
(1971) 03 AHC CK 0021

In the Allahabad High Court

Case No : Income-tax Reference No's. 86 and 87 of 1966

Seth Shiv Prasad

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-03-1971

Acts Referred:

Income Tax Act, 1922 — Section 12(2), 6

Citation : (1972) 84 ITR 15

Hon'ble Judges : R.S. Pathak, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.N. Bhalla, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

Judgement

Pathak, J.—This reference has been made u/s 66(1), Indian Income Tax Act, 1922, by the Income Tax Appellate Tribunal at the instance of the assessee in respect of the assessment year 1960-61 (the relevant previous year being the financial year ending March 31, 1960), and the question of law referred is :

" Whether, on the facts and in the circumstances of the case, the assessee's claim to deduct the interest payable on a loan incurred for acquiring an asset no more held by it was legally maintainable ?"

2. The connected reference concerns the same assessee and in respect of the assessment year 1961-62. The questions of law referred are :

" 1. Whether, on the facts and in the circumstances of the case, the assessee's claim to deduct the interest payable on a loan incurred in acquiring an asset no more held by it was legally maintainable ?

2. Whether, on the facts and in the circumstances of the case, the legal expenditure amounting to Rs. 2,970 incurred by the assessee in defending a suit relating to an asset which was not held by the assessee during the relevant period was deductible under the provisions of Section 12 of the Income Tax Act, 1922 ? "

3. The assessee is a Hindu undivided family. It owned a large number of shares of the Lord Krishna Sugar Mills Ltd. In 1951, the assessee acquired 19,250 shares of that company from Seth Devi Chand. Out of the purchase consideration amounting to Rs. 4,37,500, a sum of Rs. 2,10,000 was paid by the assessee. The unpaid balance remained at Rs. 2,27,500 on March 31, 1959. This amount was treated as money due to Seth Devi Chand and the interest payable thereon was calculated by the assessee at Rs. 10,589 for the previous year relevant to the assessment year 1960-61 and at the same figure for the previous year relevant to the assessment year 1961-62. In assessment proceedings for each of the assessment years 1960-61 and 1961-62 the assessee claimed a deduction of Rs. 10,589 against its dividend income as representing the interest payable by it to Seth Devi Chand. Earlier, the Hindu undivided family property belonging to the assessee had suffered partial partition, once in 1953 and again in 1959. As a result, the entire block of 19,250 shares purchased in 1951 ceased to form part of the assets of the assessee. Other shares of the same company had similarly ceased to belong to the assessee. That left a balance of 51, 524 shares representing the holding of the assessee in that company. The Income Tax Officer took the view that, since the interest was directly related to the distinctive shares purchased from Devi Chand, and they were no longer held by the assessee, the claim to deduction could not be allowed. The assessee appealed. The Appellate Assistant Commissioner held that the assessee was following the cash basis of accounting in respect of dividends and interest on investments and, as the interest was only payable and had not yet been paid, the deduction could not be allowed. The assessee then appealed to the Income Tax Appellate Tribunal. The Tribunal accepted the contention of the assessee that it maintained its accounts on the mercantile basis and, therefore, did not agree with the ground upon which the Appellate Assistant Commissioner disallowed the claim. But it took the view that the block of 19,250 shares purchased from Seth Devi Chand in 1951 constituted a distinct source of income, and that as that block of shares was not owned by the assessee during the previous years relevant to the assessment years 1960-61 and 1961-62, it could not be said that the interest represented expenditure incurred for the purpose of making or earning income from those shares. Construing and so applying the provisions of Section 12(2) of the Act, it endorsed the rejection of the assessee's claim. In this respect, therefore, a similar question has been referred by the Tribunal in each of the two references before us. We think the point raised by these questions can conveniently be disposed of first.

4. Section 6, Indian Income Tax Act, 1922, enumerates the heads of income chargeable to Income Tax. One of the heads is "income from other sources". Sub-section (1) of Section 12 provides :

"(1) The tax shall be payable by an assessee under the head "income from other sources" in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads)".

5. It is clear that the head contemplates income, profits and gains of different kinds and, therefore, from different sources. The expression " income from other sources " itself indicates that more than one source of income is contemplated.

6. What is a " source of income " ? The expression has been used in several places in the Act. In Section 2(11) the definition of " previous year" envisages a different previous year in respect of each separate source of income. Section 4, which is concerned with the application of the Act, declares that the total income of a person includes all profits and gains, from whatever source derived, which falls within the categories set out there. And so on. The first authoritative judicial pronouncement appears in *Rhodesia Metals Ltd. (Liquidator) v. Commissioner of Taxes* [1941] 9 ITR 45(P.C.) where the Privy Council approved of the passage quoted by Mr. Justice de Villiers from Mr. Ingram's work on Income Tax :

" Source means not a legal concept but something which a practical man would regard as a real source of income ; the ascertaining of the actual source is a practical hard matter of fact."

7. This quotation was referred to by a Full Bench of our court in *RANI AMRIT KUNWAR Vs. COMMISSIONER OF INCOME TAX, C.P. and U.P.,* . In that case the learned Judges considered that an agreement or an order of the court requiring the payment of a periodical sum could be regarded as a source of income. In the case of income from business, which is a separate head u/s 6, each business has been treated as a distinct source of income. The decision of the Madras High Court in *COMMISSIONER OF Income Tax, MADRAS Vs. V. E. K. R. SAVUMIAMURTHY,* proceeds on that basis. In *COMMISSIONER OR Income Tax, NEW DELHI Vs. LADY KANCHANBAI,* the Madhya Pradesh High Court observed that each branch of a business could be described, as a distinct source of income. A source of income, therefore, may be described as the spring or fount from which a clearly defined channel of income flows. It is that which by its nature and incidents constitutes a distinct and separate origin of income, capable of consideration as such in isolation from other sources of income, and which by the manner of dealing adopted by the assessee can be treated so.

8. Reverting to Section 12, we find that income from dividends has been treated as one kind of income. What is the source of dividend income? It is the shareholding held by the assessee; and there can be as many sources of income as there are shareholdings. Shareholding in different companies constitute different sources of income. The shares of one company may be treated by the assessee as a single shareholding. The assessee may also, for good reason, treat the shares of the same company as constituting a number of separate and distinct shareholdings. The shares may be divided into groups defined by reference to the circumstances in which they were acquired, or to the purpose for which they were purchased, that is, some as an investment holding and others as a share-dealer's stock-in-trade, or to the category or class to which they belong, for example, whether they are preference or equity. There may be other criteria reasonably defining them into separate and distinct shareholdings,

and, therefore, as distinct and separate sources of income.

9. Upon the facts before us, the block of 19,250 shares was purchased by the assessee in 1951 as a single group from Seth Devi Chand and it appears from the manner in which they were dealt with by the assessee that they were treated as a distinct group throughout. The unpaid balance due on the purchase of those shares was apparently shown as a separate figure of Rs. 2,27,500 as on March 31, 1959, and interest was claimed as specifically payable thereon in respect of each of the assessment years 1960-61 and 1961-62. This group of 19,250 shares was included in the Hindu undivided family assets for the purposes of partial partition and, as the Tribunal has found, they were identifiable as the shares purchased in 1951. In our opinion, the block of 19,250 shares must be treated as constituting a distinct source of income in the hands of the assessee.

10. The next question is whether, upon the circumstance that the block of 19,250 shares ceased to be owned by the assessee, the assessee is still entitled to the benefit of Section 12(2). Section 12(2) reads:

" (2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains and further in the case of any income by way of dividend, for any reasonable sum paid by way of commission or remuneration to a banker or any other person realising such dividend on behalf of the assessee "

11. Therefore, in computing the income from each source an allowance has to be made for expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income. In the case of dividend income, an allowance has also to be made for any reasonable sum paid by way of commission or remuneration to the person realising the dividend on behalf of the assessee. It is after making such allowances that the net income proceeding from each source of income is determined. Since the allowance is in respect of expenditure for the purpose of making or earning income, it must be incurred while there is the possibility of the income being made or earned, and that necessarily postulates the existence of the source of such income at the time when the expenditure is incurred. That being so, it is not possible to describe the interest payable on the amount due to Seth Devi Chand as an expenditure incurred for the purpose of earning dividend income from the 19,250 shares.

12. In our judgment, the assessee's claim to deduction of the interest for each of the two assessment years is not maintainable. The question referred is answered in the negative.

13. The other question, which arises solely in respect of the assessment year 1961-62, is whether the expenditure amounting to Rs. 2,970 incurred by the assessee in defending a suit relating to 19,250 shares was deductible u/s 12. The sons of Devi Chand had filed a suit to set aside the agreement under which Seth Devi Chand had sold 19,250 shares to the assessee. The assessee claimed

deduction of that amount. The Income Tax Officer, however, found that the expenditure was incurred by the assessee in connection with a dispute among the members of the family and had no connection with the income earned by the family, and, accordingly, he disallowed it. The rejection of the claim was confirmed by the Appellate Assistant Commissioner. On second appeal, the Tribunal took the view that even if the litigation related to 19,250 shares the expenditure incurred by the assessee could not be allowed for the same reasons on which the claim to deduction of interest had been rejected. We think the Tribunal is right. When the shares themselves were no longer held by the assessee during the relevant previous year it is not possible to hold that the expenditure was incurred for the purpose of earning income from that asset. The question is answered in the negative.

14. In the result, all the questions referred are answered against the assessee. The Commissioner of Income Tax is entitled to his costs, which we assess at Rs. 200 in each case. Counsel's fee is assessed in the same figure.