
(1950) 10 OHC CK 0006

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 19 to 22 of 1950

Ramanarayana

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 03-10-1950

Acts Referred:

Income Tax Act, 1922 — Section 10, 10(2), 42, 43

Citation : AIR 1952 Ori 112

Hon'ble Judges : Ray, C.J.;Narasimham, J

Bench : Division Bench

Advocate : B.N. Mohanty and S.K. Ray, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Ray, C.J.—These cases are heard analogously and should be governed by this order. The assessee has asked us to issue a writ of

mandamus to the Income Tax Tribunal to state a case on a point of law arising out of their order.

2. The circumstances are that the assessee, in carrying on business, is in the habit of borrowing money for capital purposes, & u/s 10 (2) (iii), he is

entitled to a deduction, in computation of assessable profits or gains of business, of the amount of interest paid. There is no doubt that in this case

the amount of interest nearing about Rs. 11,000/- & odd was paid for the respective assessment years to one Ghanashyam Das. This Ghanashyam

Das, creditor, is a resident of Nayagarh State which was outside ""British India"" at the time of assessment. For the purpose of this case, he should

be considered to be a nonresident. The proviso to Section 10 (2) (iii), provides for exceptions to such deduction. It says that no allowance (for the

interest paid) shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India except (i)

interest on which tax has been paid, or, (ii) from which tax has been deducted u/s 18, or (iii) in respect of which there is an agent in British India

who may be assessed u/s 43, or, (iv) in the case of a firm, for any interest paid to a partner of the firm. Mr. Mohanty, learned counsel for the

petitioner in fact, relies upon exceptions upon exceptions. and in this connexion he relies upon the 3rd exception, viz., that there is an agent in

British India who may be assessed u/s 43. It is conceded by him that he cannot avail of the other exceptions, referred to above. With regard to

this, he urges, relying upon a Bombay decision, reported in MAHARAJA OF PATIALA Vs. COMMISSIONER OF Income Tax (CENTRAL),

BOMBAY, , that a case, where the principal himself can be assessed, as he was assessed in the aforesaid reported case, is as good as a case in

which there is an agent in British India who may be assessed u/s 43. The Legislature, however, has chosen to make a distinction that mere

existence of an agent is sufficient to bring the case within the exception while assessability of the principal u/s 42 of the Act is not enough for the

purpose. It is only when the principal or any body on his behalf in respect of the very item of interest received by him is assessed to Income Tax,

the debtor's business has to be exempted from being assessed against in respect thereof. We cannot, therefore, accede to the prayer that we

should ask the Tribunal to state a case.

3. The Tribunal have made the right observation in their order that at the time when the petitioner was being assessed the business firm of

Ghanashyam Das at Jatni had submitted the returns, to the very Income Tax Dept. may be to the very same officer or to a neighbouring officer (to

use their words), of their income which included this identical item of the interest received from the assessee & that the Income Tax Dept.,

concerned should have waited till Ghanshyam Das' business was fully assessed. However, they have thrown a suggestion that in case Ghanshyam

Das is assessed for the same it will be proper for the Income Tax Dept. to refund the money to the assessee. We entirely concur with this view. It

has been brought to our notice at the Bar that in the meantime the assessment of Ghanashyam Das has been completed & that he has been

assessed for the sum as a part of his profits. If that be so, it is open to the assessee to approach the Income Tax Dept. for a refund. We are sure that the dept. will not try to have double assessment on the selfsame item of money. This cannot be treated for assessment purposes as profits of the debtor as well as of the creditor. Under the circumstances, Mr. Mohanty's remedy is somewhere else than in this Ct. In case the Income Tax Dept. does not perform their duty, his remedy in this Ct. would then be opened. Under the circumstances, we dismiss these S. J., cases. As all these cases have been heard analogously, there will be one consolidated hearing fee for the learned Standing Counsel for the Dept. We assess it at two gold mohurs. We are impressed with the fact that the assessee has some yet unredressed grievance at any rate.

Narasimham, J.

4. I agree.