
(1965) 01 AP CK 0008

In the Andhra Pradesh High Court

Case No : Case Referred No. 14 of 1962

CORINGA CO. LTD.

APPELLANT

Vs

COMMISSIONER OF Income Tax, A. P.

RESPONDENT

Date of Decision : 13-01-1965

Acts Referred:

Income Tax Act, 1961 — Section 10, 12, 2

Citation : (1965) 2 AnWR 433 : (1966) 62 ITR 523

Hon'ble Judges : Narasimham, J

Bench : Division Bench

Judgement

NARASIMHAM, J. - The Income Tax Appellate Tribunal has referred the question formulated thus for decision by the High Courts :

"Whether, on the facts and in the circumstance of the case, the excess of sale amount over the written down value of the building and machinery amount to Rs. 68,666 was profit under the under the second 10(2) (vii) of the Ac ?" The reference is to the Indian Income Tax XI of 1922.

The question arose on these facts : The assessee, The Coringa Company Limited (in voluntary liquidation) represented by the liquidator, Kakinada, is a public limited company. The relevant year of assessment was 1950-60 for which the account period was the are which ended December 31, 1958. The assessee-company had basins in rice milling and brick manufacturing plant. For the purpose of its business, it owned a rice mill and a brick manufacturing plant. It had leased out the rice smile from about 1928, though prior to that it had worked it. The income derived from the manufacturing of bricks and from the lease of the rice mill was assessed up to 1958-59 under the head "income from business". In the year of assessment as well the return was made on that footing. The buildings and the machinery of the assessee-company were sold on February 5, 1958, by court action for a sum of Rs. 1,02,914. The written down of the above assets as on the date sale was only Rs. 34,248. The Income Tax Officer treated the excess of 68,666 over the written down value as profit u/s

10(2)(vii) of the Act and brought the said sum to tax. An extricate foursomes the assessment order, annexure, "A", forms part of the case record.

The assessee contended that, as the rice mill had been leased out, the income therefrom could not be considered as income from business and taxed as such, and that therefore the second proviso to section 10(2)(vii) of the Act did not apply. The connection was not accepted by the Appellate Assistant Commissioner and the Tribunal and hence the reference.

The main contention before us is the same, viz., that the income from the lease of the rice cannot be considered as profit and gains of business as the assessee-company had worked the rice mill, but had let it out many years ago. Thus the simple question is issue is whether the amount derived by assessee-company by leasing the rice mill ceased to be income from business.

"Business" is defined in section 2(4) of the Indian-tax Act as including any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture."

In *Narain Swadeshi Weaving Mills v. Commission of Excess Profit Tax* the Supreme Court was of the view that "the word Business connotes some real, substantial systematic or organised course of activity or conduct with a set purpose" and that the question whether a particular source of income was business are not must be decided according to ordinary notions as to what a business was.

Sri Ramakrishnaiah, the learned counsel for the assessee, canvassed this very decision in his support on the ground that the assessee-company was not carrying on any business in rice milling during the assessment year. The facts in the said case were that the mills had the business of manufacture of ribbons and laces and for that purpose it owned buildings, plant, machinery, etc. During the relevant year the firm closed its business, sold its buildings and let out the plant. In the said circumstances, it was observed that applying the common sense principle to the facts, it was impossible to hold that the letting out of the plant, machinery, etc., was at all a business operation when its normal business activity had come to a close. In the said view, it was expressed that the letting out in such circumstances did not amount to carrying on any business and that the income realised by letting would not be exigible to tax.

Manifestly, the facts in the present case are different. Till the assessee's buildings and machinery were sold on February 5, 1958, the assessee-company had been manufacturing bricks, which was one of its business activities, and had also leased out its rice mill which was run as a rice mill to the lessee. Can we say that the assessee firm by leasing the rice mill to the lessee ceased its business activity? On this aspect of the matter, we recall the lucid observations of Lord President Strathclyde in *Sutherland v. Commissioners of Inland Revenue*, referred to with approval by the Supreme Court in *Commissioner of Excess Profits Tax v. Sri Lakshmi Silk Mills Ltd.*, that :

"A commercial asset susceptible of being put to a variety of different uses in which gain might be acquired, and whichever of these uses it was put to by the appellant, the profit earned was a user of the asset of the same business. A mere substituted use of the commercial asset does not change or alter the nature of that asset. Whatever the commercial asset produces is income of the business of which it is an asset, the process by which the asset makes the income being immaterial."

This approach guided the decision in that case in which the facts were : the assessee was doing the business of manufacturing silk cloth and also dyeing silk yarn. During the relevant accounting year the assessee could not work the dyeing plant had to remain idle for some time and so the assessee let it out on a monthly rent. The Supreme Court ruled that the dyeing plant did not cease to be a commercial asset merely because it could not be used as a commercial asset by the assessee himself at the time it was let out and that the rent received from the lessee was assessable as income from business. The ruling was referred to in *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax*, relied on by the learned counsel and distinguished. It emerges therefore that the letting out of a business or business asset could of itself be a business : vide *Parry & Co. v. Commissioner of Income Tax*. It is quite different from a mere lease of property. There are cases where an assessee owned a rice mill or a jute press or a hotel and leased it out for a fixed annual rental and the assessee was held to be doing the business, not a of milling rice or running a jute press or a hotel, but of letting out the mill, press or hotel. *Commissioner of Income Tax v. Mangalagiri Sri Umamaheswara Gin and Rice Factory Ltd.* is a case of letting out a rice mill. *In re Sadhucharan Roy Chowdhry* is a case of letting a jute press. *Commissioner of Income Tax v. Bosotto Bros. Ltd.* pertains to a hotel. There is a clear line of distinction between letting out a property and letting out a business asset. A clear picture of this vital distinction is brought out in *C. P. Pictures Ltd. v. Commissioner of Income Tax*. The assessee was carrying on the business of exhibiting motion pictures in its own cinema there. In 1953 it leased out the theatre to a stranger for 5 years with an option for renewal up to 8 years on a monthly rental of Rs. 2,000. The premises included the out-houses, restaurants, furniture, fixtures, machinery and the whole equipment of the cinema house. It was held that in the circumstances of the case the income which the assessee received from the lease of the theatre and its equipment was income from business and had to be assessed u/s 10 of the Act and not u/s 12. The principle involved was explained that :

"..... an asset which was acquired or used for the purpose of a business does not cease to be the commercial asset of that business as soon as it is temporarily put out of use or let out to another person in his business or trade. It is not necessary that the commercial asset must be used only by the assessed himself in order that the yield of the income of the asset should be profit of the business of the assessee. The letting out, therefore, of a commercial asset for a period for being for the same business would be one of the modes of obtaining income by

the exploitation of the commercial asset in the business of the assessee. The activity, therefore, of letting out a commercial asset is a business activity, and by engaging in this activity, the assessee is carrying on its own business."

It would indeed be fallacious to suppose that by letting out the business, the business activity had been abandoned or had come to a close and the entire business is no more than a lease of mere property. We agree with the view expressed by the Division Bench thus :

"Whether, therefore, letting out of the commercial asset is a business activity of the business of the assessee exploiting the commercial asset, or whether it is the letting out of property by an owner of the property not as an activity of the business, would depend upon the fact and circumstance of each case."

It has to be remembered that, in the instant case, the commercial activity is in two directions, viz., letting the rice mill run as such and manufacture of bricks.

The words "any business" occurring in section 10(1) mean each and every business, i.e., all the business of the assessee put together : vide Commissioner of Income Tax v. Arunachalam Chettiar. The decision was approved by the Privy Council in Arunachalam Chhettiar v. Commissioner of Income Tax. The profits of separate and distinct businesses have to be lumped together and in the instant case in all the prior years the assessee firm had in fact done so.

In the case relied on by the learned counsel before us, Narain Swadeshi weaving Mills v. Commissioner of Excess Profits Tax, the Supreme Court adopted the ratio decidendi in Inland Revenue Commissioners v. Broadway Car Co. Ltd. There the war conditions had reduced the companys business of motor car agents and repairers to very small proportions. In that situation it was observed that the company dealt with part of its property which had become redundant and sublet it purely to produce income - a transaction quite apart from the ordinary business activities of the company.

For the said reasons, we cannot accede to the contention that the ratio decidendi of Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax would apply to the facts of the case. We are inclined to the view that the ratio decidendi enunciated by Lord President Strathclyde in Sutherland v. Commissioners of Inland Revenue, referred to with approval in Commissioner of Excess Profits Tax v. Shri Lakshmi Silk Mills Ltd., applies on all fours to this case and that the question referred to us has to be answered in the affirmative, i.e., against the assessee. The reference is answered accordingly with costs. Advocates fee Rs. 200.

Question answered in the affirmative.