(1998) 07 PAT CK 0046

In the Patna High Court

Case No : Tax Case No. 69 of 1985

Commissioner of Income Tax APPELLANT

Vs

Ramdas and Sons. RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (1999) 236 ITR 786 : (1999) 103 TAXMAN 267

Hon'ble Judges : B.M. Lal, C.J;S.K. Singh, J

Bench : Division Bench

Advocate : S.K. Sharan, for the Appellant; Shambhu Saran, for the Respondent

Judgement

1. This is an Income Tax reference u/s 256(1) of the Income Tax Act, 1961. The following question is referred by the Tribunal for the opinion of this court :

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

2. The assessee is a firm deriving income from contract work. The assessee is also owner of oil mill premises and though the oil mill is closed for the last 35 years, the quarters attached to the factory of the oil mill is let out to different tenants. The income derived from the let out portion of the oil premises from different tenants has been clubbed by the assessee in his business income derived from other sources. The Income Tax Officer the Appellate Commissioner and the Tribunal held that since the business activity of the oil mill is closed since last 35 years, therefore, income derived from factory premises as rent from tenants the same is to be assessed to tax as business income.

3. An application was moved before the Tribunal for referring the question to this court. The Tribunal observed that in the preceding year the same point arose and the Tribunal had referred the matter to this court and the same has been disposed of by a Division Bench of this court in Commissioner of Income Tax Vs. Ramdas and Sons . This court dealt with the issue in detail referring to other

decisions of other High Courts as also of the Supreme Court.

4. In Commissioner of Income Tax Vs. Ramdas and Sons , the conclusion reached by this court is that the Tribunal was not correct in holding the income from the premises in question to be business income and assessing the same as such. Therefore, this court answered the question referred to this court for opinion in the negative, i.e., in favour of the Revenue and against the assessee.

5. Learned counsel appearing for the assessee no doubt referred to a catena of decisions contending that the decision referred to in the case of Commissioner of Income Tax Vs. Ramdas and Sons , had not taken into consideration various other aspects of the case. But what are those other aspects he could not elaborately pointed out successfully supporting the same by relevant materials and decisions. Thus, in our view, it is not safe to interfere with the same in any manner and the ratio laid down in Commissioner of Income Tax Vs. Ramdas and Sons .

6. On the other hand, we may point out that for the view taken in Commissioner of Income Tax Vs. Ramdas and Sons , the Division Bench of this court has relied upon the decisions in the case of Commissioner of Income Tax Vs. Central Studios (P.) Ltd., ; BENGAL JUTE MILLS CO., LTD., CALCUTTA Vs. COMMISSIONER OF Income Tax, CENTRAL, CALCUTTA., ; Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd., and East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal, .

7. Out of these decisions, two Supreme Court decisions precisely deal with the points in issue. Thus the matter in issue is fully covered.

8. Since the matter in issue has been set at rest by this court on the basis of the decisions of the apex court as referred to above, we hold that the matter in issue under this reference is aptly covered by the decision in Commissioner of Income Tax Vs. Ramdas and Sons , and we follow the same dictum and hold that the Tribunal was not correct in holding the income from the premises in question to be business income and assessing the same as such. We accordingly answer the question referred to this court for opinion in the negative, i.e., in favour of the Revenue and against the assessee.