(1984) 04 MAD CK 0019

In the Madras High Court

Case No : T.C.P. No. 537 of 1983

B.M.S. (Private) Limited APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 23-04-1984

Acts Referred:
Income Tax Act, 1961 — Section 57

Citation : (1985) 153 ITR 758 : (1984) 19 TAXMAN 458

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; Nalini Chidambaram and C.V. Rajan, for the Respondent

Judgement

Ramanujam, J.—In this reference petition, the assessee seeks a direction from this court to the Tribunal to refer the following three questions

for the opinion of this court :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the write-off of Rs. 6,50,922 could

not be allowed as a business loss ?

(2) Whether, on the facts and in the circumstance of the case, the Appellate Tribunal was right in holding that there was no indication of any

commercial expediency involved in the write-off of Rs. 6,50,922 ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the write-off of Rs. 6,50,922, did

not amount to any expenditure incurred by the assessee-company ?

2. However, after going through the facts and in the circumstances of this case, and after hearing the learned counsel for the assessee at length, we

are satisfied that no question of law, much less a referable question of law, arises out of the order of the Tribunal.

3. For the assessment year 1977-78, the assessee, M/s. B.M.S. (P.) Ltd., Tirupur, claimed a deduction of a sum of Rs. 6,50,922 on the ground

that it represented business loss for that year. The ITO disallowed the said deduction claimed by the assessee. However, when the matter went

before the Commissioner of Income Tax (Appeals), he chose to allow the appeal and, accordingly, he directed the deduction of said amount as a

business loss. The Revenue took the matter in appeal to the Tribunal and Tribunal held that the said sum of Rs. 6,50,922 was not a business loss,

but that it was incurred buy the persons in management of the company for the purpose of acquiring the exclusive right and management lover the

company and, therefore, such expenditure could not be said to have been incurred for business purpose or business expediency. On the facts, we

find that the Tribunal has come to the right conclusion.

4. The assessee is a private limited company, the shares of which were held by two groups, one represented by N. Shanmugham Chettiar and the

other represented by late N. Veeraswamy Chettiar. Disputes had arisen between the two groups in the matter of management of the assessee

company as well as of the other companies concerned in which each group had a 50% interest. Those disputes were referred to arbitration and an

award was passed directing that the debit and credit balance appearing in the accounts of the concerned parties of the two groups should be

ignored and they cannot be treated as an asset or liability receivable or payable by either party to the arbitration award. The award also allotted

various concerns as between the two groups exclusively. As a result of the said arrangement bought about by the arbitrator''s award, the assessee-

private limited company was exclusively taken over by N. Shanmugham Chettiar''s group. For the purpose of allotting various concerns exclusively

to one or the other of the two groups, the award provided that the amounts payable by a party other that the party to which the concern was

allotted have to be ignored or written off and no claim can be made in respect of those sums. As already state, as a result of such arrangement, the

groups headed by N. Shanmugham Chettiar which was allotted to the assessee-company as well as some other concerns could not realise the amounts due by the other group to those concerns. A sum of Rs. 6,50,922 was due to the assessee-company from the group of N. Veeraswamy

Chettiar which was having 50% shareholding before the award, and the said amount the assessee wanted to write off as a business loss. It is not in

dispute that the assessee-company was managed by two groups, N. Shanmugham Chettiar''s group and N. Veeraswamy Chettiar''s group, each

owning 50% interest in the company. As a result of the arbitrator''s award N. Shanmugham Chettiar''s group came to own the entire shareholding

in the assessee-company exclusively and N. Veeraswamy Chettir''s group had lost all interest in the assessee-company. As consideration for

acquiring the exclusive interest in the company, N. Shanmugham Chettiar''s group had to forgo a sum of Rs. 6,50,922 due to the assessee-

company by N. Veeraswamy Chettiar''s group. The said amount of Rs. 6,50,922 should be taken to the consideration paid by N. Shanmugham

Chettiar''s group for exclusively acquiring the 50% interest of N. Veeraswamy Chettiar''s group in the assessee-company. Thus, N. Shanmugham

Chettiar''s group which was originally entitled only to as 50% share in the company came to possess 100% of the shares by virtue of the arbitration

arrangement. The arbitration arrangement itself provided that the amount due to the company from N. Veeraswamy Chettiar''s group should be

forgone by N. Shanmugham Chettiar''s group. Thus, the amount of Rs. 6,50,922 which was due by N. Veeraswamy Chettiar''s group and which

was forgone by N Shanmugham Chettiar''s group can only be taken to the the personal expenses of N. Veeraswamy Chettiar''s group and no

expenses incurred by the company for its business purpose. This is the view taken by the Tribunal and we are of the opinion that the Tribunal has

come to the right conclusion in this case.

5. In this view, no referable question of law arises out of the order of the Tribunal and the reference petition is, therefore, dismissed. There will be

no order as to costs.

