct accordingly."

Following the decision of the Income Tax Appellate Tribunal, the Appellate Assistant Commissioner accepted the contention of the assessee in the assessment year 1966-67. On further appeal, the Income Tax Appellate Tribunal reiterated its earlier view.

Feeling aggrieved, the Commissioner of Income Tax applied for a reference u/s 256(2) of the Income Tax Act, 1961. The Income Tax Appellate Tribunal, however,

rejected the application on the ground that the department has all along treated this income as the assessee's income from business, and, therefore, the question of law was purely academic. It, therefore, declined to make any reference.

By our judgment in *Addl. Commissioner of Income Tax v. National Newsprint & Paper Mills Ltd.* (M. C.C. No. 49 of 1972, decided on 23rd March, 1978-see page 388 supra) delivered today, we have held that the Income Tax Appellate Tribunal was right in holding that the rents received from letting out of the accommodation to the Government departments for locating a branch of the State Bank, post office, police station, Central excise office, etc., being incidental to the assessee's business, was taxable u/s 28 of the Income Tax Act, 1961, as receipts from business and not u/s 22 of the Act as income from property. Incidentally, we may mention that the department throughout accepted that the residential quarters constructed by the assessee for, and let out to, its employees, would be outside the scope of section 22 of the Income Tax Act, 1961, as being incidental to the assessee's business. In the view, the application u/s 256(2) of the Act filed by the Commissioner of Income Tax, Madhya Pradesh-I Bhopal, in respect of the assessment years 1966-67, in so far as it relates to question No. (1), i.e., as regards the rents received from letting out of the accommodation to the Government departments, being covered by Miscellaneous Civil Case No. 332 of 1975 (*Commissioner of Income Tax v. National Newsprint & Paper Mills Ltd.* - see page 388 supra), having been answered by us to-day in our separate judgment, becomes infructuous.

The short question that falls for consideration in these two reference applications, therefore, is whether the hire of furniture by the assessee to its employees and to the various Government departments for furnishing the accommodation let out to them, should be treated as the assessee's business income chargeable u/s 28 of the Income Tax Act, 1961, or not. Though the Income Tax Appellate Tribunal was not justified in refusing to make a reference on the ground that the question of law was purely academic, none the less we feel that no useful purpose would be served in requiring the Tribunal to state a case, as the answer to the question is self-evident.

It is needless to stress that when residential quarters built by the assessee-company are let out to its employee or where accommodation is let out to the Government departments for locating a branch of the State Bank of India, post office, police station, Central excise office, etc., for facilitating the assessee's business, the letting out of furniture to them for furnishing of such accommodation was subservient and incidental to the lease, and, therefore, incidental to the assessee's business.

Placing reliance on the word "inseparable" in clause (iii) of sub-section (2) of the section 56 of the Income Tax Act, 1961, learned counsel for the Commissioner of the Income Tax strenuously contends that the (iii) would only apply in the case of the composite lease, i.e., where an assessee lets on hire furniture belonging to him and also building, and the letting of the buildings is inseparable from the letting of the said furniture. We are afraid, the contention cannot be accepted. He, instead, tried

to bring the receipts from hire of furniture under clause (ii) thereof. Again, that contention cannot be accepted.

Section 56 of the Income Tax Act, 1961, so far as material, reads as follows :

"56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to Income Tax under the head Income from other sources, if it is not chargeable to the Income Tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of the sub-section (1), the following incomes shall be chargeable to the Income Tax under the head Income from other sources, namely :-

(ii) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to Income Tax under the head Profits and gains of business or profession;

(iii) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings its inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to Income Tax under the head Profits and gains of business or profession."

No, doubt, in order that clause (iii) may apply, the letting of the machinery, plant or furniture should be inseparable from the letting of the building. The word "inseparable" does not connote that the machinery, plant or furniture should by its very nature be inseparable from the building so that the building has also necessarily to be let along with it, or that it should be fixed to the building. The inseparability referred to in the section arise from the intention of the parties - the parties should intend that the subject-matter of the lease should be enjoyed together and that the letting of the building and of the other assets should be practically one letting. The section does not require that the letting of the machinery, plant or furniture should be primary and the letting of the building subsidiary : Palkhivalas Income Tax, seventh edition, volume 1, page 576.

In [Sultan Brothers \(P\) Ltd. Vs. Commissioner of Income Tax](#), , their Lordships of the Supreme Court, after referring to the corresponding section 12(4) of the Indian-tax Act, 1922, held that the inseparability referred to is one that arise from the intention of the parties. That intention may be ascertained by framing the following questions : Was it the intention in making the lease-and its mattes not whether there is one lease or two, that is, separate leases in respect of the furniture and the building-that the two should be enjoyed together ? Was it the intention to make the letting of the two practically one letting ? Would one have been let alone, and a lease of it accepted, without the other ? their Lordships held that if the answers to the first two questions are in the affirmative, and the last in the negative, then it has to be held

that it was intended that the lettings would be inseparable. Applying that test to the facts and circumstances of the present case, we are clearly of the opinion that the receipts derived by the assessee from the hire of furniture was rightly held by the Income Tax Appellate Tribunal to be taxable u/s 28 of the Income Tax Act, 1961, as business income. It was not disputed before us that the furniture was let by the assessee to its employees for furnishing of the residential quarters allotted to them. that equally applies to the various Government departments which agreed to locate a branch of state Bank of India, post office, police station, Central excise office, etc., provided accommodation was made available to them. The assessee not only made available such accommodation but also provided the furniture required by the Government for use of such accommodation. From this, the conclusion will be irresistible that the letting of furniture was subservient to the letting of the accommodation, i.e., it was for more beneficial enjoyment of the accommodation let.

The application for reference u/s 256(2) of the Income Tax Act, 1961, are accordingly rejected. The assessee shall have its costs in both the cases. Hearing fee Rs. 150 in each case.