(1990) 05 CAL CK 0011

In the Calcutta High Court

Case No : IT Reference No. 215 of 1985

Commissioner of Income Tax APPELLANT

Vs

Hope India Ltd. RESPONDENT

Date of Decision : 17-05-1990

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1993) 68 TAXMAN 277

Hon'ble Judges : Suhas Chandra Sen, J;Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : A.C. Moitra and R.C. Prasad, for the Appellant; Aloke Pal, for the Respondent

Judgement

Sen, J.—The Tribunal has referred the following question of law to this Court u/s 256(1) of the income tax Act, 1961 (''the Act''):

Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that the disallowance of Rs. 52,000 out of the hiring charges claimed to have been paid for the lifts to Equipment Leasing Co. was not justified?

The question that has come up for consideration before this Court cropped up also in the earlier assessment years. The Tribunal''s order disposing of the case for the assessment year 1971-72 in IT Appeal No. 146 (Cal.) of 1974- 75 has been annexed to the statement of case.

2. The facts as found by the Tribunal are as under :

The assessee is a company. The assessment year involved is 1973-74 for which the previous year ended on 31-3-1973. The assessee carried on business as a dealer in shares, land and hire purchases. In addition, the assessee also derived income from house property and other sources such as dividend and lease rent. etc. The assessee-company as in the preceding assessment years had claimed expenses of Rs. 72,000 alleged to have been paid to Equipment Leasing

Company as hiring and service charges in respect of lifts installed in its premises. For the reasons mentioned in the preceding assessment years, the income tax Officer held that Equipment Leasing Company was a mere benami concern and the said concern was brought into existence in order only to receive the service charges which had the effect of minimising the assessee''s income for the purpose of income tax. Thus, the income tax Officer came to the conclusion that the payment of Rs. 72,000 was bogus. However, the income tax Officer, considering the fact that the assessee must have incurred some expenses in connection with operational and service charging in respect of lifts, allowed a sum of Rs. 20,000 on estimate and added the balance sum of Rs. 52,000 to the assessee''s total income.

The assessee appealed to the Commissioner of income tax (Appeals) against the disallowance of the above sum of Rs. 52,000. The Commissioner of income tax (Appeals) found that the issue was concluded by the Tribunal in favour of the assessee in its order in IT Appeal No. 146 (Cal.) of 1974-75 for the assessment year 1971-72. Hence, following the aforesaid order of the Tribunal deleted the addition of Rs. 52,000.

The revenue came up in appeal before the Tribunal against the deletion of Rs. 52,000 by the Commissioner of income tax(Appeals). The Tribunal following the earlier order dated 3-5-1976 confirmed the deletion of Rs. 52,000 and dismissed the departmental appeal.

3. The reasons given in the earlier order for upholding the contention of the assessee by the Tribunal were as follows :

We need not discuss the case laws referred to us because our decision on the point in issue would entirely depend upon the facts and circumstances of the case. Hence, in view of our discussions in the foregoing paragraphs we agree with the learned counsel for the assessee that the authorities below had failed to establish the case of benami against the assessee company with reference to the concern of Equipment Leasing Company. Here, we must mention that whatever little more was paid to the said concern by the assessee company represented remuneration to the proprietor of the said concern and for the risk he had taken in launching upon the business. Therefore, we conclude by holding that the expenditure of Rs. 72,000 was laid out or expended wholly and exclusively for the purpose of making or earning income by way of service charges from the tenants. The income tax Officer is directed to allow the expenditure in full.

The Tribunal had taken into consideration all the facts and circumstances of the case, the evidence produced before it and also the various arguments advanced before it. The Tribunal''s conclusion is that the authorities below had failed to establish the case of benami against the assessee-company. It is well-settled that ''benami'' is a pure question of fact. The finding of fact by the Tribunal has not been challenged on the ground of perversity. It has also not been shown before us how the Tribunal had misdirected itself on the evidence produced before it. Under these circumstances, the question must be answered in the negative and in favour of the assessee. There will be no order as to costs.

Banerjee, J.

I agree.

