(1987) 01 MP CK 0028

In the Madhya Pradesh High Court

Case No : MCC No. 306 of 1984

Prem Trading Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 23-01-1987

Acts Referred:
Income Tax Act, 1961 — Section 185

Citation : (1987) 62 CTR 7 : (1987) 166 ITR 211 : (1987) 33 TAXMAN 246

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : P.K. Choudhary, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the activity of letting out the factory building did not constitute business and the income was assessable as income from property instead of business income and consequently in holding that the assessee-firm was not entitled to registration ?"

2. The material facts giving rise to this reference, briefly, are as follows :

For the assessment year 1976-77, the assessee applied for registration u/s 185 of the Act. Registration was refused by the Income Tax Officer on the ground that as the assessee had income only from letting out its dal mill, the assessee had no income from any business and hence was not entitled to registration. On appeal, the Appellate Assistant Commissioner held that the assessee was engaged in a business activity by exploiting the dal mill as a commercial asset. The Appellate Assistant Commissioner, therefore, directed the Income Tax Officer to grant registration to the assessee-firm. Aggrieved by the order passed by the Appellate Assistant Commissioner, the Revenue preferred an appeal before the

Tribunal. The Tribunal came to the conclusion that the act of leasing the dal mill by the assessee could not be held to be a business activity and hence the income tax Officer was right in refusing registration. The Tribunal, therefore, allowed the appeal. Aggrieved by the order passed by the Tribunal, the assessee sought for a reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

3. It is significant to note that the Tribunal has not found that the assessee was not a genuine firm. The only ground for refusal of registration was that the activity of letting out the dal mill did not constitute business. Now the answer to the question as to whether the act of letting out a dal mill can or cannot constitute a business activity, will depend on the answer to the question as to whether the asset in question, which is being exploited, is a commercial asset. In Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd., , the Supreme Court held that there is no warrant in law for the proposition that a commercial asset which yields income must be used as an asset by the assessee himself. The Supreme Court held that the assessee is entitled to exploit such asset to his best advantage, which he may do so either by using it himself personally or by letting it out to somebody else. In the instant case, the business of the partnership, as evidenced by the deed of partnership, which has not been found to be sham, is to erect the building, plant and machinery for the dal mill unit and leasing out the building for the dal mill unit. The decision in Rampur Industries Ltd. Vs. Commissioner of Income Tax, relied on by learned counsel for the Revenue is distinguishable on facts. In that case, the godowns, from which rent was received by the assessee company, were let out incidentally and the assessee company was not established for earning profit from godowns. In the instant case, the activity of letting out the dal mill was in the nature of a business activity and it could not be held that the assessee was not carrying on any business to entitle it to registration u/s 185 of the Act.

4. In our opinion, therefore, the Tribunal was not justified in holding that the activity of letting out the factory building did not constitute business, that the income therefrom was assessable as income from property and that the assessee-firm was, therefore, not entitled to registration. Our answer to the question referred to this court is, therefore, in the negative and against the Revenue.

5. In the circumstances of the case, parties shall bear their own costs of this reference.

