

Commissioner of Income Tax Vs International Clearing and Shipping Agency

Court: Madras High Court

Date of Decision: April 6, 2009

Hon'ble Judges: M.M. Sunoresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Final Decision: Allowed

Judgement

K. Raviraja Pandian, J.

Whether in the facts and circumstances of the case the Tribunal was right in holding that a clearing and forwarding

agent is a professional firm is the question of law framed by the revenue in this appeal, which is filed against the order of the Income Tax Appellate

Tribunal, dated 27-2-2003 passed in ITA No. 504 (Mad.) 95 in respect of the assessment year 1991-92.

2. The necessary facts for the disposal of the appeal is as follows:- The assessee is engaged in the business of clearing and forwarding. For the

assessment year 1991-92, the assessee filed its return declaring a total income of Rs. 51,40,170 claiming its status as a professional firm. The

assessing officer held that clearing and forwarding activities is not a profession, but a business, and brought the assessee's income to tax

accordingly. The assessee filed an appeal to the Commissioner of Income Tax (Appeals), who allowed the appeal following the order of the

Income Tax Appellate Tribunal in the assessee's own case for the earlier year. The revenue took up the matter in second appeal to the Tribunal,

which dismissed the appeal by following its earlier order. Hence the present appeal with the question of law as referred to above.

3. We have heard the argument of the learned Counsel for the revenue and perused the materials available on record.

4. In the case of Commissioner of Income Tax Vs. International Clearing and Shipping Agency, at the instance of the revenue, the question of law

referred to the opinion of the High Court was that whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in

holding that the business of the assessee firm could be treated as a profession for calculating the tax at the concessional rate provided under sub-

paragraph II of Paragraph C of the First Schedule of the Finance Act, 1982? The facts are identical. In the above said case, the Division Bench

held as follows:

With regard to question No. 1 learned Counsel for the revenue invited our attention to the order of this Court in respect of the same assessee in

Tax Cases Nos. 2091 to 2094 of 1984, dated 19-2-1998 (Commissioner of Income Tax Vs. International Clearing and Shipping Agency,). In

the above said case, the same question of law came up for consideration and this Court, following the decision of the Supreme Court in Cochin

Shipping Co. v. ESI Corpn. (1992) 81 FJR 387 held that (p. 174):

The assistance rendered by the clearing and shipping agent to those who import or export, by attending to the documentation and ensuring the

clearance of goods, cannot be regarded as profession based on intellectual attainments or personal service rendered on account of possession of

specialised skill and knowledge based on higher learning and intellectual skill", and answered the question of law in favour of the revenue and

against the assessee.

Applying the same reasoning, we answer the first question of law in favour of the revenue and against the assessee.

5. In view of the Judgment of the Supreme Court in the case of Cochin Shipping Co. v. ESI Corporation (1992) 81 FJR 387 and the Division

Bench Judgment of this Court in the case of International Clearing & Shipping Agency (supra), we are of the view that the question of law framed

has to be answered in favour of the revenue and against the assessee by answering so. The appeal is allowed.