Commissioner of Income Tax, Central-II Vs Model Manufacturing Co. Pvt. Ltd.

Income-tax Reference No. 524 of 1975

Court: Calcutta High Court

Date of Decision: Dec. 10, 1984

Acts Referred:
Income Tax Act, 1961 â€" Section 57

Citation: (1985) 49 CTR 38 : (1986) 159 ITR 270 : (1985) 21 TAXMAN 338

Hon'ble Judges: Dipak Kumar Sen, J; Ajit Kumar Sengupta, J

Bench: Division Bench

Advocate: M.L. Bhattacharjee and B.K. Bagchi, for the Appellant;

Judgement

Ajit Kumar Sengupta, J.
The assessee is a private limited company. This reference relates to the assessment years 1968-69 and 1969-70,

The assessee derived income from property, shares, business and dividend. The assessee was the owner of a six storeyed building and derived

rental income from the said property. The assessee also received certain amount from the tenants as service charges for the supply of electricity,

use of lifts, supply of water, maintenance of staircases and for the watch and ward facilities for the tenants. Before the Income Tax Officer, the

claim of the assessee was that the service charges received by the assessee should be treated as business income. However, the Income Tax

Officer did not accept the claim of the assessee and treated the service charges as income from property.

2. The assessee also claimed depreciation on the fans installed in the property situated at 40, Strand Road. Since the income from the said

property was assessable u/s 22 of the Income Tax Act, 1961, the Income Tax Officer disallowed the claim of the assessee as regards depreciation

on fans.

3. The assessee preferred appeal against the said assessment orders before the Appellate Assistant Commissioner, The Appellate Assistant

Commissioner, however, upheld the order of the Income Tax Officer in treating the amount received for service charges as income from property

and also in disallowing the depreciation on fans claimed by the assessee. The assessee came in second appeal to the Tribunal.

4. The Tribunal held that the service charges should be assessable as income from other sources and the assessee would be entitled to all the

deductions u/s 57 of the Income Tax Act, 1961. The Tribunal, therefore, directed the Income Tax Officer to modify the assessment orders by

assessing the service charges as income from other sources and also allowing deduction to which the assessee would be entitled u/s 57 of the

Income Tax Act, 1961. The Tribunal adopted the findings and reasonings for the assessment year 1970-71, where similar issues were dealt with

by the Tribunal. The Tribunal also held that the assessee also received service charges for electric fittings and other services rendered. Hence, the

claim with regard to the depreciation on fans should be allowed to the extent allowable u/s 57 of the Income Tax Act, 1961.

5. On the aforesaid facts, the following questions of law have been referred to this court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the services rendered by the assessee in

providing electricity, use of lifts, supply of water, maintenance of staircases and watch and ward facilities to the tenants constituted separate

activities distinct from the letting out of the property and were not incidental to such letting out ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the service charges realised were not part

and parcel of the income derived from house property assessable u/s 22 of the Income Tax Act, 1961, and that they were assessable under the

head ''Income from other sources" ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that depreciation on fans fitted to portions of the

building let out was an allowable expenditure u/s 57 of the Income Tax Act, 1961 ?

6. The question is whether the service charges should be assessed as income from other sources or income from property. The Tribunal did not

accept the claim of the assessee that the service charges would fall under the head ""Profits and gains of business"". Unlike in the case of Karnani

Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, in the present case, it is not in any organised manner with a set purpose and

with a view to earn profits that the assessee is conducting its services and activities. The services are rendered for providing amenities to the

occupants of the premises. Such rendering of service is not the normal business of the assessee. The Tribunal, therefore, held that the service

charges are assessable as income from other sources. The Tribunal examined the lease deed executed in respect of the 5th and 6th floors occupied

by the Income Tax Department. It was seen that the rent and service charges are stipulated for separately. Under the terms of the lease, the lessee

was to pay rent at the rate of Rs. 95 per sq. ft. per month and as service charges 10 p. per sq. ft. per month. In the lease deed, the rent and

service charges are referred to and dealt with separately as consideration for different things. The Tribunal also examined the rent receipts issued to

other tenants wherefrom it appears that in the case of other tenants too, over and above the stipulated rent, fixed amounts by way of service

charges were also being charged. It is not in dispute that the service rendered and charged by the assessee consisted of supply of electricity,

providing electric lifts, the maintenance of staircases and lighting of common passages, corridors and staircases and providing watch and ward

facilities. The contention of the Revenue is that the income from service charges falls within the specific head being income from house property.

Even if the service charges may indirectly be covered by another head, such income cannot be taxed under the head ""Other sources"". The primary

source is the house property income and service charges are incidental to the income from house property. The contention of the Revenue,

however, cannot be accepted, on the facts and in the circumstances of this case, and having regard to the principles enunciated in several decisions

of this court as well as of the Supreme Court to which we shall presently refer.

7. In the case of Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, the Supreme Court held, on the facts of that case,

that the rental income and the service charges are two different sources and not one source. In that case, the flats and shops were let out to tenants

which included charges for electric current, for the use of lifts, for the supply of hot and cold water, for the arrangement for scavenging, for

providing watch and ward facilities as well as other amenities.

8. In the case of Commissioner of Income Tax Vs. Kanak Investments (Pvt.) Ltd., this court held that where a composite rent is received by the

assessee from its tenants it should be split up and the amount attributable to the building only should be computed u/s 9(1) of the Indian Income

Tax Act, 1922, while the amount attributable to the amenities provided by the assessee to the tenants should be assessed u/s 12 of the Act.

9. In the case of Indian City Properties Ltd. Vs. Commissioner of Income Tax, this court held that the income derived from letting out the buildings

was assessable as income from house property u/s 22. The lift charges and airconditioning charges, which had been shown separately were

assessable u/s 56, as income from ""Other sources"".

10. The Tribunal found that the service charges realised constituted a separate item of receipt. The rent and service charges have been separately

shown and accounted for as consideration for different things. The Tribunal in coming to its conclusion that the charges received for amenities

furnished by the landlord to the tenants were assessable to Income Tax as income from other sources and not as income from house property

relied on the case of Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, and the observation of Lord Macmillan in the

case of Salisbury House Estate Limited v. Fry [1930] 15 TC 266 . This court in the case of Commissioner of Income Tax Vs. Kanak Investments

(Pvt.) Ltd., , took the view that even where a composite rent is received, the amount attributable to the amenities provided by the assessee to the

tenants should be assessed under the head ""Other sources"". In our view, on the facts found by the Tribunal, the first two questions in this reference

must be answered in the affirmative and in favour of the assessee.

11. The third question relates to the depreciation claimed by the assessee on the fans fitted in the tenanted portion. The Income Tax Officer

allowed the expenses incurred by the assessee towards lift maintenance; water supply and cleaning charges, etc. He, however, disallowed

depreciation claimed on fans. The Appellate Assistant Commissioner held that the entire income is assessable under the head ""Income from house

property"". The assessee was, therefore, not entitled to deduct depreciation on fans u/s 24(1) of the Act. The Tribunal held that income from

service charges is assessable under the head ""Other sources"". The assessee received service charges for the electrical fittings and other services

rendered. Hence, according to the Tribunal, the claim of the assessee should be allowed to the extent allowable u/s 57 of the Act. The Tribunal has

not discussed whether the assessee is entitled to depreciation on fans or not. Even if the service charges are to be assessed under the head ""Other

sources"", it does not necessarily follow that the assessee would be entitled to depreciation on fans. Where service charges are to be assessed as

income from other sources, the assessee can claim such deductions as would come within the purview of Section 57. But the assessee cannot

claim deduction for depreciation unless the provisions of Section 56(2)(iii) are attracted. The assessee, no doubt, is entitled to deduction of the

expenditure incurred wholly and exclusively for the purpose of making or earning income from service charges. The Tribunal, without finding the

fact, held that the assessee is entitled to deduction but the quantum of deduction was left to the Income Tax Officer. Since the Tribunal has not

found out the facts as regards the claim of the assessee for depreciation on fans, we are unable to answer the third question referred to us. We,

therefore, decline to answer the third question.

12. There will be no order as to costs.

Dipak Kumar Sen, J.

13. I agree.