(1996) 04 MAD CK 0039

In the Madras High Court

Case No : Tax Case No. 503 of 1984 (Reference No. 445 of 1984)

Commissioner of Income Tax — APPELLANT

Vs

Ravichandran — RESPONDENT

Date of Decision : 17-04-1996

Acts Referred:
Income Tax Act, 1961 — Section 32(2)

Citation : (1998) 232 ITR 634

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question for the opinion of this court u/s

256(1) of the Income Tax Act, 1961 :

Whether, in the case of the partner of a firm which had become defunct, the Appellate Tribunal is correct in coming to the conclusion that the

unabsorbed depreciation relating to the defunct firm which had closed its business in the assessment year 1978-79 must be carried forward and set

off against the profits of the assessee from other business in the assessment for the year 1979-80 ?

2. The assessee is a partner in the firm by name Sri Abirami Cotton Mills. The assessee is deriving income from property and share income from

three firms. He was also a partner in a firm by name Sri Abirami Cotton Mills, which has been incurring losses year after year right from its

inception. That firm was sold as a going concern in the course of the assessment year 1978-79. The assessee had certain carried forward losses and unabsorbed depreciation relating to this firm. The assessee claimed that this carried forward business loss and unabsorbed depreciation of Rs.

40,827 should be set off against his income for the assessment year 1979-80, which is the year under consideration. The Income Tax Officer

negatived the assessee''s claim on the ground that as the business of Sri Abirami Cotton Mills in which the loss was incurred had been closed

down, the carried forward loss could not be set off.

3. On appeal, the assessee contended that as he was a partner in a number of firms, the business of these firms formed one business and so long as

one of those businesses exists, it must be presumed that the same business continued and any loss sustained in one of those businesses would be

available for set off against the profits from any other business. The alternative contention of the assessee was that at least unabsorbed depreciation

of the defunct firm should be carried forward and allowed set off against the profits of this year. The assessee placed reliance upon an earlier

decision on this aspect in the case of Commissioner of Income Tax Vs. Virmani Industries (P.) Ltd., and Commissioner of Income Tax, Bombay

City II Vs. Estate And Finance Ltd., . The Appellate Assistant Commissioner has not accepted the first contention as the firm in which the loss was

sustained was defunct, but accepted the alternative claim by relying upon the decisions in Commissioner of Income Tax Vs. Virmani Industries (P.)

Ltd., and Commissioner of Income Tax, Bombay City II Vs. Estate And Finance Ltd., . Consequently, the Appellate Assistant Commissioner

directed the Income Tax Officer to set off the unabsorbed depreciation against the profits of the assessment year 1979-80. On appeal by the

Revenue, the Tribunal upheld the order of the Appellate Assistant Commissioner allowing set off of carried forward depreciation of the defunct

firm and dismissed the departmental appeal, by relying on an earlier decision of the Tribunal in the case of Smt. C. Angammal in I.T.A. No. 587

(Mad) of 1982, dated November 9, 1982.

4. A similar question came up for consideration before the Supreme Court in Commissioner of Income Tax, Meerut and Others Vs. Virmani

Industries Pvt. Ltd. and Others, wherein the Supreme Court affirming the decision in Commissioner of Income Tax Vs. Virmani Industries (P.)

Ltd., held that if after setting off the unabsorbed depreciation allowance relating to the assessment year 1956-57 against the income for the

following assessment years, any depreciation allowance still remained unabsorbed, it could be set off against the income for the accounting period

relevant to the assessment year 1965-66. The decision in the case of Smt. C. Angammal in I.T.A. No. 587 of 1982, who is the another partner of

the firm, came up for consideration before this court in Commissioner of Income Tax Vs. B. Vijayalakshmi and others, (Appex.) wherein by a

judgment, dated March 28, 1996, this court affirmed the order passed by the Tribunal. In view of the foregoing decision, the order passed by the

Tribunal on this aspect is in order. Accordingly, we answer the question referred to us in the affirmative and against the Department. No costs.