

(1972) 08 MAD CK 0049

In the Madras High Court

Case No : Tax Case No. 24 of 1967 (Reference No. 1 of 1967)

Commissioner of Income Tax

APPELLANT

Vs

Central Studios (P.) Ltd.

RESPONDENT

Date of Decision : 16-08-1972

Acts Referred:

Income Tax Act, 1922 — Section 10, 9

Citation : (1973) 88 ITR 298

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

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

Ramanujam, J.—The assessee-company has a studio building. The company was producing pictures in the said studio but it closed down that business of production of pictures before the assessment year 1958-59 and leased out the studio to third parties for production of pictures. It also let out on hire its machineries. In the previous year relevant for the assessment year 1958-59 the assessee sold away all the machineries pertaining to the film production and the studio building was rented to a cotton merchant to be used as a cotton godown. In the previous years relevant to the assessment years 1959-60, 1960-61 and 1961-62 the company carried on the business of distribution of pictures and earned income by way of commission on the collections. In the said three years the assessee claimed the following sums as deduction :

Rs.

1959-60 23,000

1960-61 22,500

1961-62 19,722

2. The said amounts represented the irrecoverable part of the rent from the

producers who had taken the assessee's studio on rent for production of pictures. The Income Tax Officer disallowed the said claim on the ground that the claim related to a business which had been completely wound up, that the business of distribution of pictures was different from production of films, and that the business of production was not in existence in these years.

3. The assessee appealed to the Appellate Assistant Commissioner, who allowed the claim stating :

" The appellant-company was renting out its studios and machinery for film producers. The losses that are partly written off are rental dues from these producers. The studios' immovable properties are still being rented out to a cotton merchant. The memorandum and articles of association allow it to rent out the immovable properties and machinery. From this, it is clear that the appellant's business of letting out its immovable properties and machinery is continuing."

4. In the previous year relevant for the assessment year 1962-63 there was no distribution of pictures and the only receipts by the company were as under:

Rs.

Rental on studio premises 19,800.00

House rent collection 8,145.50

Film vault charges 210.00

Agricultural income 7,000.00

35,155.50

5. The company filed a return for that year showing the first two items of receipts as income from property. But at the time of the assessment it was claimed before the Income Tax Officer that though rentals of Rs. 8,145 derived from other buildings can be treated as income from property, the income from the studio building should be assessed as business income and that expenditure should be allowed against such income. The Income Tax Officer rejected the assessee's claim and assessed the said rental income from the studio as income from property.

6. The assessee-company went on appeal to the Appellate Assistant Commissioner, who, relying on the decisions on the very issue in the earlier years where it has been held by him that the rental received by the assessee by hiring of the studio building should be assessed as business income, held that in this year also the income in question should be assessed under the head " Business ".

7. The revenue filed an appeal against that order before the Tribunal. The Tribunal held that as there was no change in the status quo as compared with the earlier years, the Appellate Assistant Commissioner's decision for the earlier assessment years, which has not been questioned by the revenue by filing

appeals, concludes the issue as to whether the rental receipts from the studio building is income from business or income from property.

8. Aggrieved against the order of the Tribunal, the revenue sought a reference to this court, and the following question has been referred to us for decision :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the rent received by the assessee from letting out of the studio -is assessable under the head " Profits and gains of business or profession ? "

9. From the facts set out earlier, it is seen that the assessee-company did not carry on its business of producing films after the assessment year 1957-58, that they let out the studio for production of pictures to third parties for some time, that they had sold all the machineries pertaining to the film production during the assessment year 1958-59 and had let out the studio building to a cotton merchant for using it as a godown, and that, thereafter, the assessee carried on the business of distribution of films and earned income by way of commission on the collections up to the assessment year 1961-62. But, the distribution of films has nothing to do with the original business of production of films which require the use of the studio building and the machinery. Therefore, it has to be taken that the assessee's business of producing pictures had been discontinued from the year 1958-59 when the machineries pertaining to the film production were sold and the studio was let out for using it as a godown. The question is whether the rental income received by the company from the studio building without any machinery for its user as a cotton godown can be brought under the head " Profits and gains of business ". The income from the studio building is undoubtedly an income from property. But, to bring that income under a different head, " Profits and gains of business ", it must be shown that the building has been used for the purposes of the business. The reasons given by the Income Tax Officer for treating the income as income from property are these:

"(1) The company itself had shown the income from the studios as income from house property in its return ; (2) the presence of a clause in the memorandum and articles of association permitting the company to let out the immovable properties and machinery cannot make the letting out of its immovable properties as a business of the company; and (3) the presence of this clause does not enable computation of income under one head to be taken under a different head for the purpose of Income Tax assessment."

10. The Income Tax Officer, therefore, did not allow the losses of earlier years against rental income received from the studio building as it is not a business income. The Appellate Assistant Commissioner has merely relied on its earlier decision pertaining to the years 1959-60, 1960-61 and 1961-62 wherein he held that as the letting out of its immovable properties and machinery has been authorised by the memorandum and articles of association of the company it is

also a business of the company and, therefore, the rental income from the studio building should be treated as income from business. The Appellate Assistant Commissioner, however, did not consider the reason given by the Income Tax Officer that the authorisation given to the company by the articles of association to let out its buildings and machineries will not enable the computation of income under one head to be taken under a different head for the purpose of Income Tax assessment. The Tribunal also did not go into the question as to whether the income falling under one head can be taken to another head merely because the articles of association has authorised the letting of the studio building. The Tribunal merely rested its decision on the assessments made in the earlier years on the ground that there are no change of circumstances, that no sufficient cause has been shown for interfering with the view taken by the Appellate Assistant Commissioner in the earlier years and that, therefore, the decisions rendered in the earlier years should be taken to govern the situation in this year as well.

11. It is well-established that each assessment year is a unit by itself and that the decision rendered with reference to any particular year will not constitute res judicata or estoppel in relation to the assessment for the subsequent years so as to bind either the assessee or the revenue Vide *The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad, and M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras*, . It is true that in this case in respect of the three earlier assessment years the income from the studio building was held to be business income by the Appellate Assistant Commissioner relying on a clause in the articles of association of the company authorising it to let out the building and the machinery, even though the business of production of films had been stopped and the entire machinery used for production of films had been sold showing the assessee's intention to discontinue the business of production of films, and the studio building has been actually let out for use as a cotton godown. But, the question is whether the decision of the Appellate Assistant Commissioner holding the rental income from the studio building to be a business income in these circumstances is correct. The fact that the revenue has not challenged the decision of the Appellate Assistant Commissioner in the previous years by filing appeals before the Tribunal will not prevent it from raising the question as to the proper head under which that income has to be brought in the subsequent years. We,, therefore, proceed to consider the question as to whether the rents received by the assessee-company from the studio building in the accounting year would come under the head " Income from property " or under the head " Business income ".

12. In *H. C. Kothari v. Commissioner of Income Tax*, [1951] 20 ITR 579 this court had expressed the view that the classification of income u/s 6 of the Indian Income Tax Act, 1922, under various heads does not mean that there are many taxes as there are heads of income, that Income Tax is one tax on the aggregate of the income, that if an income falls under more than one head the

assessee has the option of choosing for the purpose of Income Tax such head which makes the burden on his shoulders lighter, and that if there is no doubt as regards the head under, which a given income becomes chargeable to tax, it is not open either to the assessee or to the revenue to ignore that head and deal with the income for the purpose of Income Tax under a different head. In that case the assessee had several sources of income, namely, interest on securities, profits of business, dividends, etc. The business, however, ended in a loss but the assessee claimed earned income relief in respect of the interest on securities on the ground that the securities and Government promissory notes, which they purchased and sold as part of their business, formed stock-in-trade and that the profits arising in such purchase and sale including the interest on securities should be treated as business profits. It was held that Section 8 of the Act which deals with interest on securities is a separate and distinct head, that if an income is chargeable under that head, it is not open either to the assessee or to the revenue to change the head and claim to tax it under a different head, that such interest on securities was already charged to tax at the source, there was no option left to the assessee to claim that that interest should be treated as part of the income of his business or as income from other sources, and that, therefore, the assessee was not entitled to claim relief of earned income in respect of such interest. Their Lordships of the Supreme Court in *United Commercial Bank Ltd. Vs. Commissioner of Income Tax, West Bengal*, have also expressed the same view. In that case it was held that interest on securities is a specific head of charge, and, therefore, it cannot be charged as profits of business, even if the securities were held as trading assets. There the assessee was a banking company whose business included dealings in securities. The assessee contended that the securities are part of its trading assets and any income which accrues in respect of those assets in the form of interest has the same characteristics of profits or gains of its banking business and that, therefore, it must be treated as business income falling u/s 10 of the Indian Income Tax Act, 1922. The Supreme Court, after considering the scheme of the Act, the scope of the provisions of Sections 6 to 12, and the form of the return prescribed u/s 21 giving the various heads of income expressed :

" Thus, on a true construction of the various sections of the Act the income of an assessee is one and the various Sections 7 to 12 are modes in which the statute directs that Income Tax is to be levied and these sections are mutually exclusive. The head of income of which the source is " interest on securities " has its characteristics for Income Tax purposes and falls under the specific head covered by Section 8 of the Act, and where an item falls specifically under one head it has to be charged under that head and no other. This interpretation follows from the words used in Sections 6, 8 and 10 which must be read so as to give effect to the contrast between " income, profits and gains " chargeable under the head "Interest on securities" and " income, profits and gains" chargeable under the head " Business ". Thus, on this construction the various heads of " income, profits and gains " must be held to be mutually exclusive, each head

being specific to cover the item arising from a particular source. It cannot, therefore, be said that qua the assessee in the present case and for the purpose of securities held by it, Section 8 is more specific and Section 10 general or vice versa and, therefore, no question of the applicability of the principle *generalia specialibus non derogant* arises. This finds support from the decided cases which have been discussed above."

13. In *East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal*, the Supreme Court again reaffirmed the same principle thus :

" Income Tax is undoubtedly levied on the total taxable income of the taxpayer and the tax levied is a single tax on the aggregate taxable receipts from all the sources ; it is not a collection of taxes separately levied on distinct heads of income. But, the distinct heads specified in Section 6 indicating the sources are mutually exclusive and income derived from different sources falling under specific heads has to be computed for the purpose of taxation in the manner provided by the appropriate section. If the income from a source falls within a specific head set out in Section 6, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head. "

14. In that case the assessee-company, incorporated with the object of buying and developing landed properties and promoting and developing markets, purchased an extent of land in the town of Calcutta and set up a market therein. The question was whether the income realised from the tenants of the shops and stalls in the market was liable to be taxed as " business income " u/s 10 of the Indian Income Tax Act, 1922, or as income from property u/s 9. It was held that the income derived by the company from shops and stalls was income received from property and fell under the specific head in Section 9, and that the character of that income was not altered because it was received by a company formed with the object of developing and setting up markets. This decision gives a square answer to the reasoning given by the Appellate Assistant Commissioner that as the memorandum and articles of association of the company in this case had authorised the letting of its assets, such letting and the receipt of income was in the course of its business. As pointed out in *Commercial Properties Ltd. v. Commissioner of Income Tax*, ILR [1928] Cal. 1057 merely because the owner of the property was a company incorporated with the object of owning property, the incidence of the income derived from the property owned could not be regarded as altered, and the income came more directly and specifically under the head " Property " than income from business. In *Sultan Brothers (P) Ltd. Vs. Commissioner of Income Tax*, their Lordships of the Supreme Court dealt with a case of a composite letting of building fitted with furniture and fixtures for the purposes of being run as a hotel and the question was whether the income derived from such a lease was one from business or one from property or one from other sources. In that case the assessee-company constructed a building on a certain plot of land, fitted it up with furniture and fixtures and let it out on

lease fully equipped and furnished for the purpose of running a hotel and the lease provided that a monthly rent of Rs. 5,950 for the building and a hire of Rs. 5,000 for the furniture and fixtures should be paid. The Supreme Court held that, (1) although the object of the assessee was to acquire land and building and turn them into account by letting and selling them, the activity contemplated did not by itself turn the lease into a business deal and the income under the lease could not, therefore, be assessed u/s 10 of the Income Tax Act as income from business, (2) as the assessee-company and the lessee intended that the building and the fixtures and furniture were to be used for one purpose, namely, for the purpose of running a hotel altogether, though the sums payable for their enjoyment were fixed separately, the lease satisfied all the conditions for the applicability of Section 12(4), and (3) when a building and plant, machinery or furniture are inseparably let the Income Tax Act contemplates the rent from the building as a residuary head of income and not one to be computed u/s 9. Their Lordships of the Supreme Court had stated that whether a particular letting is business has to be decided in the circumstances of each case, that each case has to be looked at from a businessman's point of view to find out whether the letting was for business or for the exploitation of his property by an owner, and that it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on.

15. Having regard to the principles laid down in the above decisions it has to be found out whether the studio building has been let out in the course of a business or it is a mere exploitation of the property by the owner. Section 9 of the Indian Income Tax Act, 1922, and Section 22 of the Income Tax Act, 1961, make receipts from property taxable under the head " income from property " on the owner. The mere fact that the studio building along with the machinery was used for the business of the assessee in film production at one stage and, therefore, was a commercial asset, will not make any difference since a specific head of charge is provided for income accruing from the ownership of a house property and the rental income from the studio building cannot be brought to tax under any other head. As pointed out in *BENGAL JUTE MILLS CO., LTD., CALCUTTA Vs. COMMISSIONER OF Income Tax, CENTRAL, CALCUTTA.*, letting out property is the ordinary method of obtaining income from the property, and management of property by letting it out does not result in an income from business, unless the functions of managing and letting out the property are the sole or main functions of the company. In that case the court was concerned with a case where the assessee-company which was engaged in the manufacture and sale of jute products let a portion of its business premises to a firm which was conducting the business of dehydrating potatoes. The court held that the rents and profits received from such letting could not be regarded as profits of the assessee's business as the letting out of the property was not either part of its business or a separate business and that, therefore, the income derived from the letting of the assessee's premises cannot be regarded as income from business for the purpose of the Excess Profits Tax Act.

16. As already stated, in this case, the assessee has stopped his business of producing films even during the assessment year 1957-58 and all the machineries required for the production of films had been dismantled and sold and the building is only used as a cotton godown. Therefore, the rental receipts received by the assessee in the accounting year could only be traced to the ownership of the same by the assessee-company and it cannot be said to be an income from the business of film production. It is significant to note that even the business of distributing films which did not require the studio building was stopped during the accounting year. Therefore, the rental receipts have nothing to do with the defunct business the assessee carried on before the assessment year 1957-58. The learned counsel for the assessee contends that the business - of film production has been merely suspended and the assessee intends or contemplates reviving that business, and that, so long as the revenue is not able to show that the assessee has completely and for ever discontinued the business, the studio building continued to be a commercial asset in the assessee's hands and that should be taken as conclusively showing that the income from that commercial asset is a business income. But, we are not inclined to agree with the contention of the learned counsel for the assessee that the facts of this case indicate, in any way, the assessee's intention to revive the business of film production. The fact that he has dismantled and sold all the machineries" installed in the studio building and the building has been let out for a cotton godown shows that the assessee has no intention to start the business in the accounting year. If the assessee has retained the machineries in fact and let out the studio building for film production, it could be said that he could revive the business at any time and that the income by such letting was a business income. Such a question was dealt with by the Supreme Court in *Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd.*, on which reliance is placed by the assessee. In that case the assessee-company was a manufacturer of silk cloth and as a part of its business it installed a plant for dyeing silk yarn. On account of war it could not make use of the plant and had to keep it idle. In the course of the accounting year it was let out to a person on a monthly rent for dyeing jute. The question was whether the rents realised by the assessee were chargeable to excess profits tax as profits of business. The Supreme Court held that it was part of the normal activities of the assessee's business to earn money by making use of its machinery either by employing it in its own manufacturing concern or temporarily letting it, to others for making profit for that business when for the time being it could not itself run it and that as the dyeing plant had not ceased to be a commercial asset of the assessee the rental receipts have to be treated as income from business and was chargeable to excess profits tax. The Supreme Court had expressed that if the commercial asset is not capable of being used as such, then its being let out to others does not result in an income which is the income of the business, but it cannot be said that an asset which was acquired and used for the purpose of the business ceased to be a commercial asset of the business as soon as it was temporarily put out of use or let out to another person for use in his business or trade.

17. Reliance is also placed by the assessee on a decision of this court in G.R. Narasimier and Co. Vs. Commissioner of Income Tax, and of the Supreme Court in S. G. Mercantile Corporation P. Ltd, v. Commissioner of Income Tax, in support of its contention that the exploitation of a commercial asset in any one of the ways will be of a commercial character and will fall within the wide ambit of business. In S.G. Mercantile Corporation P. Ltd. Vs. Commissioner of Income Tax, Calcutta, the facts were these : The assessee carried on business of running a powerloom factory by manufacturing handloom cloth in partnei-ship up to April 12, 1954, and thereafter the manufacturing was stopped and the machinery and the buildings were lying idle. The powerloorns. were then commissioned again to work by another person with effect from November 1, 1956, on condition that the assessee was to be paid a fixed sum of Rs. 650 per month as and by way of his share of the net profits. The departmental authorities and the Tribunal treated the agreement as one of lease and assessed the income derived by the assessee therefrom as income from other sources, rejecting the assessee"s contention that the same was assessable as income from business. On those facts this court held that the intention of the parties as expressed in the agreement being one to create the relationship of principal and agent in relation to the working of the looms, it could not be treated as a lease and hence the income was assessable as income from business, and the reasoning given is this:

" There may be people who may take risk and then make a profit or incur "oss, but there may be others who may not be willing to take risk, but still willing to run a business by themselves or through other means and proceed cautiously and make a moderate profit, Logically speaking, there is no reason why the latter category of activity is any the less a business carried on by such persons. If there is a commercial asset and it can be exploited in many ways which in the process may be, of a wasting character or subject to wear and tear, we should be inclined to think that irrespective of the particular mode or means of working, the activity will be of a commercial character and would fall within the wide ambit of business."

18. In that case the commercial asset as such was exploited by the assessee through an agent and it naturally follows that the assessee instead of himself running the powerlooms worked the powerloom factory through an agent and received his share of the profits which will be clearly an income from business. But, that is not the case here. Here, even the assessee himself cannot use the studio building for the purpose of his business of film production without purchasing new machineries and installing the same in the building. The studio building as such cannot be put to use as a studio for production of films either by the assessee or by the lessee.

19. 5. G. Mercantile Corporation P. Ltd. v. Commissioner of Income Tax was a case where the assessee-company which was authorised by its memorandum of association to take on lease or otherwise acquire and to hold, improve, lease or otherwise dispose of land, houses and other real and personal property and to

deal with the same commercially, took on lease a market place for an initial term of 50 years and spent a sum of Rs. 5 lakhs for the purpose of remodelling and repairing the structures on the site. During the accounting year the activity of the assessee-company consisted of developing property and letting out portions thereof as shops, stalls and ground spaces to shopkeepers, stallholders and daily casual market vendors. The question was whether the income of the assessee-company from subletting the stalls was assessable as business income u/s 10 of the Income Tax Act, 1922, or as income from other sources u/s 12. The Supreme Court held that the definition of "business" in Section 2(4) was of wide amplitude as it could embrace within itself dealing in real property as also the activity of taking a property on lease, setting up a market thereon and letting out shops and stalls in the market, and, therefore, the activity of the assessee and the income derived therefrom fell u/s 10 of the Act and not u/s 12 and that the residuary head of income u/s 12 can be resorted to only if none of the specific heads is applicable to the income in question and it comes into operation only after the preceding heads are excluded. This case, instead of helping the assessee, supports the contention of the revenue. The Supreme Court in that case, while dealing with the scope of Section 9, has stated :

" Section 9 of the Act deals with income from property. According to that section, the tax shall be payable by an assessee under the head "income from property" in respect of the bona fide annual value of the property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried on by him, the profits of which are assessable to tax, subject to certain allowances which are mentioned in that section but with which we are not concerned. It is noteworthy that the liability to tax u/s 9 of the Act is of the owner of the buildings or lands appurtenant thereto. In case the assessee is the owner of the buildings or lands appurtenant thereto, he would be liable to pay tax under the above provision even if the object of the assessee in purchasing the landed property was to promote and develop market thereon. It would also make no difference if the assessee was a company which had been incorporated with the object of buying and developing landed properties and promoting and setting up markets thereon. The income derived by such a company from the tenants of the shops and stalls constructed on the land for the purposes of setting up market would not be taxed as "business income " u/s 10 of the Act, to which a more detailed reference would be made hereafter, but u/s 9 of the Act."

20. The Supreme Court specifically laid down the principle that once the income is treated as income from property the character of that income will not be altered because it has been received by a company, and the learned judges have cited with approval the following observations in *Karanpura Development Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal*, :

" Ownership of property and leasing it out may be done as a part of business, or

it may be done as land-owner. Whether it is the one or the other must necessarily depend upon the object with which the act is done. It is not that no company can own property and enjoy it as property, whether by itself or by giving the use of it to another on rent. Where this happens, the appropriate head to apply is " income from property" (section 9), even though the company may be doing extensive business otherwise. But a company formed with a specific object of acquiring properties not with a view to leasing them as property but to selling them or turning them to account even by way of leasing them out as an integral part of its business, cannot be said to treat them as land-owner but as trader."

21. On a due consideration of the matter in the light of the statutory provisions and the relevant decisions on the point, we are of the view that the rents received by the assessee during the accounting year from the studio building would fall under the head " income from property " and not under the head " profits and gains of business ". The question is, therefore, answered in the negative and against the assessee. The revenue will have its costs from the assessee. Counsel's fee Rs. 250.

Question answered in the negative.