

(1990) 07 CAL CK 0025

Calcutta High Court

Case No: IT Reference No. 226 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Sethia Tea Estates (P.) Ltd.

RESPONDENT

Date of Decision: July 2, 1990**Acts Referred:**

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

Citation: (1993) 69 TAXMAN 560**Hon'ble Judges:** Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J**Bench:** Division Bench

Judgement

Suhas Chandra Sen, J.

The Tribunal has referred the following question of law to this Court u/s 256(1) of the income tax Act, 1961 ("the Act"):

Whether, on the facts and in the circumstances of the case, the assessee's income from lease rent and interest is liable to be assessed under the head "Profits and gains of business or profession" and not under the head "Income from other sources"?

The assessment year involved is 1975-76 for which the relevant year of account was the year ending 31 -3-1975.

In the order in appeal, the Tribunal has not given any separate reasons for its decision. The Tribunal has merely followed its common order passed in the earlier assessment years 1968-69, 1969-70 and 1970-71. In that order the reasons given by the Tribunal were as under:

The next common grievance is against assessment of rent and interest income under the head "Income from other sources" for the assessment years 1969-70 and 1970-71. The assessee-company by an agreement dated 24-5- 1968 leased out its tea garden, machineries, offices, godowns, labour quarters, furniture fittings along

with the existing staff to R.K. Agents Ltd. for five years subject to renewal for further three terms of five years each at the option of the lessee. In accordance with the terms and conditions of the lease agreement, the lessee was to carry on the assessee's business and to pay to the assessee a monthly rent of Rs. 2,500. The income tax Officer assessed the lease rent and interest under the head "Income from other sources" and the Appellate Assistant Commissioner concurred with the income tax Officer by observing that the assessee was merely receiving rent by letting out its assets and it had nothing to do with production and sale of tea.

Having heard the rival submissions and after considering the facts of the case, we are of the opinion that the submissions of the assessee's counsel must prevail. This very issue came up for consideration before the Supreme Court and many High Courts. The Supreme Court in the case of [Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd.](#), held that if for some reasons, e.g., paucity of raw materials in a manufacturing concern, the machinery is let out to others, the hire income received is business income.

In the cases cited by the assessee's counsel it had been held that income from the lease rent was the business income earned by exploiting the assessee's commercial assets. In the case of [Commissioner of Income Tax Vs. S.K. Sahana and Sons Ltd.](#), the assessee, owning a colliery, executed an agreement with another company under which the latter was to carry on the assessee's coal business and to pay to the assessee certain specified share of the profits from the business. It has been held by the Patna High Court that on the facts of the case and as per terms of the agreement, the partnership between the assessee and the lessee was that of principal agent and the share of profits received by the assessee was business income. In our opinion, the facts of the present case are similar to those of the case referred to above and in view of the circumstances we have no hesitation to hold that the income received by the assessee by leasing out its running business was its business income. So far as the interest income is concerned, we see that lower authorities had assessed the same as assessee's income from other sources without giving any reason whatsoever. The learned departmental representative, however, urged that the assessee was not a money-lender and, therefore, the interest income could not be said to be business income. We were told that interest income was earned by the assessee on the advances made and short-term loans given in the course of assessee's main business, i.e., cultivation, manufacture and sale of tea. Therefore, it cannot be regarded, in our opinion."

2. Mr. Prasad appearing for the revenue has not been able to show us how the Tribunal has made any mistake of law in this case. There is no challenge to the finding of fact. The assessee-company had leased out its tea garden for five years subject to a renewal clause. In accordance with the terms and conditions, the lessee was to carry on the assessee's business and pay to the assessee a monthly rent. The

Tribunal has found that the facts in the case of [Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd.,](#) were very similar to the facts of this case. Mr. Prasad has not been able to distinguish this case either on facts or in law.

3. In that view of the matter, the question is answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Banerjee, J. -

I agree.