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(2001) 05 DEL CK 0132

Delhi High Court

Case No: IT Ref. No''s. 301 and 302 of 1981 25 May 2001

Commissioner of Income Tax	APPELLANT
Vs	
DELHI CATTLE BREEDING FARMS (P) LTD.	RESPONDENT

Date of Decision: May 25, 2001

Citation: (2001) 169 CTR 477

Hon'ble Judges: Arijit Pasayat, C.J; D.K. Jain, J

Bench: Full Bench

Advocate: R.D. Jolly and Ms. Premlata Bansal, for the Revenue B.R. Aggarwal, for the assessee, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of revenue, following questions have been referred for opinion of this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the Income Tax Appellate Tribunal Delhi Bench D (hereinafter referred to as "the Tribunal").

(i) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the capital gains of Rs. 7,45, 109 could not be considered for purposes of computing the commercial profits of the assessed-company for the purposes of section 104 of the Income Tax Act, 1961 ?"

(ii) "If the answer to the first question is in the negative, whether the Tribunal was right in cancelling the orders passed by the Income Tax Officer u/s 104 of the Act for the two assessment years 1974-75 and 1975-76 ?"

Dispute relates to the assessment years 1974-75 and 1975-76 and this judgment shall cover both the references.

2. Factual position, in a nutshell, is as follows :

assessed, at the relevant point of time, was a private limited company carrying on business in agricultural activities and dairy-farming. Previous years for the two assessment years ended on 30-6-1973, and 30-6-1974, respectively. Question that arose for consideration related to levy of tax u/s 104 of the Act. assessees stand before the Income Tax Officer was that having regard to accumulated past losses and the smallness of profits, payment of dividend by the assessed would be unreasonable within the meaning of section 104(2)(i) of the Act, and Therefore, provisions of section 104(1) were not to be invoked in its case for the two assessment years. The Income Tax Officer, however, did not agree with the stand of assessed. It was noted that assessed had made substantial capital gains, which were reflected in the capital reserve of Rs. 7,45,109 and the same was available to the assessed for declaring dividend. assessed did not require the aforesaid capital reserve for any of its business requirements and this was established from the fact that there was no utilization of this reserve in any of the accounting years. The Income Tax Officer, Therefore, levied tax at the rate of 15 per cent on the distributable surplus worked out in the following manner :

	Assessment year	1974-75	1975-76
		Rs.	Rs.
(1)	Total income assessed	3,22,580	72,130
(2)	Less taxes payable thereon	2,20,160	49,228
(3)	Distributable surplus	1,02,420	22,902
(4)	Dividends that ought to have been declared by the company, i.e., 90 per cent	92,223	20,612
(5)	Dividend declared by the assessed-company	Nil	Nil
(6)	Debit balance in P&L a/c	91,472	20,508
(7)	Capital reserve shown in the balance sheet	7,45,109	7,45,109

assessed carried the matter in appeals before the Commissioner (Appeals). It was contended before Commissioner (Appeals) that capital gains should not be considered for the purpose of determining the commercial profits of assessed, and Therefore, declaration of dividend in these two assessment years would be unreasonable, having regard to past losses of the company as well as smallness of

its profits in the two assessment years, Commissioner (Appeals) did not accept the stand. He, Therefore, held that despite its past losses, assessed had sufficient distributable funds and the conclusion of Income Tax Officer was justified. It was also observed that losses, if any, sustained for the assessment year 1975-76 was irrelevant for determining the applicability of section 104 of the Act in respect of the two assessment years. Matter was carried in further appeal before the Tribunal-Stand of the assessed before the forums below was reiterated. Tribunal held that with reference to the facts and figures relating to distributable surplus, as computed by Income Tax Officer in both the years, there was hardly any scope for dispute regarding applicability of section 104(1) of the Act. Further question, according to it, was whether it would be unreasonable for assessed to declare a dividend having regard to losses incurred by it in the earlier years and or to the smallness of profits made in the previous year within the meaning of section 104(2)(i) of the Act.