

(1989) 11 KL CK 0027

In the High Court Of Kerala

Case No : Income-tax Reference No. 8 of 1986

Commissioner of Income Tax

APPELLANT

Vs

P.I. Simon

RESPONDENT

Date of Decision : 28-11-1989

Acts Referred:

Income Tax Act, 1961 — Section 263, 37

Citation : (1991) 2 ILR (Ker) 9 : (1991) 187 ITR 302

Hon'ble Judges : Varghese Kalliat, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; V.M. Kurian and A.V. Thomas, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following two questions of law for the decision of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and on facts in holding that "the oil mill was only a branch and did not constitute a separate business" and is not the above finding wrong, unreasonable and without material and is not the above finding vitiated by failure to consider the relevant evidence and material facts ?

2. Whether, on the facts and in the circumstances of the case, the payment of retrenchment compensation is allowable as a deduction u/s 37 of the Income Tax Act, 1961 ?"

2. The respondent, an individual, is an assessee to Income Tax. We are concerned with the assessment year 1975-76, The previous year ended on March 31, 1975. The assessee was mainly dealing in oil and oil seeds as well as commission agency in those goods. He was also running an oil mill in a different locality in the same town. The oil mill was closed. The asses-see had to pay a sum of Rs. 20,850 as retrenchment compensation to the employees. It was

claimed as a deduction in the computation of the income. The Income Tax Officer allowed the same. The Commissioner of Income tax initiated suo motu revision proceedings u/s 263 of the Act and held that the oil mill was a "separate" business and was not part of the assessee's business in oil and oil seeds and so the expenditure incurred, by way of payment of retrenchment compensation, was not an allowable deduction. The assessee appealed before the Appellate Tribunal and contended that the business carried on by him was the same and so the payment of retrenchment compensation was a deductible item of expenditure. Two main grounds relied on by the Commissioner of Income Tax to negative the deduction were the following ; (1) the oil mill was maintaining separate accounts, and (2) the assessee had entered into an agreement with the workers, under which compensation was paid, stating that he would retake the workers if, for any reason, the oil mill was restarted. The Commissioner held that there would not be such a clause in the agreement if the oil mill was only a branch, or part of the same business run by the assessee. The Appellate Tribunal referred to the tests laid down by the Supreme Court of India in *B.R. Limited Vs. V.P. Gupta, Commissioner of Income Tax, Bombay*, , to decide whether the oil mill business formed part of the assessee's business or a separate business and held that there was unity of control in the nature of the two lines of business. It also held that the entire requirements of finance for the oil mill came from the head office. It was further observed that the only credit item in the balance-sheet on the liabilities side is the dues to the head office, that the oil mill has no independent bank account and no loans are shown as payable by the oil mill and, in the circumstances, there was complete interlacing and interlocking of funds apart from unity of control. In the light of the tests laid down in the the decision of the Supreme Court mentioned above, the oil mill was found to be only a branch and not a separate business. Holding that the business is one and the same and that the requirements of business necessitated the closing down of the oil mill, the Appellate Tribunal held that the payment of retrenchment compensation, necessitated on account of the closure of the oil mill, is a permissible deduction u/s 37 of the Income Tax Act. It is thereafter at the instance of the Revenue that the Income Tax Appellate Tribunal has referred the questions of law, formulated herein-above, for the decision of this court.

3. We heard counsel for the Revenue. Mr. N.R.K. Nair, as also counsel for the assessee-respondent. The sole question that arises for consideration is whether the different activities carried on by the assessee constitute the same business. The said question has to be decided on the application of the tests laid down by the Supreme Court of India, In such circumstances, on the application of the tests laid down by the Supreme Court, whether the different activities carried on by the assessee constitute the same business is largely a mixed question of fact and law. Unless it is shown that the Tribunal applied the tests laid down by the Supreme Court wrongly or that there is no evidence to support the findings of the Tribunal or that the proper legal inference from facts has not been drawn or that the decision of the Appellate Tribunal is otherwise irrational or perverse, this

court will not be entitled to interfere with the findings of fact arrived at by the Appellate Tribunal.

4. In the instant case, the Appellate Tribunal referred to the tests laid down by the Supreme Court in *B.R. Limited Vs. V.P. Gupta, Commissioner of Income Tax, Bombay*, and stated thus :

"What we have to see is whether there is unity of control in the nature of the two lines of business. The earlier decisions of the Supreme Court had also approved of the tests based on interconnection, interlacing and interdependence. Although the points made out by the Commissioner have relevance in deciding the issue, they are not conclusive. The control is exercised through provision of finance. We find that the entire requirements of finance for the oil mill has to come from the head office. In fact, the only credit item in the balance-sheet on the liabilities side is the dues to the head office. The oil mill has no independent bank account. No loans are shown as payable by the oil mill. This shows that the finances are centralised and the requirements of finance by the oil mill are met by drawing from the head office. This shows complete interlacing and interlocking of funds. We also find that there is unity of control. It would, therefore, appear that on the tests laid down by the Supreme Court, the oil mill was only a branch and did not constitute a separate business. On this finding of fact one has to see whether the payment of retrenchment compensation is allowable as a deduction. The requirements of business necessitated the closing down of the oil mill. A purpose of business is therefore served by such a closure. The oil mill could not be closed down without payment of retrenchment compensation. Therefore, the payment of retrenchment compensation is for the purpose of business and allowable u/s 37."

5. A reading of the appellate order rendered by the Tribunal would show that the Appellate Tribunal has correctly applied the tests to the facts of the case. It cannot be said that the Appellate Tribunal posed the question that arose before it wrongly or failed to bear in mind the tests applicable or otherwise acted illegally or unreasonably or in a perverse manner. The ultimate conclusion being a mixed question of fact and law, there is no scope for interference with the order of the Appellate Tribunal.

6. Counsel for the Revenue very strongly relied on the decision in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. K. Kelukutty*, and stated that the decision of the Appellate Tribunal will not stand scrutiny in the light of the aforesaid decision of the Supreme Court. This plea is without force. The question that arose before the Supreme Court was whether the two firms consisting of identical partners carrying on two businesses had to be treated as business of a single partnership firm. The Supreme Court adverted to the decisions of the various High Courts wherein the said question came up for consideration, and held that the various decisions of the High Courts proceeded on the basis that, for the purposes of Income Tax law, each partnership firm must be regarded as an assessable entity, separate and distinct from its

partners, and the approach proceeded upon a conceptual perspective of the tax law. Holding that the above approach adopted by the High Courts is not sound, the Supreme Court held that the provisions of the tax law are structured into a scheme providing for the assessment of partnership income, that the aforesaid principle cannot go beyond the purposes of that scheme and cannot confer a corporate personality on the firm and beyond the area within which that principle operates, the general law, that is to say, the partnership law, holds undisputed domain. Proceeding further, their Lordships of the Supreme Court held, at page 165, as follows :

"The firm name is only a collective name for the individual partners. But each partnership is a distinct relationship. The partners may be different and yet the nature of the business may be the same, the businesses may be different and yet the partners may be the same. An agreement between the partners to carry on a business and share its profits may be followed by a separate agreement between the same partners to carry on another business and share the profits therein. The intention may be to constitute two separate partnerships and, therefore, two distinct firms. Or to extend merely a partnership originally constituted to carry on one business, to the carrying on of another business. It will all depend on the intention of the partners. The intention of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance and other incidents of the respective businesses,"

7. On the other hand, the question whether different businesses carried on at different points of time constitute one business or separate business came up for consideration before the Supreme Court in *B.R. Limited Vs. V.P. Gupta, Commissioner of Income Tax, Bombay*. After referring to the earlier decisions of the Supreme Court and the principles laid down in English decisions, the court held that a common management, a common business organisation, a common administration, a common fund and a common place of business showed in the said case the interlacing and interdependence of the businesses carried on by the assessee. The court also laid emphasis on the unity of control and certain other circumstances adverted to by it in the judgment, and held that there was dovetailing or interlacing between the business of import and the business of export carried on by the assessee, and they constituted one business.

8. After referring to the tests laid down by the Supreme Court in *B.R. Limited Vs. V.P. Gupta, Commissioner of Income Tax, Bombay*, the Appellate Tribunal, in the instant case, held that there was unity of control and that there was interlacing and interdependence and so the oil mill was part of the business carried on by the assessee. There is no error of law discernible in the order of the Appellate Tribunal either in its approach or in the conclusion aforesaid. The Commissioner of Income Tax was apparently swayed by the fact that the oil mill was maintaining separate accounts and that the agreement by which the workers

were paid compensation, provided that the assessee would retake the workers if, for any reason, the oil mill was restarted. We are of the view that maintenance of separate accounts by itself will not be a ground to hold that the oil mill was a separate business. The Appellate Tribunal has found that the oil mill has no independent bank account, that no loans are shown as payable by it and that the finances are centralised and the requirements of finance by the oil mill are met by drawing from the head office. This shows complete interlacing and interlocking of funds and also unity of control. The further fact that there was an agreement to retake the workers, if the oil mill was restarted, is also of no consequence. In a case where the assessee was running various businesses and there was separate staff for one of them, which was not intertransferable, the Gujarat High Court held that the unity of control was not affected since there was a common management and administration in view of the overall control of the various businesses. (See *Bansidhar Pvt., Ltd. Vs. Commissioner of Income Tax, Gujarat-I*, . By parity of reasoning, we are of the view that the provision in the agreement that the assessee would retake the workers if, for any reason, the oil mill was restarted, is of no consequence, in view of the fact that there was unity of control in the nature of the two lines of business.

9. In the light of our above reasoning, we are of the view that the Appellate Tribunal was justified in holding that the oil mill was only a branch and did not constitute a separate business. The Appellate Tribunal was justified in holding so. The aforesaid finding is based on proper and legal material and is not vitiated.

10. We answer question No. 1 in the affirmative, against the Revenue and in favour of the assessee. In consequence, we answer question No. 2 also in the affirmative, against the Revenue and in favour of the assessee.

11. A copy of the judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.