
(1962) 08 AHC CK 0001

In the Allahabad High Court

Case No : Miscellaneous Income Tax Case No. 246 of 1958

NIRANJAN LAL RAM CHANDRA

APPELLANT

Vs

COMMISSIONER OF Income Tax, U.P.

RESPONDENT

Date of Decision : 21-08-1962

Acts Referred:

Income Tax Act, 1961 — Section 66

Citation : (1964) 52 ITR 60

Hon'ble Judges : Brijlal Gupta, J

Bench : Division Bench

Judgement

BRIJLAL GUPTA J. - This is an Income Tax reference u/s 66(1) of the Act. The question which has been referred to this court for opinion is "Whether, on the facts and in the circumstances of the case, the sum of Rs. 5,347 was income arising to the assessee during the course of the business and liable to tax?"

The facts giving rise to the reference are that during the previous year relevant to the assessment year 1950-51, the assessee was given a sum of Rs. 16,000 by the State Government as compensation for loss and expense sustained by him by reason of the abandonment by the Government of the scheme of floating the Hind Roadways Corporation. The assessee was a motor operator and was also a dealer in motor-cars and trucks. Some time prior to the previous year the State Government decided that motor transport business should be taken over by a Corporation and should not be allowed to be done by individual operators. As the assessee had experience of motor transport business he was called upon to promote the corporation which was intended to be called the Hind Roadways Corporation. The assessee was promised the managing agency of this corporation when it came into existence. Subsequently, however, it appears that the Government decided to run roadways services by its own department and not along with private operators under the proposed corporation. Meanwhile the assessee had been devoting his time and attention and making a survey of various districts in order to organise and to bring into existence the proposed

corporation. In doing so he incurred expenditure to the extent of Rs. 10,653. In his account books he credited the sum of Rs. 16,000 to the account which he styled as the "rail-road transport account" and in this very account he debited the expense of Rs. 10,653. In these circumstances the question arose as to what was the nature of the balance in this account amounting to Rs. 5,347 and whether it was liable to be assessed to Income Tax.

The Income Tax Officer treated the amount of Rs. 16,000 as a business receipt and out of it allowed only a sum of Rs. 4,000 as expense and brought to tax the balance of Rs. 12,000. The assessee went up in appeal to the Appellate Assistant Commissioner of Income Tax who allowed the whole amount of Rs. 10,653 as expense but he also was of the view that the balance of Rs. 5,347 represented taxable income. The finding recorded by him in this connection was that "the assessee had been drawn away from his normal course of business to which he could not pay the same attention as he would have normally paid". In other words the view taken by the Appellate Assistant Commissioner was that if the assessee had not given time and attention to promoting the Hind Corporation, he would have given that time and attention to his own business and would have earned more profits represented by the amount of Rs. 5,347 and as such the amount represented profits of the business and was assessable. The assessee went up in further appeal to the Income Tax Appellate Tribunal. With regard to the findings recorded by the Appellate Assistant Commissioner the Tribunal only observe :

"The facts relating to this receipt (Rs. 5,347) have been very elaborately discussed in the order of the Appellate Assistant Commissioner in paragraph 2 of his order and need not be reiterated here."

It will be seen that the Tribunal did not in so many words either affirm or overrule the findings recorded by the Appellate Assistant Commissioner. The Tribunal only observed that it did not think it necessary to reiterate the facts relating to the receipt which had been elaborately discussed by the Appellate Assistant Commissioner. It may be that the Tribunal did really want to affirm what had been found by the Appellate Assistant Commissioner but it did not say so in its order. Thereafter, the Tribunal went on to record its own finding in the following word :

"The receipt in question was undoubtedly for compensation the assessee for loss of profit in abandoning the operation of the Hind Roadways Corporation which was organised by the assessee at the instance of the Government but given up when the Government wanted to operate its own transport system."

From this finding the following inferences seem to be derivable :

1. That the receipt was compensation.
2. The compensation was for loss of anticipated profits.
3. The profits were to accrue by the operation of the Hind Roadways Corporation.

4. The loss was suffered by the abandonment of the scheme of the corporation at the instance of the Government.

On these premises which are clearly implied in the finding of the Tribunal it appears to us to be plain that the compensation was not for loss of profit of any business of the assessee but was to accrue out of a profit making structure, viz., the corporation, of which as pointed out earlier the assessee was to be appointed the managing agent. With the abandonment of the scheme of the corporation, the prospect of the assessee becoming the managing agent of the corporation also vanished. Compensation was paid to him in lieu of the benefit which he might have derived by becoming the managing agent of the corporation. The corporation or the profit-making structure or the managing agency were to my mind only an asset of a capital nature. Compensation paid for the loss of a capital asset is not and cannot be taxable income. It follows that on the finding recorded by the Income Tax Appellate Tribunal the conclusion in law which it arrived at, namely, that "the amount was clearly taxable" was entirely erroneous. The answer to the question referred to us must therefore be in the negative and against the department.

Before parting with the case we cannot help observing that the order recorded by the Tribunal in this case is rather unsatisfactory. The Appellate Assistant Commissioner had dealt with the matter in great detail and had referred to all relevant facts and circumstances and reached the relevant conclusion on the basis of those facts and circumstances. The finding has already been indicated by us in this order above. The Tribunal should either have confirmed that finding or should in so many words have overruled it. It did not do either. It merely referred to the finding of the Appellate Assistant Commissioner as "facts" which itself was quite wrong. It also did not appear to be conscious that in recording its own finding on the facts it was taking a very different view of the facts than that taken by the Appellate Assistant Commissioner. As it happened it also arrived at a wrong legal conclusion on the basis of the facts found by it. The result of this way of dealing with the matter may sometimes result in prejudice to a party against which that party may have no remedy at all. In this case it is possible to conceive that the Commissioner of Income Tax may have been aggrieved by the finding recorded by the Tribunal but as the result of the appeal was in his favour he could do nothing about it. We do not know whether in such a situation there is any remedy for an aggrieved party.

The reference shall be returned to the Income Tax Appellate Tribunal, Allahabad, with the above answer under the seal of the court and the signature of the Registrar. The assessee shall be entitled to the costs of this reference which we assess at Rs. 200.