

(1977) 01 GAU CK 0009

In the Gauhati High Court

Case No : Income-tax Reference No. 29 of 1974

Sookerating Tea Co. (P.) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-01-1977

Acts Referred:

Income Tax Rules, 1962 — Rule 8

Citation : (1978) 111 ITR 457

Hon'ble Judges : M.C. Pathak, C.J.;B.N. Sharma, J

Bench : Division Bench

Advocate : S.K. Sen, R.L. Jain and S.C. Tebriwal, for the Appellant; G.K. Talukdar and D.K. Talukdar, for the Respondent

Judgement

Pathak, C.J.—The following question of law has been referred u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act", by the Income Tax Appellate Tribunal, Gauhati Bench, to this court for decision :

"Whether, in the facts and circumstances of the case, the Tribunal was justified in holding that Rule 8 of the Income Tax Rules, 1962, did not apply to income from interest received by the assessee on loans advanced by it and that such income was liable to be included in the assessee's total income in full and not to the extent of 40% only?"

2. The facts of the case are as follows. The assessee is a private limited company owning tea gardens. The assessment years involved are 1966-67, 1967-68 and 1969-70. In the assessment year 1966-67, the assessee had taken a loan from the Allahabad Bank against hypothecation of tea crops. The amount of interest paid by the assessee during the assessment year 1966-67 amounted to Rs. 18,266. It had also advanced loans to three sister concerns, namely, (1) Bharat Wood Works (P.) Ltd., (2) Tarajan Tea Co. (P.) Ltd. and (3) Assam Forest Products (P.) Ltd. In respect of the loans advanced by the assessee to these companies it received interest of Rs. 21,351. While computing the income of the assessee the Income Tax Officer held that part of the loan taken from the Allahabad Bank was

used for advancing loans to the three companies mentioned above and interest paid to the Allahabad Bank in respect of such amounts could not be allowed as a deduction while computing the income from tea business. This amount of Rs. 9,732 disallowed while computing the income from tea business was allowed as a deduction against the sum of Rs. 21,351 received as interest from the three companies on loans advanced to them and the net income from interest on these loans was computed at Rs. 31,619. This amount was included in the income of the assessee as income from other sources. Whereas only 40% of the income from tea business was included in the total income of the assessee, this income from interest was included in the income of the assessee in full. The claim of the assessee that only 40% of this income also should be treated as a taxable income was rejected by the Income Tax Officer.

3. In the assessment year 1967-68, the interest received on loans advanced to the three sister concerns was Rs. 40,361. The interest paid on loans taken by the assessee amounted to Rs. 26,009. While computing the income from tea business the Income Tax Officer held that interest of Rs. 9,000 was referable to the amounts advanced to the sister concerns and disallowed this amount. 40% of the income from tea business was included in the total income of the assessee. The income from interest on loans advanced to the sister companies was computed at Rs. 31,361 after deducting the sum of Rs. 9,000 from the total amount of interest of Rs. 40,361 received by the assessee. This amount was included in the income of the assessee in full as income from other sources. Here again, the claim of the assessee that this income also would be covered by Rule 8 of the Income Tax Rules, 1962, and only 40% of the same could be included in its total income was rejected.

4. In the assessment year 1969-70 a sum of Rs. 10,000 was disallowed out of the interest paid to the Allahabad Bank in respect of the loans advanced to sister concerns of the assessee while computing the income from tea business. 40% of the income from tea business was included in the assessee's total income under Rule 8 of the Income Tax Rules. During this year the assessee had received interest of Rs. 14,073 on loans advanced by it to the sister concerns and the whole of this amount was included as income from other sources.

5. The assessee appealed against the above orders of the Income Tax Officer before the Appellate Assistant Commissioner of Income Tax. In the appeal for the assessment year 1966-67, the Appellate Assistant Commissioner accepted the contention of the assessee that Rule 8 of the Income Tax Rules would apply to the income from interest on loans advanced to the sister concerns and, therefore, only 40% of the amount of income computed by the Income Tax Officer under this head would be liable to be included in the assessee's total income.

6. In the appeal for the assessment year 1969-70, the findings given in the appeal for the assessment year 1966-67 were followed.

7. In the appeal for the assessment year 1967-68 the Appellate Assistant Commissioner held that the income from interest should be computed by deducting the total payment of Rs. 26,009 from the total amount of Rs. 40,361 received by the assessee as interest and the balance of Rs. 14,352 should be taxed as income of the assessee in full.

8. The assessee then appealed against the order of the Appellate Assistant Commissioner for the assessment year 1967-68 before the Tribunal. The department, on the other hand, filed appeals to the Tribunal against all the orders of the Appellate Assistant Commissioner for the aforesaid three assessment years. All these appeals were disposed of by the Tribunal by a consolidated order.

9. It was claimed on behalf of the assessee that Rule 8 of the Income Tax Rules would apply to the entire business income of the assessee. It was urged that the only business of the assessee was tea business and interest was received in the course of the business. The Tribunal held that the receipt of interest and the tea business was one integrated business. The Tribunal, therefore, held that the entire loan taken against the hypothecation of the tea crop from the Allahabad Bank was loan for the purpose of tea business and the entire interest paid on the loan should be allowed as a deduction while computing the income from tea business. While considering the nature of the receipt from interest the Tribunal held that this income had nothing to do with sale and manufacture of tea and, therefore, Rule 8 will not apply to this income. According to the Tribunal the interest received by the assessee was liable to be included in the income of the assessee in full. As the Income Tax Officer had assessed the interest at a lower figure the orders of the Income Tax Officer were restored. The appeals filed by the department in this respect were allowed and the assessee's appeal was dismissed.

10. On the above facts, the above mentioned question of law has been referred.

11. The question that falls for decision is whether Rule 8 of the Income Tax Rules, 1962, applies to the interest received by the assessee from the three sister concerns, namely, (1) Bharat Wood Works (P.) Ltd., (2) Tarajan Tea Co. (P.) Ltd. and (3) Assam Forest Products (P.) Ltd.

12. Section 10(1) of the Act reads as follows:

"10. Incomes not included in total income.--In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(1) agricultural income....."

13. Section 295 of the Act deals with the power to make rules. Section 295(1) and (2)(b)(i) of the Act read as follows :

"295. (1) The Board may, subject to the control of the Central Government, by

notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters--.....

(b) the manner in which and the procedure by which the income shall be arrived at in the case of-

(i) income derived in part from agriculture and in part from business....."

14. Rules 7 and 8 are rules framed u/s 295(2)(b)(i) of the Act. In this case we are concerned with Rule 8, which reads as follows :

"8. Income from the manufacture of tea.--(1) Income derived from the sale of tea grown, and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent, of such income shall be deemed to be income liable to tax....."

15. It has been contended on behalf of the assessee that 40% of the interest derived by the assessee from the loans advanced to the three sister concerns should only be taken into account in computing the total income of the assessee under Rule 8. Or, in other words, Rule 8 is applicable to the interest received by the assessee from the three sister concerns.

16. In this connection the learned counsel for the assessee has drawn our attention to the finding of the Tribunal to the effect that the receipt of interest and the tea business was one integrated business and since the Tribunal has held that the receipt of interest and tea business was one integrated business, there is no reason why the benefit of Rule 8 should not be given to the interest in the particular case.

17. In order to solve the problem we have to carefully examine the language of Rule 8. This Rule of 40%--60% is applicable to income derived from the sale of tea grown and manufactured by the seller in India. So, the question resolves to this. Is the interest received by the assessee from the loans advanced to the three sister concerns an income derived from the sale of tea grown and manufactured by the assessee ? In other words, whether the receipt of this particular interest was in prosecution of tea business, the business of growing, manufacturing and selling of tea. From the facts stated hereinabove it is found that certain amounts were borrowed by the assessee from the Allahabad Bank by hypothecation of tea crop. The assessee had to pay interest to the bank on these amounts. The interest paid to the bank has been allowed as a deduction allowable under the provisions of the Act. No doubt, the money that was taken by the assessee by hypothecation of tea crop cannot but be held to be in the course of tea business. But the same thing cannot be said in respect of the interest received from the three sister concerns. Out of the sum that was taken on loan from the bank, a portion was advanced to these three sister concerns as loan and the assessee received interest thereon. This advancing of loan to the

three sister concerns from the facts of the case does not appear in any way to be related to or connected with tea business, that is, growing, manufacturing or selling of tea of the assessee. This is quite clear from the finding of the Tribunal in its order, which reads as follows :

"It was submitted by the assessee that they have to take the loans sanctioned from the Allahabad Bank and since there was no immediate use for the same in the tea business, it was deposited with the sister companies. If that were to be a fact then we should find withdrawal of these deposits when the tea business is in full swing. But the accounts of these sister concerns show no such withdrawal. Therefore, we are unable to accept this explanation as establishing a connection between the interest received and the tea business. In fact, there is nothing at all to show that it was even remotely connected with the tea business. However, the assessee is receiving more interest than it has paid to the Allahabad bank. It would show perhaps that the assessee has in fact surplus funds but in the absence of facts we cannot give that as a finding ; but it is sufficient to show that there is no connection with the tea business. That being so the provision of Rule 8 will not apply and the interest has to suffer tax at 100%".

18. Considering the facts and circumstances of the case, the Tribunal has come to the definite finding that this receiving of interest from the three sister concerns has no connection even remotely with the tea business of the assessee.

19. Mr. R. L. Jain, the learned counsel appearing for the assessee, has submitted that the Tribunal has observed that receipt of interest and tea business was one integrated business and if that is the finding of fact arrived at by the Tribunal, then it erred in law and logic in holding that this interest had no connection with the integrated business. There is, however, a fallacy in this submission. The assessee took loan from the Allahabad Bank by hypothecating the tea crop and some interest was paid to the bank for this loan. This interest was charged to tax in full by the Income Tax Officer, and this question was considered by the Tribunal. While considering this aspect of the matter the Tribunal found:

"There is common management and control, common organisation, common finance, common place of business, etc. In view of these and unity of control and management, we have come to the finding that it is one integrated business. In view of this finding the loan taken on the hypothecation of the tea crop from the Allahabad Bank has to be accepted as the loan for the purpose of tea business and the entire interest claimed has to be allowed against the tea business."

20. This rescuing, however, as the Tribunal has correctly held, is not applicable to the interest that was received from the loans advanced to the three sister concerns because these loans have no relation with the tea business of the assessee, as has been categorically found by the Tribunal. That being so, we hold that in the facts and circumstances of the case the Tribunal was justified in holding that Rule 8 of the Income Tax Rules, 1962, did not apply to income from interest received by the assessee on loans advanced by it and that such income

was liable to be included in the assessee's total income in full and not to the extent of 40% only.

21. The learned counsel for the assessee referred to Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, ; Commissioner of Income Tax, Madras Vs. Prithvi Insurance Co. Ltd., ; Hooghly Trust (Private) Ltd. Vs. Commissioner of Income Tax, West Bengal and Andaman and Nicobar Islands, (Hooghly Trust (P.) Ltd, v. Commissioner of income tax). We, however, find that the facts of these cases are different from the facts of the case before us and the principles laid down in those cases are not applicable to the facts of the present case.

22. In the result, the question of law is answered in the affirmative and against the assessee.

23. The reference is accordingly disposed of. There will be no order as to costs.

B.N. Sarma, J.

24. I agree.