(1990) 08 CAL CK 0036

Calcutta High Court

Case No: Income-tax Reference No. 226 of 1982

GOODRICKE GROUP LTD. (NO. 1) (SUCCESSORS-IN-INTEREST TO HOPE TEA CO. LTD.)		APPELLANT
	Vs	
COMMISSIONER OF Income Tax.		RESPONDENT

Date of Decision: Aug. 14, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 80G

Citation: (1993) 201 ITR 261

Hon'ble Judges: Bhagabati Prasad Banerjee, J; Ajit K. Sengupta, J; Ajit K. Sen gupta, J

Bench: Full Bench

Judgement

AJIT K. SENGUPTA J. - In this reference u/s 256 (1) of the Income Tax Act, 1961, the following question of law have been referred to this court for the assessment year 1977-78 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the loss of Rs. 59,891 incurred by the assessee-company due to fluctuation of exchange rates in remittance of profits from India to its U. K. office was not an allowable deduction in its Income Tax assessment for the assessment year 1977-7 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that these surtax liability under the Companies (profits) Surtax Act, 1964, for the assessment year 1977-78 was not an allowable deduction in the Income Tax assessment for the said assessment year ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the deduction u/s 80G of the Act was allowable from 100 per cent. of the income from tea business and not from the gross total income arrived at after allocation of 40 per cent. of the income from tea business ?"

Before we deal with the first and third questions, we may add that the second question is concluded by the decision of this court in Molins of India Ltd. Vs. Commissioner of Income Tax, . Following the said decision, we answer the second question in the affirmative and in favour of the Revenue and against the assessee.

The facts relating to the first question are that the assessee claimed a sum of Rs. 59,891 representing the loss on remittance of profit to England sustained by the assessee. The Inspecting Assistant Commissioner disallowed the claim on the ground that the loss represented difference in exchange rates on the remittance of its profits and investments outside India. Such an expenditure could not be said to have been laid out for the purpose of earning its income and, therefore, no deduction could be allowed of the same. On appeal, the Commissioner of Income Tax (Appeals confirmed this order with an additional observation that the loss had been incurred by the assessee after the profits had already been earned.

It has been contended by learned counsel for the assessee that this question has been set at rest by the decision of this court in the case of Commissioner of Income Tax Vs. Calcutta Electric Supply Corporation Ltd., . In that case, one of the questions was whether the "Tribunal was right is upholding the disallowance of the loss suffered by the company on the remittance of the profits from Calcutta to its head office in the U. K. In that case, the assessee remitted its profits to its head office in the U. K. periodically for payment of dividends to the foreign shareholders. Any surplus remaining after such distribution in the United Kingdom was invested. During the relevant previous year, by reason of fluctuations in the rate of exchange, the assessee suffered a loss in the sense that it had to remit an extra amount for payment of such dividend. The assessee claimed deduction of the said amount from its total income. The Income Tax Officer disallowed the claim. On appeal, the Appellate Assistant Commissioner held that the loss arising out of the change in the rate of exchange in the remittance of the profit was not an allowable business expenditure. The tribunal upheld the decision of the Appellate Assistant Commissioner. In that context, after referring to the judgment of the supreme court in Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta, , the court observed as follows (at page 800 of 166 ITR) :

"In our view, once dividend was declared, the assessee as a company was bound to pay the same to the shareholders and a liability arose which had to be met by the assessee. As has been held by this court in Commissioner of Income Tax Vs. Tingri Tea Company Ltd., , where money was borrowed in India on an overdraft account and deposited in the United Kingdom banks for the purpose of payment of dividends to the non-resident shareholder, the said transaction was for the purpose of business of the assessee. In that view, the extra amount which had to be paid by the assessee in the instant case for the purpose of remittance of dividends must be held to be for a similar purpose, viz., for the business of the assessee and to that extent there is no reason why the same should not be considered to be a legitimate

business expenditure of the assessee and deductible."

In the instant case also, the surplus profits were remitted to the head office in the U. K. for the purpose of distribution by way of dividends. The loss arising from such remittance should be regarded as loss incurred by the assessee in carrying on its business. In our view, having regard to the facts admitted and/or found by the Tribunal, the principles laid down by this court in Commissioner of Income Tax Vs. Calcutta Electric Supply Corporation Ltd., will govern the instant case. In that view of the matter, the first question is answered ink the negative and in favour of the assessee.

So far as the third question is concerned, the facts are that the Commissioner (Appeals) held that 50 per cent. of the donation of Rs. 5,450 was deductible u/s 80G of the Income Tax Act from 100 per cent. of the business income instead of the gross total income computed after allocation of 40 per cent. of the business income. On a perusal of the order of the Commissioner (Appeals), it appears that the Commissioner (Appeals) has not dealt with this issue in computing the total income of the assessee-company. The company, however, raised this issue as an additional ground before the Commissioner (Appeals) who admitted the same and disposed of the contention of the assessee-company on merits. The Commissioner (Appeals) observed that, under rule 8 of the Income Tax Rules, 1962, income derived from the sale of tea grown and manufactured by the seller in India is to be computed as if it were income derived from business, and 40 per cent. of such income is deemed to be income liable to tax. In view of this provision, the Commissioner (Appeals) observed that the deduction u/s 80G had to be allowed to the assessee from its gross total income and it is only after the total income had been computed in accordance with the provisions of the Income Tax Act, including section 80G, that the provisions of rule 8 would come into force. He, accordingly, rejected the contention of the assessee-company. The Tribunal was of the opinion that the decision of the Commissioner (Appeals) on this point was in conformity with the correct interpretation to be placed on the provisions of rule 8 of the Income Tax Rules, 1962. The Tribunal, therefore, found no justification for interfering with the order of the Commissioner (Appeals) on this point.
At the hearing before us, learned counsel for the assessee has contended that the Tribunal was not justified in directing that the deduction u/s 80G should be allowed from the gross total income of the tea garden; it is only from the income which is assessable under the Income Tax Act that the relief u/s 80G should be allowed. Our attention has been drawn to the circular of the Board where it has been stated as follows (see [1975] 101 ITR 128) :

"318. Donation to Prime Ministers National Relief Fund [Sub-clause (ii) of clause (a) of sub-section (2)]. Money order coupons to be treated as sufficient evidence of donation.

Under the provision of section 80G deduction is allowable as spelt out in the said section on the sums paid by an assessee to the Prime Ministers National Relief Fund. With a view to helping the donors to remit amounts of the donations to the Fund, the money orders addressed to the Prime Ministers National Relief Fund have been exempted from payment of money order commission. Taking advantage of this facility a large number of persons have sent their contributions to the fund through money orders. In the cases of persons who have sent their donations through money orders. In the cases of persons who have sent their donations through the money orders, the money order coupons duly receipted by the Confidential Assistant-cum-Accounts Officer, Prime Ministers Secretariat, may be treated as sufficient evidence of the donations having been made to the fund for purposes of allowing deduction u/s 80G.

Circular No. 178 (F. No. 176/82/75-IT(A-1)), dated 23-9-75."

In our view, on a plain reading of the section and rule 8 of the Income Tax Rules, the interpretation placed by the Tribunal does not appear to be correct. It is only after the determination of the total income which is assessable under the Income Tax Act that the question of deduction u/s 80G will arise. In our view, therefore, the deduction must be made only after the determination of the income under the Income Tax Act, 1961. The part of the income which is not taxable will not be taken into account for the purpose of giving any relief u/s 80G. If the method which has been suggested by the Tribunal is followed, in that event, before any income is ascertained which is assessable under the Income Tax Act, the deduction will be made. But, it is not the intention of the section. The circular makes it quite clear that there will not be apportionment of the deduction u/s 80G between the income chargeable under the Income Tax Act and the agricultural income chargeable under the relevant Agricultural Income Tax Act. We are only concerned with the income as computed under the Income Tax Act for the purpose of assessment and only from such income the deduction u/s 80G shall be allowed.

For the reasons aforesaid, the third question is answered by saying that the deduction u/s 80G is allowable from the income computed for the purpose of assessment under the Income Tax Act, 1961.

There will be no order as to costs.

BHAGABATI PRASAD BANERJEE J. - I agree.