
(1985) 02 PAT CK 0020
In the Patna High Court
Case No : Taxation Case No. 43 of 1975

Commissioner of Income Tax	Vs	APPELLANT
Model Jharia Colliery Co.		RESPONDENT

Date of Decision : 26-02-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1986) 54 CTR 79 : (1987) 163 ITR 565

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : B.P. Rajagarhia and S.K. Sharan, for the Appellant; K.N. Jain, S.K. Narain and Shambhu Sharan, for the Respondent

Judgement

Nazir Ahmad, J.—A statement of the case has been submitted by the Income Tax Appellate Tribunal, "A" Bench, Patna, u/s 256(1) of the Income Tax Act, 1961 (hereinafter to be called as "the Act"), referring the following questions of law for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal were correct in law in holding that the income derived by the assessee was taxable under the head "Business", and

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the status of the assessee should be firm and not association of persons."

2. The relevant facts of the case can be culled out from the statement of the case. The assessee claims to be a firm and the assessment year involved is 1967-68 corresponding to the accounting period ending December 31, 1966. The assessee, by an agreement, appointed a managing contractor for extraction of coal and from him the assessee received certain commission. The Income Tax Officer came to the conclusion that the assessee, by giving to a managing contractor the complete control over the mines of the colliery, ceased to carry on

its business and, therefore, the income received by the assessee was assessable under the head "Other sources". He also held that as there was no intention to carry on business, there can be no firm as such and treated the status of the assessee as an association of persons. The order of the Income Tax Officer has been annexed and marked as annexure "A" forming part of the statement of the case.

3. The assessee went up in appeal before the Appellate Assistant Commissioner, who, after considering the facts and circumstances of the case, held that the income received was business income. He further held that in the immediately preceding year the Income Tax Officer making the assessment had treated that the status of the assessee as that of a firm and that once the income was treated as income from business, there was no bar to treat the status of the assessee as firm. Accordingly, he directed the Income Tax Officer to take the status of the assessee as that of a firm. A copy of the order of the Appellate Assistant Commissioner has been annexed and marked as annexure "B" forming part of the statement of the case.

4. Aggrieved by the order of the Appellate Assistant Commissioner, the Department came up in appeal before the Tribunal and it was submitted on behalf of the Department that by the appointment of the managing contractor, the assessee leased out its colliery and received certain commission from the managing contractor and that in fact the assessee had no business activity. It was submitted that the income received by the assessee was assessable under the head "Other sources" and not as income from business. It was further submitted that the assessee had no intention to carry on business and in the absence of that, there could be no partnership. The Tribunal, on the facts and in the circumstances of the case, upheld the order of the Appellate Assistant Commissioner following the decision of the Punjab High Court in *DAL CHAND and SONS Vs. COMMISSIONER OF Income Tax*, and *Nauharchand Chananram Vs. Commissioner of Income Tax*, where it was held that the income received by the assessee from letting out its commercial assets was assessable under the head "Business" and not under the head "Other sources" and that there can be a partnership carrying on business by leasing of its commercial assets. A copy of the order of the Appellate Tribunal has been annexed and marked as annexure "C" forming part of the statement of the case.

5. On the above facts, the questions mentioned above were referred to this court at the instance of the Department.

6. In this case, the lease deed on the basis of which the findings were given by the lower authorities was not annexed to the statement of the case. We also adjourned the case several times for filing of the lease deed by the parties but neither of the parties filed the lease deed, and in the absence of the lease deed, it is not possible for this court to answer the questions referred to this court.

7. Mr. B.P. Rajgarhia on behalf of the Revenue has relied on the decision in *Khas*

Benedih Colliery v. CIT [1974] BCJ 440 where the lease deed was produced and the various clauses of the lease deed were considered with reference to the various clauses in Ray Talkies Vs. Commissioner of Income Tax, and then it was held that the colliery having been let out on fixed income, the income received becomes income from "Other sources" and not from "Business" and no business being carried out by the partners, the firm is not entitled to renewal of registration.

8. It cannot be doubted that this court will not be able to answer the questions referred to this court, unless the Tribunal considers the clauses of the lease deed and comes to a definite finding whether clauses of the lease deed are as mentioned in the decision in Khas Benedih Colliery v. CIT [1974] BCJ 440 or the clauses are on the lines as mentioned in the decision in Ray Talkies Vs. Commissioner of Income Tax, .

9. Under the circumstances, the case is sent back to the Appellate Tribunal without answering the questions referred to this court for opinion with a direction that the Appellate Tribunal will peruse the clauses of the lease deed in the present case and will find out as to whether on the basis of the clauses it can be said that the assessee was carrying on business or the assessee has to be assessed in the status of an association of persons. If after a fresh finding of the Tribunal after perusal of the clauses of the lease deed the question of reference arises again, then, while referring the questions, the Tribunal should also enclose a copy of the lease deed in the case of the assessee.

10. In view of the above order, the taxation case is disposed of.

Uday Sinha, J.

11. I agree.