Commissioner of Income Tax Vs New India Investment Corporation Ltd.

Court: Calcutta High Court

Date of Decision: Feb. 28, 1978

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

Citation: (1978) 113 ITR 778

Hon'ble Judges: Dipak Kumar Sen, J; C.K. Banerji, J

Bench: Division Bench

Advocate: B.L. Pal and Ajit Sengupta, for the Appellant;Kalyan Roy and R.N. Dutta, for the Respondent

Judgement

Dipak Kumar Sen, J.
This reference is at the instance of the Commissioner of Income Tax, West Bengal-II, Calcutta, u/s 256(2) of the

Income Tax Act, 1961. This court has directed the Tribunal to draw up a case and refer the following question :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income Tax Officer was not justified in

apportioning the total expenditure incurred by the assessee as between the several heads of income and treating the appropriate portion thereof as

expenditure against the dividend income ?

2. The facts admitted and/or found are in short as follows : New India Investment Corporation Ltd., the assessee, is an investment company and

also deals in shares. The assessee derives income from business, interest on securities, dividends and other sources.

3. In its Income Tax assessments for the assessment years 1963-64, 1964-65 and 1965-66, the assessee claimed deduction of its expenditure

respectively of Rs. 79,560, Rs. 89,125 and Rs. 63,308 as business expenditure. The Income Tax Officer took the view that a portion of such

expenditure was attributable to the dividend income of the assessee in the said years and accordingly he apportioned the expenditure in a certain

manner between the business income and the dividend income and allowed deduction on a pro rata basis.

4. The assessee preferred appeals before the Appellate Assistant Commissioner and contended that there was no basis for allocation of expenses

between business income and dividend. The Appellate Assistant Commissioner held that a small part of the interest paid by the assessee on bank

overdrafts could be ascribed to the business income. But considering the extent of investments of the assessee in shares he allocated Rs. 22,000,

Rs. 35,000 and Rs. 30,000, respectively, out of such interest against dividend for the purposes of deduction.

5. Next, he considered other expenses incurred by the assessee, viz., commission paid to the secretaries and treasurers as also salaries, bonus,

bank charges and membership subscription and held that half of such expenses should be attributable to the assessee''s business and the other half

to the assessee''s dividend income. He disposed of the appeals accordingly.

6. The assessee, still aggrieved, preferred further appeals before the Income Tax Appellate Tribunal and contended that its business consisted of

dealing in shares and that its entire stock of shares and securities were and had been shown in the balance-sheet as stock-in-trade. The assessee

claimed that the entire expenses incurred should be deducted in computing its business income.

7. The revenue contended that the assessee was primarily an investment company. The shares and securities held by it were investments from

which dividends were realised. The main income of the assessee being dividend, the entire expenditure should relate to dividend and no portion

thereof should be attributed to business. Even if the dividend had to be treated as business income, the entire expenditure should still be charged

against dividend and not against other business income.

8. The Tribunal found that the investments held by the assessee were its stock-in-trade and that the dividend arose therefrom. The Tribunal found

further that there was no material to show that any part of the holding of the assessee was held as investment. The Tribunal held that the assessee

being a dealer in shares and securities, dividend arising from such shares and securities partook of the character of income from business and not

income from investment and the dividend income constituted part of the business profits of the assessee though the same would be charged to

Income Tax under the specific head provided. The Tribunal accordingly allowed the appeals of the assessee.

9. This reference was originally disposed of ex parte when the assessee did not appear. By our judgment delivered on the 24th November, 1977,

we answered the question referred in favour of the revenue.

10. Later, it was submitted on behalf of the assessee that the cause title of the matter had been incorrectly printed in the daily list., and the name of

the assessee could not be ascertained therefrom. Moreover, the name of the learned advocate on record, who was acting on behalf of the

assessee, was not printed at all. It was submitted that for the reasons as aforesaid the assessee could not appear at the hearing. It appeared to us

that there was sufficient cause which prevented the appearance of the assessee and accordingly on the 11th January, 1978, we recalled our

judgment and directed that the matter should be heard afresh.

11. Mr. B.L. Pal, learned counsel for the revenue, has contended before us at the hearing that under the statute the dividend received had to be

assessed under the head "" Other sources "". If expenditure was incurred solely and exclusively for the purpose of earning dividend then such

expenditure had to be deducted from the dividend earned u/s 57 of the Income Tax Act, 1961, whether claimed by the assessee or not. Mr. Pal

placed particular emphasis upon the observation of the Tribunal that in the appeal there was no dispute as to the amount actually allocated by the

Appellate Assistant Commissioner between the dividend income and business income. He submitted that no challenge having been thrown to the

basis of the allocation the question referred was academic. Mr. Pal contended further that the finding of the Appellate Assistant Commissioner, that

the assessee was an investment company and held the stocks and shares by way of investment, had not been exclusively negatived by the Tribunal.

12. In support of his contentions Mr. Pal cited a decision of the Supreme Court in Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile

Mills Ltd., , for the proposition that the revenue authorities had jurisdiction to admit an expenditure as an allowance under its proper head even

though the assessee had claimed it under another head.

13. Mr. Kalyan Roy, learned counsel for the assessee, contended on the other hand that it was not necessary for the assessee to throw challenge

specifically to the amounts allocated inasmuch, as the assessee had challenged the entire basis asserting that there should not be any allocation at

all. The assessee had contended before the Tribunal that the entire expenditure should be allowed against the head ""Business income"" and not

against any other head. Mr. Roy also cited a few decisions which are chronologically as follows :

(a) Commissioner of Income Tax Bombay Vs. Chugandas and Co., Bombay, . This case was cited for the observations of the Supreme Court as

follows :

Under the Act, Income Tax is a single tax on the aggregate of income received from diverse heads mentioned in Section 6 : Section 6 is not a

charging section, and income computed under each distinct head is not separately chargeable to tax. But income which is chargeable under a

specific head cannot be brought to tax under another head either in lieu of or in addition to that head.....

It must, therefore, be held that even if an item of income is earned in the course of carrying on a business, it will not necessarily fall within the head ''

Profits and gains of business '' within the meaning of Section 10 read with Section 6(iv). If securities constitute stock-in-trade of the business of an

assesses, interest received from those securities will, for the purpose of determining the taxable income, be shown under the head '' Interest on

securities " u/s 8 read with Section 6(ii) of the Act. Similarly, dividends from shares will be shown u/s 12(1A) and not u/s 10. If an assessee carries

on business of purchasing and selling buildings, the profits and gains earned by transactions in buildings will be shown u/s 10, but income received

from the buildings so long as they are owned by the assessee will be shown u/s 9 read with Section 6(iii). Income earned by an assessee carrying

on business will in each case be broken up, and taxable income under the head " Profits and gains of business " will be that amount alone which is

earned in the business, and does not fall under any other specific head.

(b) Commissioner of Income Tax, Madras Vs. Indian Bank Ltd., . The facts in this case were that the assessee was a banking company and had,

in the course of its business, invested a large sum in securities, including securities the interest wherefrom was exempt from tax. Profits and losses

on the purchase and sale of such securities were taken into account in computing the business income of the respondent. The question arose

whether the bank could claim deduction of the entire interest paid to its own constituents on their deposits. The Supreme Court held that such

interest had to be allowed in its entirety u/s 10(2)(iii) of the Indian Income Tax Act, 1922, and observed as follows (page 80) :

In Section 10(2)(xv), what Parliament requires to be ascertained is whether the expenditure has been laid out or expended wholly and exclusively

for the purpose of the business. The legislature stops short at directing that it be ascertained what was the purpose of the expenditure. If the answer

is that it is for the purpose of the business, Parliament is not concerned to find out whether the expenditure has produced or will produce taxable

income. Secondly, the reason may well be that Parliament assumes that most types of expenditure which are laid out wholly and exclusively for the

purpose of business would directly or indirectly produce taxable income, and it is not worth the administrative effort involved to go further and

trace the expenditure to some taxable income.

Therefore, it seems to us that there is nothing in the language of Section 10 from which it can be fairly implied that an expenditure or allowance

falling within the section must fulfil some other condition before it can be allowed.

(c) Commissioner of Income Tax, Andhra Pradesh Vs. Cocanada Radhaswami Bank Ltd., . The facts in this case were that the assessee, again a

banking company, held securities as part of its trading assets. In the assessment year in question the assessee incurred a loss under the head

Business "" and earned certain amount as interest on securities. The net loss was brought forward. The question arose whether in the succeeding

years the net loss should be allowed to be set off against the income only under the head "" Business "" or whether it could also be taken into account

for computation of the income under the head ""Interest on securities"". The Supreme Court held as follows (pages 309, 310) :

The answer to this question depends upon the scope of Section 6 of the Act. Section 6 of the Act classified taxable income under the following

several heads : (i) salaries ; (ii) interest on securities ; (iii) income from property; (iv) profits and gains of business, profession or vocation; (v)

income from other sources ; and (vi) capital gains. The scheme of the Act is that Income Tax is one tax. Section 6 only classifies the taxable

income under different heads for the purpose of computation of the net income of the assessee. Though for the purpose of computation of the

income, interest on securities is separately classified, income by way of interest from securities does not cease to be part of the income from

business if the securities are part of the trading assets. Whether a particular income is part of the income from a business falls to be decided not on

the basis of the provisions of Section 6 but on commercial principles. To put it in other words, did the securities in the present case which yielded

the income form part of the trading assets of the assessee ? The Tribunal and the High Court found that they were the asses-see"s trading assets

and the income therefrom was, therefore, the income of the business. If it was the income of the business, Section 24(2) of the Act was

immediately attracted. If the income from the securities was the income from its business, the loss could, in terms of that section, be set off against

that income.

(d) Commissioner of Income Tax, Bombay City II Vs. Industrial Investment Trust Co. Ltd., . This case was cited for the following observation of

the Bombay High Court :

The circumstance that the business activity has produced income, a part of which is liable to tax and a part of which is free from tax, will not

permit the allocation of the expenses between these two parts of the income and allow only that part which is attributable to the earning of the

taxable income. In the present case before us, it is not disputed that the business activity of the assessee was a single activity and it had not two

distinct or different businesses : one yielding a tax-free profit and the other a profit, which was subject to tax. The expenses were incurred for the

carrying on of a single business, which produced income partly of one kind and partly of another. In such a case, as observed by the Supreme

Court, where the expenses were allowable under the Act as expenses of business, no further enquiry was required as to whether the expenses had

directly or indirectly the quality of producing income, which was liable to tax.

(e) Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, . In this case the assessee owned lands on which it grew

sugarcane and used the same for manufacture of sugar in its factory. The question arose whether any part of the managing agency commission paid

by the assessee could be related to the management of sugarcane cultivation, income from which was exempt from tax as agricultural income and

thus not be allowed as an ordinary business expenditure. Following its earlier decision in the case of Commissioner of Income Tax, Madras Vs.

Indian Bank Ltd., , the Supreme Court held that the entire managing agency commission was laid out or spent for the purpose of the business of

the assessee and was allowable u/s 10(2)(xv) of the Indian Income Tax Act, 1922. That a part of the income was not taxable was not relevant in

determining whether the expenditure should be allowed or not.

14. In the instant case it has been found by the Tribunal as follows :

(a) The assessee held the shares and securities as its stock-in-trade.

(b) The dividend was received by the assessee from its stock-in-trade.

(c) None of the holdings of the assessee were shown to be held by way of investment only.

15. It is not disputed that the assessee had incurred expenditure to earn its income. The Tribunal has also found that dividend earned by the

assessee though assessable under a particular head is really a part of the business income of the assessee.

16. In view of the law as laid down by the Supreme Court it appears to us that the expenditure in the instant case has been shown to be referable

to the business activity carried on by the assessee and must be allowable under the head "" Business income "". Even assuming that the income of the

assessee is solely referable to dividend, there can be no question of appor apportionment. The entire expenditure would then be allowable against

the dividend earned. We had occasion to consider a similar question in Income- tax References Nos. 365, 369 and 367 of 1971 (Commissioner

of income tax v. Birds Investment (Anniversary Investment Agency)), where we held that where the assessee was holding shares as its circulating

capital and it was not possible to ascertain if any shares were held solely for the purpose of earning dividends, there was no justification for

apportioning the expendi ture incurred by the assessee against income arising under two separate heads, i.e., business and dividend.

17. For the reasons stated above we answer the question referred in the affirmative and in favour of the assessee.

18. In the facts and circumstances of the case, there will be no order as to costs.

Banerji, J.

19. I agree.