
(1960) 01 MAD CK 0023
In the Madras High Court
Case No : T.R.C. No. 53 of 1957

G. J. Coelho

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 19-01-1960

Acts Referred:

Income Tax Act, 1922 — Section 10(2), 10(2)(iii), 10(2)(xii), 10(2)(xv), 12

Citation : (1960) 40 ITR 686

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—Under the provisions of the Madras Agricultural Income Tax Act (V of 1955) the petitioner was assessed to tax in the assessment year 1955-56 on his agricultural income from his plantation known as the Silver Cloud Estate, in the "previous year" ending with June 30, 1954. The petitioner purchased that estate in 1950 for Rs. 3,10,000 to pay which he had to borrow Rs. 2,90,000 from two sets of creditors. In the year of account the petitioner paid those creditors a sum of Rs. 22,628-9-8 as interest on these loans and he claimed that the whole of that payment should be deducted before his assessable income was computed. The Department held that the petitioner was entitled only to the relief for which section 5(k) of Act V of 1955 provided and deducted a sum of Rs. 1,570-10-7. The petitioner appealed to the Tribunal. The Tribunal rejected his contention that he was entitled to have the whole amount deducted u/s 5(e) of the Act. It was the correctness of that decision that the petitioner challenged in this petition presented u/s 54(1) of the Act. The relevant statutory provisions in section 5 of Act V of 1955 are :

The agricultural income of a person shall be computed after making the following deductions, namely... (e) any expenses incurred in the previous year (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of the land;... (k) any interest paid in the previous year on any amount borrowed and actually spent on

the land from which the agricultural income is derived :

Provided that the need for borrowing was genuine having due regard to the assets of the assessee at the time :

Provided further that the interest allowed under this clause shall be limited to nine per cent on an amount equivalent to twenty-five per cent of the agricultural income from the land in that year.

What the petitioner paid to his creditors in the year of account was interest on the amount borrowed for the purchase of the land, on the income from which he was liable to be assessed to tax. When the principal amount borrowed in 1950 and 1951 was expended for the purchase of the land, the estate, that was an expenditure of a capital nature. That may have no direct bearing on the question, whether the amount expended as interest in the year of account falls within the scope of section 5(k) of the Act. Independent of the capital nature of the expenditure incurred when the estate was purchased by the petitioner, we are clearly of opinion that the payment of interest charges in the year of account did not fall within the scope of section 5(k). No portion of that borrowed money was spend on the land itself, for example, for any agricultural or horticultural purposes or any purpose subservient thereto. The expenditure for the purchase of the land is not, in our opinion, an expenditure on the land as we understand the scope of that expression in section 5(k) of Act V of 1955.

2. The petitioners claim has been all along that the deduction he claimed fell within the scope of section 5(e) of the Act. That the expenditure was incurred in the year of account was never in dispute. That expenditure in the year of account was not of a capital nature. Though the expenditure of the amount borrowed for the purchase of the land was of a capital nature, the payment of interest in the year of account on the amount so borrowed and spent did not constitute an expenditure of a capital nature, and we have no hesitation in rejecting the contention of the learned Government Pleader that the payment of interest charges under such circumstances would partake of the same character as the expenditure of the principal amount borrowed, that is, that the expenditure incurred when the interest was paid was also of a capital nature. Such expenditure did not obviously constitute the personal expenses of the assessee, the petitioner. What the petitioner has still to establish to bring his claim within the scope of section 5(e) of the Act is that the expenditure was incurred or laid out wholly and exclusively for the purpose of the land.

3. Tee Tribunal held that that test was not satisfied. The Tribunal recorded :

It is not possible to agree with the contention that interest paid in the year of account towards a loan borrowed by the proprietor for the purpose of acquisition of the estate will fall within the category of expenditure wholly and exclusively laid out for the purpose of the plantation. The immediate object of the expenditure, i.e., payment of interest, is to liquidate a personal liability of the proprietor as a debtor. That after such borrowing the debtor used it as sale price

and acquired the estate, cannot make the payment of interest an expenditure wholly and exclusively laid out for the purpose of the plantation. The language of the various sub-divisions of section 5 of the act referring to the various items of permissible deductions must have a direct and proximate connection. Here the proximate connection of the payment is with a personal loan and not with the plantation..... I hold that the claim had been rightly rejected.

4. We are unable to accept as correct that, where a personal liability was also discharged by a payment, it can never constitute expenditure incurred wholly and exclusively for the purpose of the land. Section 5(e) of the Act would be robbed of much of its content if such a narrow view is taken, because in most cases, and not only in cases of payment of interest, there will always be also a personal liability which is discharged by the payment.

5. Section 5(e) of the Act, of course, does not in express terms provide for interest charges. If the express provision made for deducting interest charges in section 5(k) of the Act were to apply, then obviously the application of section 5(e) would be excluded even if all the statutory requirements of section 5(e) are satisfied, on the short ground that an express statutory provision of special application like section 5(k) excludes the operation of another like section 5(e) which is general in its scope. We have already held that section 5(k) of the Act does not apply to the expenditure incurred by the petitioner. Whether the claim falls within the scope of section 5(e) is, therefore, independent of any possible application of section 5(k) of the Act.

6. Provision for deduction of interest charges incurred by an assessee in computing his net or assessable income is familiar enough in the Indian Income Tax Act. Express provision for such deduction has been made in the proviso to section 8 (income from securities), section 9(iv) (income from property) and section 10(2)(iii)(income from business) of the Income Tax Act. No such express provision is made in section 12 of that Act for computing the income from other sources. But what section 12(2) of the Income Tax Act permits is a deduction of any expenditure not being in the nature of a capital expenditure incurred solely for the purpose of earning income, profits and gains.

7. We are leaving out of account the cases decided under the English Income Tax Act, where the statutory provisions for the allowance and express provisions for disallowance of interest charges are different; the scheme is quite different from that which underlies the Indian Income Tax Act.

8. In *Eastern Investments Ltd. v. Commissioner of Income Tax* the Supreme Court laid down at page 4 :

The following principles are relevant :

(a) though the question must be decided on the facts of each case the final conclusion is one of law...;

(b) it is not necessary to show that the expenditure was a profitable one or that

in fact any profit was earned...;

(c) it is enough to show that the money was expended not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial expediency, and in order indirectly to facilitate the carrying on of the business...; and

(d) beyond that no hard and fast rule can be laid down to explain what is meant by the word solely.

9. At page 7, the learned judges observed :

This being an investment company, if it borrowed money and utilised the same for its investments on which it earned income, the interest paid by it on the loans will clearly be a permissible deduction u/s 12(2) of the Income Tax Act.

10. The statutory requirements of section 5(e) of Act V of 1955 are more analogous to those of section 10(2)(xv) than those of section 12(2) of the Income Tax Act. What section 5(e) of Act V of 1955 requires is that the expenditure should be laid out wholly and exclusively for the purpose of the land. Section 10(2)(xv) of the Income Tax Act requires the expenditure to be laid out wholly and exclusively for the purpose of the business."Laid out or expended for the purpose of the business" is obviously of greater amplitude than "expended for purposes of earning the income" which it is necessary to establish to permit a deduction u/s 12(2) of the Income Tax Act. The decision in *Eastern Investments Ltd. v. Commissioner of Income Tax* makes it clear that the payment of interest on a loan contracted for investment is an expenditure for purpose of earning income from that investment. The loan would obviously satisfy the test, that it had been expended for purposes of the investment had that been the statutory test. In *Newton Studios Ltd. v. Commissioner of Income Tax* this court held that the principles laid down by the Supreme Court in *Eastern Investments Ltd. v. Commissioner of Income Tax* would apply with equal force to cases that fall within the scope of section 10(2)(xv) of the Income Tax Act. Extending the principle laid down by the Supreme Court in *Eastern Investments Ltd. v. Commissioner of Income Tax* to the interpretation of the language of section 10(2)(xv) of the Income Tax Act, it seems clear to us that, if a loan was contracted and expended for purposes of the business, for example for acquiring it, then the payment of the interest would be an expenditure for purposes of the business. It will not, however, fall within the scope of section 10(2)(xv) of the Income Tax Act as it stands because specific provision has been made for such deduction in section 10(2)(iii) and section 10(2)(xv) excludes expressly deductions for which provision had already been made in any of the other clauses of section 10(2) of the Act. In other words, but for section 10(2)(iii) there should be no difficulty in holding that such an expenditure satisfies the test of "having been laid out for purposes of the business." It would satisfy even the narrower test, as pointed out by the Supreme Court in *Eastern Investments Ltd. v. Commissioner of Income Tax*, that it had been expended for purposes of

earning income from the business, If that principle is extended and applied to the interpretation of section 5(e) of the Madras Act V of 1955, the payment of interest on a loan expended for the acquisition of the land, which is the source of taxable income will satisfy the requirement of section 5(e). It will be an expenditure for purposes of the land within the scope of section 5(e) of Act V of 1955.

11. If it is expenditure incurred for purposes of the land within the meaning of section 5(e) of Act V of 1955, there should be no difficulty in holding further that that expenditure was incurred wholly and exclusively for the purposes of the land. We have already pointed out that the facts, that the petitioner as a borrower was under a personal liability to repay the loan and that the payment of interest in the year of account was also in discharge of that personal liability, made no difference. The personal liability for the loan had itself been incurred for purposes of the land, that is, for the purpose of acquiring land and the income it was expected to yield. The learned Government Pleader referred to the observations of Stone, C.J., in *Metro Theatre, Bombay Ltd. v. Commissioner of Income Tax* Dealing with section 10(2)(xii) of the Income Tax. Act as it stood then (it corresponds to section 10(2)(xv) of the present Income Tax Act), the learned Chief Justice observed :

In my judgment this interest payment on unpaid instalments cannot be stated to be wholly or exclusively a payment for purposes of such business. No doubt the payment of interest on the arrears of the purchase price of this leasehold interest in which the business is carried on may be said to be for the purposes of the business, but it is not wholly and exclusively for the purposes of the business. For example, if the cinema business had to be closed down, the appellant would still have to make this payment unless he was prepared to have the licence forfeited.

12. These observations were really in the nature of obiter. Besides there is obviously a difference between the unpaid instalments the learned Chief Justice had to consider in that case and a loan contracted to provide the capital for investment in business, or as in this case for the purchase of the land, the income yielding investment. With all respect to the learned Chief Justice we are unable to agree with the implied principle, that though the payment of interest would satisfy the test that it had been incurred for purposes of the business, it would not satisfy the further test, that it must have been incurred wholly and exclusively for that business. If, for example, the petitioner were to sell the land in this case, the liability to pay the loan and the interest thereon would still be there. But the petitioner cannot claim any allowance for that expenditure u/s 5(e) of the Act, not because it was his personal liability that was diminished by that payment, but because after such a sale there will be no gross income from the land from which the allowance could be deducted. So long as the source of income to acquire which the loan had been expended stood, such an expenditure would be wholly and exclusively for purposes of that source of income, and the

payment of interest thereafter would also be an expenditure incurred wholly and exclusively for that purpose, that is, the purposes of the land, within the scope of section 5(e) of the Act.

13. We are clearly of opinion that the deduction claimed by the assessee fell within the scope of section 5(e) of the Act and that the whole of Rs. 22,628-9-8 and not merely Rs. 1,570-10-7 should have been deducted from his assessable income. The order of assessment will be revised accordingly.

14. The petitioner will be entitled to his costs. Counsels fee Rs. 100. Order accordingly.