

(1996) 04 MAD CK 0031

In the Madras High Court

Case No : TC No's. 317 and 318 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Amalgamations Ltd.

RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 28, 91

Citation : (1998) 232 ITR 608

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following eight questions for the opinion of this Court

under s. 256(1) of the IT Act, 1961, for the asst. yrs. 1977-78 and 1978-79, respectively :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was carrying on business and

hence the income of the assessee should be computed under the head "Business" and not under the heads "Income from house property" and

"Income from other sources" ?

2. Whether the Tribunal was right in holding that no income from property No. 24, Edward Elliots Road, Madras, should be computed for

inclusion in the assessee's total income ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the interest income, guarantee commission,

profits on sale of assets and miscellaneous income should be considered as

falling under the head "Business" ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest on money taken on fixed deposits

for paying the estate duty on the estate of the late Sri Anantharamakrishnan should be allowed as a deduction ?

5. Whether, the Tribunal was right in holding that the assessee was entitled to have set off of carry forward losses of the earlier years against the

income of the asst. yr. 1978-79 ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest on investments should be assessed

under the head `Business" ?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the credit guarantee paid for the estate duty

payment should be allowed as a deduction ? and

8. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the ITO was not justified in grossing up the

foreign dividend for Income Tax purposes ?

2. The first question relates to the computation of income under the head ""Business"" or under the head ""Income from house property"" or under the

head ""Income from other sources"". The second question relates to the income from the property at No. 24, Edward Elliots Road, Madras, and

whether it should be computed for inclusion in the assessee's total income. The third question relates to whether the interest income, guarantee

commission, profits on sale of assets and miscellaneous income should be considered as falling under the head ""Business"". The fourth question

relates to the interest on money taken on fixed deposits for paying the estate duty. The fifth question relates to set off of carried forward losses of

the earlier years against the income of the asst. yr. 1977-78 (sic-1978-79). The sixth question relates to whether the interest on investments should

be assessed under the head ""Business"". The seventh question relates to credit guarantee paid for the estate duty payment and whether it should be

allowed as a deduction. The eighth question relates to the grossing up of the foreign dividend for Income Tax purposes.

3. In Commissioner of Income Tax Vs. Amalgamations (P.) Ltd., , in the case of the very same assessee for the asst. yrs. 1958-59 to 1962-63,

this Court held that, (1) the assessee-company had a systematic or organised course of activity in the matter of holding of investments; and hence

there was a business activity in the matter of holding of investments; and (2) the payments to the various persons by the assessee-company cannot

be said to be in the carrying on of its business of holding its investments and hence it was not incurred wholly and exclusively for its business and

accordingly the same is not allowable. It was further held that in view of the assessee's business having been held to include furnishing guarantees

to debts borrowed by its subsidiary companies, the assessee incurred this loss in the course of carrying on its business.

4. So also, in the decision in the case of the very same assessee in Commissioner of Income Tax Vs. Amalgamations Ltd., for the asst. yrs. 1969-

70 to 1971-72, following the earlier decision of this Court in CIT vs. Amalgamations (P) Ltd. (supra), this Court held that the Tribunal was right in

holding that the assessee was carrying on business and that the income of the assessee should be computed under the head ""Business"" and that the

income from the property No. 24, Edward Elliots Road, Madras, should be computed for inclusion in the assessee's total income. It was further

held by this Court that the assessee was entitled to have set off of carried forward losses of the earlier years against the income of the asst. yr.

1975-76.

5. The fourth question, viz., whether the interest on the money taken on fixed deposits for the payment of estate duty should be allowed as a

deduction is covered as per the decision of this Court in Tax Cases Nos. 1109 to 1113 of 1979 (Commissioner of Income Tax Vs.

Amalgamations Ltd., (supra)). The fifth question relating to set off of carried forward losses of the earlier years against the income of the asst. yr.

1978-79 was also covered in favour of the assessee as per the said decision in CIT vs. Amalgamations Ltd. (supra). With reference to the sixth

question relating to the interest on investments assessable under the head ""Business"", in the decision in Commissioner of Income Tax Vs.

Amalgamations (P.) Ltd., , this Court held that the very same assessee-company was making an investment and looking for the dividend and hence

there was a business activity in the matter of holding of investments. Therefore, the interest receivable on such investments should also be

assessable under the head ""Business income"". The seventh question relates to the credit guarantee paid for the estate duty payment. In the decision

Commissioner of Income Tax Vs. Amalgamations Ltd., this Court held that the interest amount being the interest on the money taken from the

fixed deposits for paying estate duty, it should be allowed as deduction. So far as the eighth question is concerned, it relates to the grossing up the

foreign dividend for Income Tax purpose. In the decision reported in A.F.W. Low vs. CIT (1995) 211 ITR 213 : TC 39R.461, this Court held

that having regard to the provision under s. 91 of the Act, providing for double Income Tax relief, the gross dividend alone should be regarded as

having accrued or arisen or even received by the assessee. Therefore, the Tribunal was not correct in holding that the ITO was not justified in

grossing up the foreign dividend for Income Tax purposes.

6. Accordingly, in so far as questions Nos. 1 to 7 are concerned, we answer the same in the affirmative and against the Department and in so far

as question No. 8 is concerned, we answer the same in the negative and in favour of the Department. There will be no order as to costs.