
(1984) 08 KAR CK 0034

In the Karnataka High Court

Case No : Income Tax R.C. No's. 183 and 184 of 1979

Dharak Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Income Tax Act, 1961 — Section 256 (1), 256 (2)

Citation : (1987) 163 ITR 734 : (1986) 25 TAXMAN 196

Hon'ble Judges : S.A. Hakeem, J; Mohammad Sharif, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Hakeem, J.—These are references u/s 256(1) and (2) of the Income Tax Act, 1961, whereby the following common question has been referred :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the assessee was assessable under the head `Other sources' and not "Business" ?"

2. The facts of the case are as follows :

3. The assessee is a public limited company incorporated under the companies Act, 1956. The assessee-company owned a printing machinery at Baroda and a distiller plant at Whitefield near Bangalore. It had let out the printing machinery to M/s. Alembic Chemical Works Co. Ltd., Baroda, on the following terms.

"(i) the lease is for a term of five years commencing from February 1, 1972, on a monthly rent of Rs. 651.

(ii) the assessee has to repair and keep in proper working order. the said machinery and all additions thereto throughout the term of 5 years and to substitute the same with fittings, parts, etc., as and when necessary."

4. The distillery plant was let out to M/s. Nirayu Associates on the following

terms :

"(i) The Nirayu Associates will pay to the assessee a sum of Rs. 32,400 every month by way or rent.

(ii) The hirer (Nirayu Associates) shall keep the "scheduled property" in good order and condition (fair wear and tear only excepted) and make good all damages by fire whether accidental or otherwise and at all times allow the owner, his agents and servants to inspect the same. The hirer will insure and keep insured during the continuance of the agreement, the property against loss or damage by fire.

(iii) The hirer shall punctually pay all rent, rates and taxes and other outgoings payable in respect of the premises where the hired foods are kept."

5. The Income Tax Officer, while considering the nature of the income under those leases, held that there was no nexus between the income earned and the production of the distillery. The assessee had nothing to do with the day-to-day business, as the hirer had to keep the machinery in food condition and working order. He held that the income from the leasing out of the distillery plant was income from "other sources". As regards the printing machinery let out to M/s. Alembic Chemical Works Co. Ltd., the Income Tax Officer found that there was only one machinery and it was doubtful whether the assessee could have carried on the business on one machine only. He, therefore, held that the income derived from letting out the printing machinery is also from "other sources."

6. The assessee went up in appeal before the Appellate Assistant Commissioner who upheld the order of the Income Tax Officer. The assessee then preferred a second appeal before the Income Tax Appellate Tribunal, which also concurred with the findings of the Income Tax Officer. The Tribunal noted that the assessee, which is a limited company, is one of the Alembic Group of Companies; that the assessee had purchased the printing machinery in January, 1972, and directly installed the same in the premises of the lessee company at Baroda. The assessee never carried on any printing business of its own and never utilised the machinery for any printing work of its own. The Tribunal also further took note of the fact that although the lease was for five years, it was terminated in April, 1975, and, thereafter, the machinery was given on lease to another concern which was also one of the Alembic Group of Companies.

7. So far as the distillery was concerned, the Tribunal found that the assessee-company never applied for licence to run the distillery, but let out the distillery plant with the land and building to the firm known as Nirayu Associates. This firm which came into existence on June 18, 1969, had applied and got a licence for running the distillery in 1971, which was renewed later. The assessee entered into a lease with the said firm leasing out the distillery plant on a monthly rent of Rs. 32,400 and by another lease agreement leased out the building and premises of the distillery unit also on a monthly rent of Rs. 400. The lease deeds were renewed further in October, 1973, with increased rent for the building at Rs.

4,400 and for the plant and machinery having increased to Rs. 49,000. On the facts and circumstances, the Tribunal held that the assessee was not carrying on any business of letting out printing machinery or distillery plant and, therefore, the income by way of rent received by it should be assessed under the head "Other sources".

8. In *Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd.*, the Supreme Court has laid down the distinguishing test between "business income" and income from "other sources" arising from letting out of assets. It was observed that no general principle can be laid down which is applicable to all cases and each case has to be decided on its own circumstances, according to ordinary common sense principles. However, it was emphasised that if the object of letting out the asset is to earn a profit in the ordinary course of its business, it results in business income. On the other hand, if the object of letting out the asset is merely to earn rent as owner of the asset, such income would be from "other sources", if there is no other indication to show that such asset is treated as its commercial asset and a business is sought to be carried on by the assessee.

9. Mr. Sarangan, learned counsel for the assessee, vehemently contended that the lease of machinery and plant contemplated in the agreements, dated September 1, 1972, and November 10, 1972, was lease of commercial assets and, therefore, the income arising therefrom should be assessed as business income. He relied upon the decision of the Supreme Court in *Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd.*, and the decision of the Gujarat High Court in *Commissioner of Income Tax, Gujarat-II Vs. Vania Silk Mills P. Ltd.*, . But the material facts in both the cases are clearly distinguished and as such the ratio of these decisions is not applicable to the facts of the present case. There the intention of the assessee was to treat the assets in question as commercial assets during the subsistence of the lease.

10. Admittedly, the assessee-company never carried on at any time either the business of printing or that of a distillery. There is nothing to indicate that the assessee was carrying on business of leasing out machinery or plant on hire. It is clear from the facts found by the Tribunal that the printing machinery and the distillery plant were not intended to be exploited by the assessee as a commercial asset but the assessee as owner of the property was to exploit it for earning rental income. The agreements relied upon by the assessee, which are simple lease agreements, do not disclose any indication whatsoever that the assessee was leasing out the machinery and distillery plant as its commercial assets in the course of its business of leasing for earning business income. There is also no other circumstances which indicated that the property was being exploited in the commercial sense by the assessee.

11. In arriving at the conclusion, the Tribunal has relied upon yet another circumstances. It has noted that the assessee had always treated the assets in question as fixed assets not in the nature of its circulating capital leading to profit of business, which profit may be either enjoyed or ploughed back for

further profitable exploitation.

12. The assessee's reliance solely its power to lease its assets under the objects clause by itself does not make the rental income as business income, unless the intention to do business is clearly discernible from the facts and circumstances of the case. As pointed out by the Supreme Court in A. Vs. THOMAS AND CO. LTD. v. COMMISSIONER OF Income Tax., , the nature of the transaction has to be determined not from the memorandum of the company but from the circumstances in which the transaction took place. The company might have been formed to do business in certain objects or in certain fields, but there is no presumption that all the transaction effected by the company are necessarily in pursuance of those objects and in the course of its trade. The nature of the transaction and the income derived therefrom have, therefore, to be judged by the cumulative effect of all the circumstances, and if so judged, we do not think that the view taken by the Tribunal is unreasonable or illegal.

13. In the result, the question is answered in the affirmative and against the assessee.