(2002) 10 MAD CK 0161

In the Madras High Court

Case No : Tax Cases No''s. 90 and 91 of 1998 (Reference No''s. 84 and 85 of 1998)

Commissioner of Income Tax APPELLANT

Vs

Monarch Tools Pvt. Ltd. RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:
Income Tax Act, 1961 — Section 156, 28

Citation : (2003) 182 CTR 463 : (2003) 260 ITR 258

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; J. Narayanasamy, for the Respondent

Judgement

K. Raviraja Pandian, J.—The common question referred for opinion of this court pursuant to the order dated January 17, 1997, made in T. C. P. Nos. 99 and 100 of 1996 is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the interest from fixed deposits in banks should be treated as business income ?"

2. The facts from which the above said question arose are as follows :

The assessment years are 1985-86 and 1986-87. The assessee is a company engaged in the business of design, fabrication, erection and commissioning of plant and machinery of paper mills and, inter alia, received advances from the customers. Since it was not necessary to employ the entire funds so received immediately for the purpose of business, the excess fund available with the assessee was deposited with the banks as fixed deposits for varying periods. The interest income earned by the assessee in a sum of Rs. 3,37,390 for the assessment year 1985-86 was credited to the profit and loss account and returned by the assessee as part of business income. The Assessing Officer treated the interest so earned as income from other sources. On appeal, the

Commissioner of Income Tax (Appeals) held that the income should be regarded as income from business. On further appeal by the Department, the Tribunal held that monies deposited in the bank related to the business receipts and hence the interest earned from such deposit should be regarded as business income. Hence, the question as referred to above.

3. Learned standing counsel appearing for the Revenue has submitted that it is not the business of the assessee to make deposit and earn interest on such deposit. Even if the assessee has utilised the advances received from the customers for making deposits, the nature of the interest receipts will not be that of business receipts. The business of the assessee is manufacture and erection of plant and machinery for the manufacture of papers and if the assessee employs the excess fund, which is not immediately needed for the business purpose, so as to earn some income, such income will be of the nature of income assessable under other sources. It is also not correct to say that the deposits with the banks which earned the interest, entirely represent the advance received from the customers. The assessee-company has earned substantial profit in the past and in the current year and thus the fund available with the company for making deposits would represent such profit also.

4. On the other hand, learned counsel appearing for the assessee has claimed that the surplus money not required for the business purpose of the assessee has been deposited for the purpose of earning interest and if the amount is required for the business that would have been utilised for the purpose of business. Hence, the interest earned from out of the deposits made by the assessee could rightly be treated as business income as held by the Commissioner of Income Tax, which has been affirmed by the Tribunal. There is no necessity to interfere with such a finding.

5. We heard the arguments of learned counsel on either side.

6. We are of the opinion that the finding arrived at by the Tribunal cannot be sustained. The assessee has received a sum of Rs. 3,37,390 for the assessment year 1985-86 and Rs. 1,75,612 for the assessment year 1986-87. That was in the nature of additional source of income to the assessee, which was not in any way linked to the business that the assessee was carrying on. The interest income that has been received by the assessee on its own fund kept in deposit with the bank did not have any direct link or nexus with the business that was being carried on. The deposit made with the bank was for the convenience and benefit of the assessee with a view to derive interest income. Thus, the true character of the income is not "business income" but "income from other sources" only.

7. Under the Income Tax Act, 1961, the total income of a company is chargeable to tax u/s 4. The total income has to be computed in accordance with the provisions of the Act. Section 14 lays down that for the purpose of computation, income of an assessee has to be classified under six heads. It is possible for a

company to have different sources of income each one of which will be chargeable to Income Tax. The company can keep the surplus funds which are not immediately required for the purpose of business in deposits in order to earn interest. Such interest will be chargeable u/s 56.

8. The Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, has held that if the assessee keeps the surplus funds in short-term deposits in order to earn interest, such interest would be chargeable u/s 56.

9. Learned counsel for the assessee however contended that the decision of the apex court in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, , was in the background of the fact that the assessee therein had not commenced business and therefore could not have claimed that the income received on fixed deposit was part of its business income and therefore the law laid down by the apex court is not applicable to the facts of the present case. We are not able to accept the argument of learned counsel that the law laid down by the apex court is confined to the cases where a company had not commenced business. The apex court proceeded on the basis that in the usual course, interest received by the company from bank deposits and loans could only be taxed as income under the head "Income from other sources" u/s 56 of the Act. The proposition laid down by the apex court is that the interest received by a company which carries on business from bank deposit and loans could only be taxable as "income from other sources" and not as "business income".

10. A Division Bench of this court in which one of us N. V. Balasubramanian J., is a party to the judgment, in the case of South India Shipping Corporation Ltd. Vs. Commissioner of Income Tax, , after taking stock of almost all the decisions including the decision of the Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, , while considering the question as to whether the interest from bank deposits and loans to others should be assessed to tax under the head of "Income from other sources" and not under the head of "Business income", has held that (headnote) :

"The income received by an assessee has to be fitted under one or other head having regard to the source from which that income is derived. The fact that a person carries on business does not lead to the inference that all income received by such a person is business income. The same assessee can have income which may require to be classified, under more than one head. It is the manner in which the income is derived that is relevant and not merely the fact that the person is engaged in a business or in a profession.

Interest received by a company, which carries on business, from bank deposits and loans could only be taxable as ''income from other sources'' and not as ''business income''."

11. In view of the foregoing reasoning and in the light of the decisions of the

Supreme Court and this court above referred to, we are of the view that the Commissioner of Income Tax as well as the Tribunal are not correct in coming to the conclusion that the income earned on bank deposit by the assessee is business income.

12. Hence, the question referred to is answered in the negative, in favour of the Revenue and against the assessee.