

(1980) 07 GUJ CK 0019

In the Gujarat High Court

Case No : Income-tax Reference No. 128 of 1975

Padmavati Jaykrishna

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-07-1980

Acts Referred:

Income Tax Act, 1961 — Section 57

Citation : (1980) 19 CTR 123 : (1981) 131 ITR 653

Hon'ble Judges : B.J. Divan, C.J;P.D. Desai, J

Bench : Division Bench

Advocate : J.M. Thakore, -General and B.R. Shah, for the Appellant; G.N. Desai, instructed by R.P. Bhatt, of R.P. Bhatt and Co., for the Respondent

Judgement

Divan, C.J.—In this case, at the instance of the assessee, the following question has been referred to us for our opinion :-

" Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the interest deficit to the extent of Rs. 8,666 was not deductible while determining the total income ? "

2. The facts leading to the present reference are as follows :

We are concerned with the assessment year 1969-70, the previous year being calendar year 1968, ending on December 31, 1968. The assessee is assessed in the status of an individual. Before the ITO, she claimed a deduction on account of interest deficit of Rs. 33,516. According to her, the interest was paid to Harivallabhdas Kalidas Estate in respect of borrowings made by the assessee not only in the past, but also during the current year. The withdrawals were utilised partly for investment in shares, etc., and partly for meeting personal liabilities like payment of Income Tax, annuity deposit and household expenses, The ITO noted that out of the opening balance in the account of Harivallabhdas Kalidas Estate of Rs. 5,60,474, Rs. 3,19,340 were for withdrawals made for investment purposes and out of the withdrawals made in the accounting year, Rs. 26,025

were also for the purpose of investments. The ITO, therefore, allocated the interest claimed in the proportion of withdrawals for investment purposes and withdrawals for meeting personal liabilities like payment of Income Tax, annuity deposit and household expenses, and he determined the former amount at Rs. 24,849 and allowed this as interest deficit against the claim of Rs. 33,515.

3. Against the decision of the ITO, the assessee went up in appeal before the AAC and the AAC, relying on his order in the case of Arundhati Balkrishna (which was heard along with the case of the present assessee) and for the reasons discussed therein, dismissed the appeal of the assessee on this point.

4. Against the decision of the AAC, the assessee went up in appeal before the Tribunal on this point and other points. At the time of hearing, on behalf of the assessee, reliance was placed on some other aspect, but, as this point was not taken up before the ITO, that point was not pressed. The Tribunal did not allow the assessee to raise altogether a new case at that late stage. The Tribunal noted that in the case of the assessee herself for the earlier assessment years, this point was decided against the assessee and, therefore, the Tribunal saw no reason to differ from the earlier decisions and dismissed the appeal of the assessee. Therefore, at the instance of the assessee, the question hereinabove set out has been referred to us for our opinion.

5. There has been a large number of decisions on the point so far as this court is concerned. In the case of this very assessee, for an earlier assessment year, there is a decision of this court in Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat, . The assessment year that arose for consideration in that case was the assessment year 1966-67, whereas, in the instant case, we are concerned with the assessment year 1968-69. There also, as in the present case, the deduction was claimed u/s 57(iii) of the I.T. Act, 1961. In that case, it was held that in order to earn the deduction from " income from other sources " contemplated by Section 57(iii) of the I.T. Act, 1961, the assessee has to prove two things, namely, (1) that the expenses in question were incurred for the purpose of earning the income sought to be taxed ; and (2) that such expenditure was incurred " wholly and exclusively " for the said purpose. The earlier decisions of this court dealing with this very point were also considered by the Division Bench of this court and particularly the decisions in COMMISSIONER OF Income Tax, GUJARATI II, AND ANOTHER Vs. KASTURBHAI LALBHAI AND ANOTHER., and COMMISSIONER OF Income Tax, GUJARAT Vs. MRS. INDUMATI RATANLAL., were followed in deciding that earlier case of Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat, . Thereafter, in Gopaldas Dahyabhai Lavsi Vs. Commissioner of Income Tax, Gujarat, , the decisions in the case of COMMISSIONER OF Income Tax, GUJARAT Vs. MRS. INDUMATI RATANLAL., and Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat, were followed and the same principle was again applied though in the context of borrowing made by a partner in a textile firm and the interest paid on such borrowings.

6. In Virmati Ramkrishna v. CIT (see p. 659 (infra)), all the decisions on the

point up to date were considered by this very Bench and the principles culled out from the decided cases were summarised at p. 672 of the report (infra) as follows :

" On an analysis of the statutory language and principles laid down in the decided cases referred to above, the following propositions clearly emerge : (i) in order to decide whether an expenditure is a permissible deduction u/s 57(iii) the nature of the expenditure must be examined; (ii) the expenditure must not be in the nature of capital expenditure or personal expenses of the assessee; (iii) the expenditure must have been laid out or expended wholly and exclusively for the purpose of making or earning " income from other sources"; (iv) the purpose of making or earning such income must be the sole purpose for which the expenditure must have been incurred, that is to say, the expenditure should not have been incurred for such purpose as also for another purpose, or for a mixed purpose ; (v) the distinction between purpose and motive must always be borne in mind in this connection, for, what is relevant is the manifest and immediate purpose and not the motive or personal considerations weighing in the mind of the assessee in incurring the expenditure ; (vi) if the assessee has no option except to incur the expenditure in order to make the earning of the income possible, such as when he has to incur legal expenses for preserving and maintaining the sources of income, then, undoubtedly, such expenditure would be an allowable deduction; however, where the assessee has an option and the option which he exercises has no connection with the making or earning of the income and the option depends upon personal considerations or motives of the assessee, the expenditure incurred in consequence of the exercise of such option cannot be treated as an allowable deduction ; (vii) it is not necessary, however, that the expenditure incurred must have been obligatory ; it is enough to show that the money was expended not of necessity and with a view to an immediate benefit to the assessee but voluntarily and on the ground of commercial expediency and in order indirectly to facilitate the making or earning of income; (viii) if, therefore, it is found on application of principles of ordinary commercial trading that there is some connection, direct or indirect, but not remote, between the expenditure incurred and the income earned, the expenditure must be treated as an allowable deduction ; (ix) it would not, however, suffice to establish merely that the expenditure was incurred in order indirectly to facilitate the carrying on of the activity which is the source of the income ; the nexus must necessarily be between the expenditure incurred and the income earned ; (x) it is not necessary to show that the expenditure was a profitable one or that in fact income was earned ; (xi) the test is not whether the assessee benefited thereby or whether it was a prudent expenditure which resulted in ultimate gain to the assessee but whether it was incurred legitimately and bona fide for making or earning the income ; (xii) the question whether the expenditure was laid out or expended for making or earning the income must be decided on the facts of each case, the final conclusion being one of law."

7. It is true that in *Gopaldas Dahyabhai Lavsi Vs. Commissioner of Income Tax*,

Gujarat, and in *Virmati Ramkrishna's* case (see p. 659 (infra)), this High Court distinguished the decision of the Bombay High Court in *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUNVERBA SAHEB OF MORVI AND OTHERS.*, . In *Gopaldas Dahyabhai Lavsi Vs. Commissioner of Income Tax, Gujarat*, , it was pointed out at p. 537 of the report that this decision of the Bombay High Court, was in direct conflict with" the view expressed by this court in *COMMISSIONER OF Income Tax, GUJARAT Vs. MRS. INDUMATI RATANLAL.*, and in *Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat*, . The Division Bench in that decision preferred to follow the view of this court in *COMMISSIONER OF Income Tax, GUJARAT Vs. MRS. INDUMATI RATANLAL.*, and *Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat*, and thus declined to follow the observations of the Bombay High Court in *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUNVERBA SAHEB OF MORVI AND OTHERS.*, .

8. Learned Advocate-General appearing on behalf of the assessee has very strongly relied on the recent decision of the Supreme Court in *Seth R. Dalmia Vs. The Commissioner of Income Tax Delhi, New Delhi*, . Fazal Ali J., speaking for the court, has observed at p. 652 of the report as follows :

" In *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUNVERBA SAHEB OF MORVI AND OTHERS.*, , a Division Bench of the Bombay High Court held that the deduction which is permissible under Sub-section (2) of Section 12 is an expenditure incurred solely for the purpose of making or earning the income which has been subjected to tax and the dominant purpose of the expenditure incurred must be to earn income. It was further held that the connection between the expenditure and the earning of income need not be direct, and even an indirect connection could prove the nexus between the expenditure incurred and the income. We fully agree with the view taken by the Bombay High Court."

9. It is true that in *Gopaldas Dahyabhai Lavsi Vs. Commissioner of Income Tax, Gujarat*, and also in *Mrs. Virmati Ramkrishna's* case [see p. 659 (infra)], this High Court differed from the view taken by the Bombay High Court in *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUNVERBA SAHEB OF MORVI AND OTHERS.*, , but the principles which have been culled out from the decided cases including the earlier decided cases of this High Court, as set out from the decision in the case of *Mrs. Virmati Ramkrishna* [see p. 659 (infra)] clearly indicate that the legal principles which were approved by the Supreme Court as laid down in *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUNVERBA SAHEB OF MORVI AND OTHERS.*, , are in no way different from the legal principles culled out in *Virmati's* case [see p. 659 (infra)].

10. The two principles which have been approved by the Supreme Court as emerging from the case of *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUNVERBA SAHEB OF MORVI AND OTHERS.*, are :

(1) That the deduction which is permissible under Sub-section (2) of Section 12 of the Indian I.T. Act, 1922, is an expenditure incurred solely for the purpose of making or earning the income which has been subjected to tax, and for determining whether an expenditure is deductible, the nature of the expenditure has to be examined. The purpose for which the expenditure is incurred must be to earn the income.

(2) The connection between the expenditure and the earning of the income need not be direct. However indirect the connection may be, there must be a connection or a nexus between the expenditure incurred and the income earned.

11. These propositions of law regarding the scope of the provisions of Section 12(2) of the Indian I.T. Act, 1922 (being equivalent to Section 57(iii) of the I.T. Act, 1961), are the same as the propositions Nos. (vii) and (viii) of *Virmati's* case [see p. 659 (infra)] so far as the second proposition set out just now is concerned and proposition No. (in) of *Virmati's* case (See p. 672 infra) is the same so far as the first proposition set out above is concerned. It may also be pointed out that the Supreme Court in *Seth R. Dalmia Vs. The Commissioner of Income Tax Delhi, New Delhi*, has laid down the following conditions (at p. 650) for the purpose of applying Section 57(iii) of the I.T. Act, 1961 :

" (i) the expenditure must have been incurred solely and exclusively for the purpose of earning income or making profit;

(ii) the expenditure should, not be in the nature of a capital expenditure ;

(iii) the amount in question should not be in the nature of personal expenses of the assessee;

(iv) that the expenditure should be incurred in the accounting year ; and

(v) there must be a clear nexus between the expenditure incurred and the income sought to be earned."

12. These five conditions are also to be found in the propositions which this High Court has culled out in *Virmati's* case [see pp. 672-3 (infra)]. Under these circumstances, it is obvious that the decisions of this court, particularly in *Virmati's* case, are in no way affected by the principles laid down by the Supreme Court in *Seth R. Dalmia Vs. The Commissioner of Income Tax Delhi, New Delhi*, . The question that arises for consideration in the present case is identical to the question that arose for consideration in *Virmati's* case and the two cases are on par so far as the applicability of the legal principles is concerned. In the light of the decision in *Virmati's* case, which is in no way affected by any subsequent decision of the Supreme Court, we hold that in the instant case also the interest deficit to the extent of Rs. 8,666 was not deductible while determining the total income of the assessee.

13. The facts which might have taken the case to legal principle No. 6 mentioned in *Virmati's* case have not been brought on record in the instant case and it is

not possible for us to consider the case of the assessee from that angle. It may be pointed out that though the Supreme Court has approved in *Seth R. Dalmia Vs. The Commissioner of Income Tax Delhi, New Delhi*, the principles laid down by the Bombay High Court in its decision in *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUMVERBA SAHEB OF MORVI AND OTHERS.*, this decision of the Bombay High Court was not under appeal before the Supreme Court and, therefore, it cannot be said that the application of the principles to the facts of that case was also approved by the Supreme Court. As very often happens; the difficulty is not about ascertaining the principles but is about the application of the principles to the facts of a particular case. It may be pointed out, as was also observed by this court in *Gopaldas Dahyabhai Lavsi Vs. Commissioner of Income Tax, Gujarat*, that u/s 74(2) of the E.D. Act, which was under consideration before the Bombay High Court in *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUMVERBA SAHEB OF MORVI AND OTHERS.*, there was a charge on the estate of the assessee concerned and, on those facts, it was possible to hold, as the Bombay High Court did in that particular case.

14. Under these circumstances, we answer the question referred to us in the affirmative, i.e., in favour of the revenue and against the assessee. The assessee will pay the costs of this reference to the Commissioner.

15. The learned Advocate-General on behalf of the assessee applied orally for leave to appeal to the Supreme Court u/s 261 of the I.T. Act, 1961. He informs us that the appeals against the decisions of this court in *Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat*, and in *Virmati's* case [see *infra*] are pending before the Supreme Court. In view of this fact, we grant certificate for leave to appeal to the Supreme Court and certify that this is a fit case for appeal to the Supreme Court.