
(1999) 04 AHC CK 0072
In the Allahabad High Court
Case No : Income-tax Reference No. 143 of 1982

Ishwar Das

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (1999) 155 CTR 373 : (2000) 244 ITR 146

Hon'ble Judges : S.L. Saraf, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : None, for the Appellant; Prakash Krishna, for the Respondent

Judgement

S. L. Saraf, J.—At the instance of the assessee, the following question of law has been referred for the Income Tax Appellate Tribunal, Lucknow, u/s 256(2) of the Income Tax Act, 1961, for opinion of this court:

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the loss incurred by the assessee in confiscation of gold, etc., seized and confiscated by the Customs Department was not allowable deduction from the business income of the assessee, as determined ?"

2. The facts in a nutshell are as follows :

The assessee is an individual and carries on business as a goldsmith. The assessment year in question is 1971-72 and the relevant previous year ended on March 31, 1971. As a sequel to a raid carried on by the Customs and Central Excise authorities at the residence of the assessee on October 7, 1970, the Income Tax Officer made the following additions after giving an opportunity to the assessee to show cause as to why such addition should not be made.

Rs.

Value of primary gold

8,892
Value of gold ornaments
26,592
Value of foreign gold
2,395
Cash seized
4,909
Total
42,788

3. In appeal, the Appellate Assistant Commissioner upheld the action of the Income Tax Officer. Aggrieved by the order of the Appellate Assistant Commissioner, the assessee preferred a second appeal before the Income Tax Appellate Tribunal challenging the addition of Rs. 42,788. The Income Tax Appellate Tribunal dismissed the appeal of the assessee.

4. At the time of hearing counsel for the assessee urged that by an order dated April 4, 1973, passed by the Collector of Central Excise, Allahabad, the aforesaid goods were confiscated, as such, the assessee suffered loss and it should be allowed to deduct the same from the income of the assessee. For this proposition, the assessee relied on a decision of the Supreme Court in the case of Commissioner of Income Tax, Patiala Vs. Piara Singh, . It was urged on behalf of the assessee that since the assessee had suffered loss in carrying on the business of goldsmith, the same was incidental to his business and should be deducted in determining his total income. The assessee further placed reliance on the other decisions of the Supreme Court in the case of Badridas Daga Vs. The Commissioner of Income Tax, and Commissioner of Wealth-tax, Gujarat Vs. S.C. Kothari, , where the Supreme Court has held that for the purpose of section 10(1) of the Indian Income Tax Act, 1922, a loss incurred in carrying on an illegal business must be deducted before the true figure of profits brought to tax can be computed. Mr. Justice Grover, speaking for the court, observed as under (page 802) :

"If the business is illegal, neither the profits earned nor the losses incurred would be enforceable in law. But, that does not take the profits out of the taxing statute. Similarly, the taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount, which can be subjected to tax as "profits" u/s 10(1) of the Act of 1922. The tax collector cannot be heard to say that he will bring the gross receipts to tax. He can only tax profits of a trade or business. That cannot be done without deducting the losses and the legitimate expenses of the business."

5. On the basis of the said observation of the Supreme Court, it was argued that

the tax collector cannot be heard to say that he will bring the gross receipts to tax but not the losses. He can only tax the profit of a trade or business and that cannot be done without deducting the losses and the legitimate expenses of the business. It was further submitted that admittedly the assessee was carrying on both legal and illegal business. These are two sides of the same coin. If the confiscation of gold and gold ornaments was a loss occasioned in pursuing the business, it is a loss inasmuch as the same way as if the same had been stolen or dropped on the way while carrying on the business. It is a loss which springs directly from the carrying on of the business and is incidental to it.

6. On the contrary, the respondent's counsel urged before this court that the aforesaid facts of the case are covered by the decision reported in Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, . In that case, the assessee had carried on the lawful business of importing dates from abroad and selling them in India. The import of dates by steamer was prohibited. None the less he imported dates from Iraq by steamer, and the consignments were confiscated by the customs authorities. But the dates were released subsequently on payment of fine. The assessee's claim to deduction u/s 10(2)(xv) of the Indian Income Tax Act, 1922, was rejected on the ground that the amount was paid by way of penalty for a breach of the law. An infraction of the law was not a normal incident of business carried on by the assessee, and the penalty was rightly held to fall on the assessee in some character other than that of a trader.

7. The other case cited by the Revenue is reported in Soni Hinduji Kushalji and Co. Vs. Commissioner of Income Tax, , where the court held that the assessee's claim to the deduction of the value of gold confiscated by the customs authorities was found unsustainable by the court. The decision in that case can be explained on the ground that the assessee was carrying on a lawful business in gold, silver and jewellery and committed an infraction of the law in smuggling gold into the country.

8. The Revenue also relied on another decision of the court reported in Maddi Venkataraman and Co. (P) Ltd. Vs. Commissioner of Income Tax, , where the Supreme Court was pleased to dismiss the appeal of the assessee. The assessee in the said case had indulged in violation of the Foreign Exchange (Regulation) Act. The assessee's case was that if law permits the same should be allowed under the provisions of section 37 of the Income Tax Act. The court held that there can be no justification for contravention of law against the public policy to allow the benefit of deduction under one statute of any expenditure incurred in violation of the provisions of another statute or any penalty imposed under another statute. If the deductions claimed by the assessee were allowed, the penal provisions of the Foreign Exchange Regulation Act would become meaningless. It has also to be borne in mind that evasion of law cannot be a trade pursuit. The expenditure in this case could not be allowed as wholly and exclusively laid out for the purposes of the assessee's business.

9. On a careful consideration of the aforesaid decisions cited by counsel for both the parties, we find that the Supreme Court has made a distinction for allowing losses incurred while indulging in infraction of law committed in carrying on lawful business and infraction of law committed in the business inherently unlawful. If lawful business is carried on by the assessee while carrying on the aforesaid business, the assessee commits infraction of law in smuggling gold resulting in confiscation of the said gold and loss occurs, in such an event no deduction can be allowed for carrying on a lawful business. The said deduction from an illegal business cannot be allowed as a loss in its lawful business. The present case falls under the category where a business is carried on by the assessee in a legal manner and he indulges in infraction of law and the losses suffered due to such infraction cannot be allowed while computing the income of the lawful business. In that view of the matter, we answer the question in the affirmative, in favour of the Revenue and against the assessee.

10. Reference is disposed of.