(2005) 01 MP CK 0074

In the Madhya Pradesh High Court

Case No : IT Ref. No. 74 of 1999

Ferro Concrete Construction (India)(P) Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 56

Citation : (2005) 196 CTR 158 : (2007) 290 ITR 713

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : S.C. Bagadia and D.K. Chhabra, for the Appellant; R.L. Jain and V. Mandlik, for the Respondent

Judgement

A.M. Sapre, J.—This is an IT reference made at the instance of assesses u/s 256(1) of the IT Act in RA Nos. 48, 49 and 50/Ind/1997 which arises out of ITA Nos. 902 and 221/Ind/1995 and 570/Ind/1994 decided by Tribunal on 11th March, 1997, to answer following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of sale proceeds of empty bags and containers, drums, etc. and interest on FD has no. nexus for calculation of profit of the assessee''s business at the estimated rate of net profit adopted for the purpose ?

2. Whether the Tribunal was justified in confirming the order of the authorities below in holding that the receipt of the sale proceeds of empty bags and interest on FD do not form part and parcel of the contract business and thus the amount so received at Rs. 3,85,578 is to be assessed separately under the head income from other sources ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the interest on FD and miscellaneous receipts on account of sale of empty bags, drums, etc. should be assessed separately as income under the head income from other sources ?"

2. In order to answer the questions referred, few facts as mentioned in statement of facts need mention in brief.

3. The assessee is a private limited company. It is engaged in the business of works contract such as grouting, drilling and allied engineering job works. The assessee is also engaged in business of manufacture of pipes.

4. For the assessment years in questions, i.e., 1990-91, 1991-92 and 1992-93, the question arose before AO as to what is the true nature/character of Rs. 3,85,578, Rs. 4,09,583 and Rs. 3,69,608 received by assessee in respective assessment years. It was not disputed that this amount was received by the assessee by way of interest earned on FDRs, i.e., bank deposits and by sale of empty bags, containers and drums.

5. The contention of assessee was that the entire income be treated as income from business whereas the AO was of the view that it is liable to be taxed as income from other sources. The view taken by AO was upset by CIT(A) when he held that it is a business income. However, in an appeal filed by Revenue, the Tribunal reversed the view of the CIT(A) and restored that of AO. In other words, the Tribunal was of the view that it is an income from other sources. It is against, this view, the assessee prayed for the reference to this Court. This request having been acceded to, the Tribunal made the reference to this Court to answer the aforementioned questions,

6. Heard Shri S.C. Bagadia, learned senior counsel, with Shri D.K. Chhabra, learned counsel for the assessee, and Shri R.L. Jain, learned senior counsel, with Ku. V. Mandlik, learned counsel for the Revenue.

7. Having heard learned counsel for the parties and having perused record of the case, we are inclined to answer the reference in favour of assessee in part as indicated infra.

8. In our opinion, the income earned by way of interest on short-term deposit (FDR) by an assessee has to be taxed as an income chargeable u/s 56 of the Act, i.e., income from other sources in view of the facts emerging from statement of facts. Though the issue before the Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, was slightly different, yet some of the observations made by the Supreme Court while deciding the said case cannot be ignored by this Court as being even obiter. Since even the obiter of the Supreme Court is binding on us, we are inclined to rely upon the said observations of the Supreme Court for answering the question regarding income earned out of interest against assessee. These observations read as under :

"In the usual course, interest received by the company from bank deposits and loans would be taxable as income under the head ''Income from other sources'' u/s 56 of the IT Act."

Further down at p. 179 :

"Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable u/s 56 of the Act. The company may also, as in this case, keep the surplus funds in short-term deposits, in order to earn interest. Such interest will be chargeable u/s 56 of the Act."

9. In view of aforesaid observations which are subtle in their expression, we cannot hold that interest earned by an assessee is their business income. In the first place, it is not their main or ancillary business, Secondly, no memorandum of association is filed or relied upon to show that assessee in additions to its main business of civil construction, etc, is also engaged in some kind of money-lending or deposit business with their surplus funds. We cannot ignore the pointed observations and/or finding of the Supreme Court quoted supra on the ground that it was made in altogether different context and hence, the same is liable to be ignored. On the other hand, we are inclined to respectfully follow being a law laid down by the Supreme Court on the subject holding the field.

10. Learned counsel for the assessee, no doubt, cited some of the authorities of various High Courts which, to some extent, can be construed as supporting his submissions. These authorities are Commissioner of Income Tax Vs. Madras Refineries Ltd., ; SNAM PROGETTI S.P.A. Vs. ADDITIONAL COMMISSIONER OF Income Tax, NEW DELHI-II, AND OTHERS., and COMMISSIONER OF Income Tax Vs. TIRUPATI WOOLEN MILLS LTD., . However, in view of the decision of the Supreme Court relied on by us supra, we cannot place reliance on the decisions rendered by High Courts.

11. In this view of the matter, we hold that income earned by assessee on their funds invested in short-term deposits in order to earn interest is not to be treated as their business income but it is chargeable to tax u/s 56 of the Act as an income from other sources.

12. Then comes the income earned by assessee by sale of empty bags, containers, and drums. It is not in dispute that these goods are used by the assessee in their day-to-day main business activities--they being engaged in the civil works contract. In order to dispose of these goods after the commodity kept in these goods are used in the construction activity, one cannot say that it is not connected with business. In other words, it is incidental to the business activity and hence, in our view, any income earned by sale of these empty bag/ containers/drums cannot be said to be an income from other sources but it is an income from business activity of the assessee.

13. Accordingly and in view of aforesaid discussion, we answer the questions referred to this Court by holding that the income earned by way of interest from FDR is chargeable as income from other sources u/s 56 of the Act, whereas income earned by sale of empty bags/containers/drums is a business income and hence, liable to be taxed as such. So, the reference is answered partly in favour of assessee and partly in favour of Revenue, i.e., partly against the assessee and partly against the Revenue as indicated supra. No costs.