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(1993) 202 ITR 986

Bombay High Court

Case No: Income-tax Reference No. 495 of 1978

Gammon India Pvt. Ltd.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: Feb. 19, 1993

Acts Referred:
Income Tax Act, 1961 â€" Section 246

Citation: (1993) 202 ITR 986

Hon'ble Judges: U.T. Shah, J; Sujata V. Manohar, J

Bench: Division Bench

Advocate: Dilip Dwarkadas, instructed by M/s. Gagrat and Co., G.S. Jetley, for the Appellant;

Judgement

Mrs. Sujata Manohar, J.
The assessee company carries on business as civil engineers and contractors on a substantial scale. At the

material time, the value of the assessee"s completed contracts amounted to Rs. 1 1/2 to 2 crores and the value of its book profits ran into several

lakhs of rupees. The reference pertains to the assessment years 1957-58 to 1960-61. The following two questions have been referred to us. While

question No. 1 is common to all the assessment year 1957-58 to 1960-61, question No. 2 is only for the assessment year 1958-59 :

1. Whether an appeal to the Appellate Assistant Commissioner against the charge of penal interest was competent ?

2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 1 lakh was rightly assessed as the income of the company ?

2. In respect of question No. 1, we need not set out the facts in any detail because it is an accepted position that in view of the decision of the

Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, , the question must be answered in

the negative and in favour of the Revenue. The question is answered accordingly.

3. Regarding question No. 2, the relevant facts are as follows :

The assessee submitted a tender on August 31, 1956, to the Government of Bombay for lining the Mahi Canal. The tender of the assessee was

accepted on March 22, 1957. Thereafter, the assessee and another construction company called the ""Shah Construction Company Private

Limited"" decided to float a new company called Shah Gammon Pvt. Ltd. Accordingly, the new company was registered on May 6, 1957.

Thereafter, the board of directors of the assessee passed a resolution on September 5, 1957, under which in consideration of a sum of Rs.

1,00,000 to be paid by the new company to the assessee, the assessee-company agreed to assign the said contract to the new company after

obtaining the approval of the P. W. D. On December 30, 1957, by an agreement executed between the assessee company, the Shah Construction

Company and the new company, the Mahi Canal contract was assigned and then transferred to the new company for which the assessee company

received a sum of Rs. 1,00,000.

4. Before the transfer of the contract to the new company, the assessee company had executed one third of that contract. The total Contract was

for Rs. 72,00,000 and the assessee-company had received payment amounting to Rs. 21,81,811 from the P. W. D. before the contract was

transferred to the new company. These payment have been transferred to the new company and the only amount which has come in the assessee

accounts in respect of this contract is a sum of Rs. 1,00,000.

5. The assessee-company claimed that the receipt of Rs. 1,00,000 was exempt from Income Tax as it was a capital receipt and was of a casual

and non-recurring nature. The Income Tax authorities have, however, held that the sum of Rs. 1,00,000 received by assessee-company from the

new company is taxable as a revenue receipt in the assessee-company''s hands. Hence the above question has been referred to us at the instance

of the assessee.

6. Mr. Dwarkadas, learned counsel for the assessee, submits in this connection that the contract must be viewed as a capital of the company and

the amount of Rs. 1,00,000 which is received for transfer of this contract should be treated as a capital receipt. He also submits that it is a casual

receipt and not a receipt in the course of business of the company. He relies in this connection on the decision of the Supreme Court in the case of

Commissioner of Income Tax, U.P. Lucknow Vs. The Maheshwari Devi Jute Mills Ltd. Kanpur, . The Supreme Court said that the transaction of

transfer of loom hours and the receipts which the company obtained by sale of surplus loom hours and the hours were capital receipts and not

income. He also relied upon the decision of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Barium Chemicals

Ltd., . The Andhra Pradesh High Court in that case has observed that in order to decide whether or not a payment is a revenue receipt, its true

nature and substances must be looked into. If the payment is received into ordinary course of the business of the assessee for loss of stock-in-

trade, it is a revenue receipt. If, on the other hand, the payment received is towards compensation for extinction or sterilisation, partly or fully, of a

profit-earning source, such receipts, not being in the ordinary course of the assessee''s business, is a capital receipt. On the facts before it, the court

said that the settlement which had been concluded by the assessee and the English company, under which the assessee-company received certain

payments, was not in the ordinary course of the business carried on by the assessee. The amounts which were paid were towards damages in

order to compensate the assessee for not fulfilling the terms of the contract. Having regard to all the said circumstances, the court said that what

was received by the assessee was a capital receipt and was not liable to tax.

7. The above decisions, in our view, do not assist the assessee looking to the facts of this case. The assessee has assigned this contract for Rs.

1,00,000 to the new company and has also transferred to the new company the payments received under that contract by the assessee-company

till that date. Had the contract been completed by the assessee, any profit which the assessee might have earned would have been its business

income. This amount of Rs. 1,00,000 received by the assessee is in lieu of this benefits which the assessee would have received under the contract.

Hence, in our view, it Partakes of the character of a revenue receipt rather than a capital receipt.

8. In the case of Kettlewell Bullen and Co. Vs. Commissioner of Income Tax, Calcutta, , the Supreme Court was concerned with a case where

the assessee-company had relinquished the managing agency for a certain amount. The question was whether the amount received was a revenue

receipt. The Supreme Court said (headnote) :

It cannot be said as general rule that what is determine of the nature of a receipt on the cancellation of a contract of agency or office is extinction

or compulsory cessation of the agency or office. Where payments is made to compensate a person for cancellation of a contract which does not

effect the trading structure of his business or deprive him of what in substances is his source of income, termination of the contract being a normal

incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated), the receipt is revenue;

where by the cancellation of an agree the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regard as

the source of the assessee''s income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt.

9. In the case before it, the Supreme Court held the compensation a falling in the latter category of a capital receipt. But, so far as the case before

us is concerned, the assigned of the contract and the payment received for it squarely fall within the first category enumerated by the Supreme

Court. The Sum of Rs. 1,00,000 is paid to compensate the assessee for assignment or transfer of the contract. Such assignment does not affect in

any manner the trading structure of the assessees business nor does it deprive him of any source of income. The assignment appears to be in the

normal course of business and has not impaired the assessee in any manner in carrying on it business. In these circumstances, the payment for

assignment of the contract, in our view, clearly is in the nature of a revenue receipt.

10. In the case of The Commissioner of Income Tax, U.P., Lucknow Vs. Gangadhar Baijnath Generalganj, Kanpur, , the Supreme Court applied

the same tests cited above. In that case the assessee-firm and another firm combined to form a partnership firm which enjoyed to the managing

agency of the Swadeshi Cotton Mills Co. The assessee-firm retired from the business of the partnership firm and received from the continuing

partners, in addition to their capital investments and interest thereon, a certain sum on account of compensation for surrendering their interest in the

partnership firm. The partnership firm there after continued to be the managing in the agent of the mills in question. The out going assessee firm

carried on various business activities with the aid of lump sum which it received as compensation. The question was whether this lump sum firm

carried on various business income of the assessee-firm or whether it was a capital receipt. The Supreme Court held that the assessee-firm had

various business activities and to have joined the other partnership firm was only one such activity. The assessee-firm had surrendered its rights in

the partnership to the other partner and obtained certain for surrendering its rights. this was case of cancellation of a contract which had been

entered into in the ordinary course of business. Any payments received in connection with the termination of the contract really represented the

profit which the assessee would have made had the contact been performed. Hence the entire amount received by the assessee-firm was a

business receipt. In the present case also the amount which is received by the assessee-company for assignment of a contract which it had entered

into and which formed a part of its business activities, really represents the profits it would have made on the contract. The assignment has not

affected in any manner the trading structure of the company or its business activities. The amount received for assigning this contract, therefore,

must be viewed as revenue receipt.

11. In the premises question No. 2 is answered in the affirmative and in favour of the revenue.

12. No order as to costs.

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