
(1996) 05 PAT CK 0041

In the Patna High Court

Case No : Tax Case Nos. 72 & 73 of 1983

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

RAMDAS and SONS.

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Citation : (1996) 05 PAT CK 0041

Hon'ble Judges : Sachchidanand Jha, J;Aftab Alam, J

Bench : Division Bench

Judgement

SACHCHIDANAND JHA, J. :

These two references under s. 256(1) of the IT Act, 1961, are at the instance of the Revenue. The question of law referred to this Court for opinion is :

"Whether the Tribunal was correct in holding that the rental income of the assessee was liable to be assessed as business income ?"

2. The material facts are as follows :

The assessee had leased out a certain portion of the properties of Ramdas Oil Mills and Ramdas Industries for commercial purposes. It carried on the manufacturing and processing business which was closed about 35 years ago. In course of time, the machinery was also sold out and the premises were let out to different parties for oil milling business. The quarters meant for the staff were also let out. The income accruing from the premises were all along shown and assessed as income from business. In the assessment years under reference, namely, 1976-77 and 1977-78, the assessee received, respectively, Rs. 1,35,505 and Rs. 1,05,480 as rent. This income, as usual, was claimed to be income from business. After deducting expenses of Rs. 57,692 and Rs. 33,964 the net income of Rs. 72,813 and Rs. 71,515 was returned under the head "Business income". The ITO, however, found that as the business had been closed 35 years ago and the machinery, etc., also had been sold out and the premises too had been let

out on rent, the income (from rent) was assessable under the head "Income from house property". The assessee appealed to the CIT(A). The CIT(A) accepted the contention of the assessee that the premises had not been let out for residential purposes rather it had been leased out for commercial purposes in which manufacturing business was being carried on and, thus, the income was a result of exploitation of commercial assets assessable as income from business and, accordingly, set aside the order of the ITO. On appeal by the Department, the Tribunal upholding the findings of the CIT(A) further held that the premises being commercial assets of the assessee and having been used as such in the past and its income also having been assessed as business income in the past, the mere fact that some of the portions of the premises had not been utilised for the purpose of carrying on business cannot give rise to the conclusion that the assets had lost its character as commercial assets. According to the Tribunal, the staff quarters which are part of the premises and had been let out to different persons, also are commercial assets. The Tribunal, however, accepted the petition of the Department and made reference of the question of law quoted above.

3. It is not in dispute that not only the business which was being carried on by the assessee in the premises in question in the past, the income from which was being shown as business income, had been closed long time back, about 35 years ago, but the plant and machinery installed in the premises in connection with the business activities had also been sold out. It is also not in dispute that the premises including the staff quarters were let out to different persons and the income returned by the assessee in the assessment years in question were rental income from the premises. On these admitted facts it is to be seen whether the Tribunal erred in holding that income from the premises is business income of the assessee and not income from house property.

4. Income has been classified under different heads, such as, income from salaries, income from house property, income from profits and gains of business and profession, etc., in the IT Act. It is well-settled that classification of income does not mean that there are as many taxes as there are heads of income. The Income Tax is one tax on the aggregate of the income. It is also settled that where a particular income has been classified under a specific head, for example, income from interest on securities, it cannot be assessed as profits of business even if the securities are held as trading assets. In *East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal*, the Supreme Court observed : "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 s. 6 (now s. 14) 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 s. 6 (now s. 14), the fact that

it may indirectly be covered by another head will not make the income taxable under the latter head".

5. As stated above, it is not in dispute that the business activities being carried on by the assessee in the premises were closed a long time back and that after the letting out of the premises, it was only receiving the rental income therefrom. Dealing with the case of composite letting out of building fitted with furniture and fixtures for the purpose of being run as a hotel, the Supreme Court in *Sultan Brothers (P) Ltd. Vs. Commissioner of Income Tax*, 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 business mans point of view to find out whether the letting was for business or for the exploitation of his property by the owner.

It is, thus, to be seen whether the premises in question were let out by the assessee in the course of business or it is a mere exploitation of the property. The Calcutta High Court in *BENGAL JUTE MILLS CO., LTD., CALCUTTA Vs. COMMISSIONER OF Income Tax, CENTRAL, CALCUTTA.*, observed that 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 a property are the sole or main functions of the assessee.

6. As noticed above, the Tribunal took the view that even though the commercial activities had come to an end and the premises had been let out on rent, the premises did not lose its character as commercial assets. I have reservations in accepting the view to be correct. The fact that the premises along with the plant and machinery installed therein were being used for business and was, therefore, a commercial asset at one point of time cannot be conclusive of the fact that the asset would retain the same old character for all times to come. It should be kept in mind that the IT Act provides for a separate specific head with respect to income accruing from ownership of house property.

7. There is striking resemblance between the facts of the present case and those of *Commissioner of Income Tax Vs. Central Studios (P.) Ltd.*, In that case the building was being used earlier for business in film production. In course of time the assessee stopped the said business and started a different business of distributing films which did not require the studio building. In further course of time he dismantled the entire studio and sold out all the machinery and let out the building for being used as a cotton godown. The Madras High Court held on these facts that there was no intention on the part of the assessee to revive the film production and, therefore, the income from the building could not be called business income. In this connection it was observed (at p. 307) : "The fact that he has dismantled and sold all the machinery installed in the studio building and the building has been let out for a cotton godown shows that the assessee had no intention to start the business in the accounting year. If the assessee had retained the machinery intact 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". In coming to the said conclusion the Madras High Court relied on the decision of the Supreme Court in Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd., wherein a distinction had been made in allowing the plants to remain idle (on account of exigencies of situation caused by the war) and permanent cessation of the business activities.

8. In the present case the business activities had come to an end about 35 years ago, the machinery also had been sold out, evidencing intention of the assessee not to resume the business again which, in fact, could not be so done without purchasing the plant and machinery and installing the same in the premises, I do not think that the premises can be said to have retained their old character as business assets. In my opinion, the rental receipts from the building in order to classify as business income must have some nexus or be the result of some business activities and not merely the result of ownership. Merely because in the past the premises had been used for commercial purpose and the income accruing therefrom was shown and assessed as business, that cannot be the ground to hold that it will retain its same old character for all times to come. It is well-settled that each assessment year is a unit by itself and the liability of the assessee is to be determined with respect to the state of affairs as existing in the particular year.

9. For the reasons stated above, in my opinion, the Tribunal was not correct in holding the income from the premises in question to be business income and assessing the same as such. I would, accordingly, answer the question referred to this Court for opinion in the negative, i.e., in favour of the Revenue and against the assessee. On account of non-appearance of the assessee, I would make no order as to costs.

AFTAB ALAM, J. :

I agree.