(2000) 07 DEL CK 0137

Delhi High Court

Case No: Income-tax Reference No. 202 of 1977

Commissioner of Income Tax		APPELLANT
	Vs	
K. Narendra		RESPONDENT

Date of Decision: July 18, 2000

Citation: (2000) 246 ITR 579 : (2002) 120 TAXMAN 419

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

Bench: Division Bench

Advocate: R.C. Pandey and Ajay Jha, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C.J.

At the instance of the Revenue, the following question has been referred to this court for opinion u/s 256(1) of the Income Tax Act, 1961 (for short the "Act"), by the Income Tax Appellate Tribunal, Delhi Bench-B (in short the "Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the lease money obtained by the assessed from the letting out of the machinery on hire of the rotary printing press constituted ''business income'' and not ''income from other sources'' and in further directing the Income Tax Officer to allow development rebate and double shift allowance on the said machinery ?"

2. For the assessment year 1965-66, the assessed received certain amounts on letting out of imported rotary press which he had imported. The machine was not used by the assessed in his own business but was let out on a monthly rent. It is to be noted that the assessed was not carrying on any business during the year. In the aforesaid background the question arose whether the income be treated as income from business or from other sources. The Tribunal held that the income has to be treated as business income. On being moved a reference was made to this court as aforesaid.

3. Learned counsel for the Revenue submitted that the question whether a particular income would be treated as business income or from other sources would depend on several factors. On the admitted facts the assessed was not carrying on any business and had only let out the rotary press, which he had imported, on rental basis. That being the position, the Tribunal ought not to have held the income to be income from business.

4. There was no appearance on behalf of the assessed when the matter was called.

5. A somewhat similar question came up for consideration of this court in Commissioner of Income Tax, Delhi-II Vs. Super Fine Cables Private Ltd., . As the factual position is almost identical, following the view expressed in the aforesaid case, we hold that the income ought to have been assessed as income from other sources and not as income from business. Our answer, Therefore, is in the negative, in favor of the Revenue and against the assessee.

6. The reference application is, accordingly, disposed of.