

**(2001) 09 AP CK 0029**

**Andhra Pradesh High Court**

**Case No:** Referred Case No. 173 of 1991 7 September 2001

Commissioner of Income Tax

APPELLANT

Vs

G.V. Rattaiah and Co.

RESPONDENT

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**Date of Decision:** Sept. 7, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 256

**Citation:** (2001) 119 TAXMAN 493

**Hon'ble Judges:** S.R. Nayak, J; S. Ananda Reddy, J

**Bench:** Full Bench

**Advocate:** A. Satyanarayana, for the Revenue, A.K. Jaiswal, for the Assessee, for the Appellant;

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**Judgement**

@JUDGMENTTAG-ORDER

Nayak, J.

The Tribunal, Hyderabad Bench "A", has referred the following two questions which were said to arise out of the order of the Tribunal dated 31-1-1991 in R.A. Nos. 700 to 702 (Hyd.) of 1986, for the opinion of this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in admitting a whole lot of new evidence under rule 29 of the Appellate Tribunal Rules, 1963 filed in paper book (virtually permitting the assessee to make out completely a new case) though this evidence was never presented before or considered by the lower authorities and without giving the Income Tax Officer an opportunity to estimate the evidence ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the income in question was business income or income under other sources in the absence of carrying on business for the assessment

years 1979-80 to 1981-82 ?"

2. During the relevant assessment years, the assessee-company was doing business as dealers and exporters of tobacco. During the accounting periods relevant for the assessment years 1979-80 to 1981-82, the assessee leased out its business assets to Viswabharat Agro Products (P) Ltd., and Gogineni Tobacco (P) Ltd. The lessee companies were traders in Virginia tobacco. The rental income received from the lessee companies was assessed as income under the head "Income from other sources" during the assessment years 1979-80 to 1981-82. On appeal preferred by the assessee before the Commissioner (Appeals), the Commissioner (Appeals) upheld the order of the Income Tax Officer stating that income from leasing out of the business assets of the assessee-company as assessed under the head "Income from other sources" was in accordance with law. The assessee being aggrieved by the order of the Commissioner (Appeals) preferred further appeal to the learned Tribunal. Before the Tribunal, it made an application under rule 29 of the Appellate Tribunal Rules, 1963 to adduce additional evidence and the said application was ordered by the learned Tribunal on the ground that the additional evidence sought to be produced before the Tribunal in the form of paper book was not available to be filed before the lower authorities and they are relevant documents having bearing on the decision-making and also on the ground that all the documents sought to be produced before the learned Tribunal are public documents and the correctness of those documents cannot be doubted in law. The learned Tribunal on appreciation of the entire evidence on record including the additional evidence adduced by the petitioner recorded its finding in the following words :

"From the above, we hold that it was the intention of the assessee to treat the demised premises as well as the assets of assessee-company as its business assets throughout the period of lease and it had never abandoned the idea of resuming its business after finding favourable atmosphere. Now, the question remains whether leasing out of the commercial assets for a period of 12 years would by itself amount to abandonment of its business. Firstly, we have to hold that the assessee never abandoned its business. It was purchasing tobacco and selling it, of course without grading and processing it in a small way. It was also earning huge commission amounts by purchasing tobacco for others, namely, Mettapaly Audinarayana and Indian Tobacco Co. It was also getting commission by, finding export market to other tobacco dealers and exporters and, thus, it was maintaining contacts with many of the importers of Tobacco in USSR and China. Shri A. Satyanarayana, the learned advocate for the assessee, cited before us the Andhra Pradesh High Court's decision in [Commissioner of Income Tax, Andhra Pradesh Vs. Aryan Industries \(P.\) Ltd.,](#) . The significance of this decision is, that it had considered both the Supreme Court decisions dealt with by us in this case. It was also held that while the length of the lease period is undoubtedly a relevant circumstance in finding out the intention of the assessee, it is not conclusive. In that case, though the commercial assets of the assessee were leased for eighteen years, still the Andhra Pradesh High Court on

a consideration of all the facts and circumstances of the case held that there was nothing on record to show that the reasons expressed its intention to dis-continue its business altogether and, therefore, it had treated the lease income "as business income".

From all the above, we have to hold that though the lease was for a period of twelve years in these appeals, the lease income should not be considered under any other head of income than "business", especially when there was no intention on the part of the assessee to abandon its business."

After perusing the reasoning of the learned Tribunal and the grounds stated by it in support of its conclusion and in the light of the judgment of the Apex Court in [Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd.](#), , we do not think that the finding recorded by the Tribunal on the mixed question of fact and law is perverse or based on "no evidence". It is trite that the Tribunal under the Act is the final fact-finding authority and the finding recorded by it cannot lightly be interfered with unless the court finds that the finding is ex facie erroneous and not supported by any evidence. That is not the situation in this case. Equally, we do not find any flaw on the part of the learned Tribunal in permitting the petitioner to adduce additional evidence for the reasons already noticed above.

3. In the result, we answer the question in favour of the assessee and against the revenue. Accordingly, we dispose of the reference case with no order as to costs.