

(1953) 03 AHC CK 0022
In the Allahabad High Court
Case No : Misc. Case No. 232 of 1949

Inderchand Hari Ram

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 31-03-1953

Acts Referred:

Income Tax Act, 1922 — Section 10, 10(2)

Citation : AIR 1953 All 683 : (1952) 22 CompCas 186 : (1953) 23 ITR 437

Hon'ble Judges : Malik, C.J;V. Bhargava, J

Bench : Division Bench

Advocate : C.S. Saran, for the Appellant; J. Swarup, for the Respondent

Final Decision : Disposed Of

Judgement

1. This case involves a very short point but as the facts had not been very clearly set out in the statement of the case we had to wade through various papers to find out what exactly the facts were. The assessee is a registered firm which was acting as managing agents of the Shankar Sugar Mills Ltd., Captaingunj, Gorakhpur. The assessee was also carrying on the business as _sole selling agents. To carry on the latter business the assessee had an office at Kanpur. Under the Sugar Control Order, 1942, the Sugar Controller for India issued a Notification No. 32-S.-C. (2) 42, dated 25-4-1942, to the following effect :

"In exercise of the powers conferred by Clause 3 of the Sugar Control Order, 1942, the Sugar Controller for India hereby notifies 30-4-1942, as the date after which no producer shall dispose of, or agree to dispose of, or in pursuance of any agreement, entered into on or before that date make delivery of, any sugar except --(i) to a recognised dealer, or (ii) to a person specially authorised by the Controller to acquire sugar on behalf of the Central Government or of a Provincial Government."

The Sugar Control Order mentioned above had directed that a producer shall dispose of his sugar only to a recognised dealer or a person specially authorised

by the Sugar Controller for India etc. The date was left to be determined by a notification issued by the Controller for India and the notification dated 25-4-1942, fixed 30-4-1942, as the date after which it was not open to the Shankar Sugar Mills Ltd., or any other mill producing sugar to have private selling agents of their own. Though the Sugar Control Order, 1942, was superseded by the Government of India Sugar and Sugar Products Control Order, 1943, Rule 10 of this Order provides that "Notwithstanding the supersession of the Sugar Control Order, 1942, all notifications, rules, orders, authorizations, quotas, requirements, and directions issued thereunder shall, so far as they are not inconsistent with this Order, be deemed to have been made hereunder, and they shall continue in force until rescinded or modified hereunder."

In spite of these notifications the assessee continued to maintain the selling agency office at Kanpur and incurred expenditure thereon. In the assessment year 1946-47, for which the relevant account period was 1-10-1944, to 30-9-1945, the assessee returned an income of Rs. 78,425/- from the managing agency business. From this the assessee wanted a deduction of Rs. 6,823/- for expenses incurred in maintaining the selling agency office at Kanpur. This expenditure was incurred between the dates 1-10-1944, and 7-3-1945. It appears that the Directors of Shankar Sugar Mills Ltd. on 7-3-1945, passed a resolution that the selling agents will not be given any more brokerage for sale of sugar after 1-10-1944. It also appears, though the fact is not clearly set out in either the statement of the case or the order of the Appellate Tribunal, that though the selling agents could no longer work as selling agents by reason of the Government notification, the company continued to pay them brokerage upto 30-9-1944, on sale of sugar made by the company direct to the dealers nominated by the Government. This they might have done as the selling agents were appointed for a period and the company was not sure what was the correct legal position between the company and the selling agents as a result of the Government notification. V/e have it, however, in the order of the Appellate Assistant Commissioner that on 7-3-1945, the Directors of the Shankar Sugar Mills Ltd., passed a resolution that from 1-10-1944, they would not pay any brokerage to the selling agents and it was on 7-3-1945, when the resolution was passed that the assessee disbanded the staff at Kanpur and closed the selling agency office.

2. The question for consideration is whether in these circumstances the assessee is entitled to claim that the expenses incurred in maintaining the selling agency office at Kanpur between 1-10-1944, and 7-3-1945, should be deducted as expenditure laid out or expended wholly and exclusively for the purpose of the selling agency business. The question referred to us is as follows :

"Whether in the circumstances of the case, the expenditure incurred for the maintenance of the staff of the selling agency during the period when it carried on no business was an admissible deduction u/s 10(2) (xv) of the Income Tax Act against the assessee's other income?"

3. The Tribunal in the appellate order as well as in the statement of the case had laid stress on the fact that during this period 1-10-1944, to 30-3-1945, the assessee did not enter into any agreement and did not receive any sugar from the company, nor did they do any work as selling agents nor were they paid any brokerage. These may be relevant considerations, but the question whether a business is being carried on or not must depend in each case on its own facts. A Company may not obtain or be able to execute a single business contract for months and yet it may be deemed to carry on its business if during the period of lull and inactivity it is kept alive, retains its registered office and holds meetings etc. It is not necessary that a business to be in existence should have work all the time. There may be long intervals of inactivity and a concern may still be a going concern though it may, for some time, be quiet and dormant. The mere fact that a businessman has not been able to obtain a contract and the business has for some time been, in that sense, dormant would not mean that it has ceased to exist if the assessee continues to maintain an establishment and incur expenses in the expectation that work would come and the business will be successful. How long he shall remain in hope and in what manner he must carry on his work to gain success is primarily his own concern. The mere fact that for some time he is not able to secure a contract or do the work which he set out to do should not disqualify him from pleading that the expenditure that he had incurred was expended for the purpose of his business. The question as to what the business "carried on" by him means has not been mooted at the bar and it is not necessary for us, therefore, to discuss the question. The question with which we are concerned in this case is whether the expenses incurred were in connection with the business of selling agency.

4. In considering, however, whether the expenditure can be deducted as business expenditure one must remember that Sub-section (2) (xv) is a part of Section 10 and at the time of the computation of the income of a business, though that income may be nil, the expenses incurred wholly and exclusively for the purpose of that business may be a permissible deduction, but in order to be deductible under this clause the expenditure must be incurred for the purpose of the business which was in existence in the accounting year and the profits of which are under assessment. If during the relevant period there was, in fact, no business either because it was discontinued or for some other reason it had ceased to exist, the question of computation if its income after deducting the expenses cannot arise. In the case before us, by reason of the Sugar Control Order & the notification issued thereunder, the assessee could not do any selling agency business in sugar. By merely maintaining an office at Kanpur it cannot be said that he was carrying on business the expenses of which he was entitled to deduct. There being, therefore, no business, there could be no question of computation of its income and no question of any deduction of expenses incurred wholly or exclusively for such business arises.

5. In this view of the matter, our answer to the question must be in the negative.

6. The department is entitled to its costs which we assess at Rs. 400/-.