(1998) 05 DEL CK 0096

In the Delhi High Court

Case No : IT Case No. 101 of 1993

Uberoisons (Machines) Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-05-1998

Acts Referred:
Income Tax Act, 1961 — Section 22, 23, 24, 24(1), 25

Citation : (1998) 101 TAXMAN 492

Hon'ble Judges : R.C. Lahoti, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : C.S. Aggarwal and Salil Aggarwal, for the Appellant; R.D. Jolly and Ms. Premlata Bansal, for the Respondent

Judgement

R.C. Lahoti, J.—By this petition u/s 256(2) of the income tax Act, 1961 (?the Act?), the petitioner seeks a mandamus to the Tribunal for drawing up a statement of case and referring the following questions of law (arising out of the assessment year 1988-89) for the opinion of the High Court :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that income from building No. 21, Community Centre, Friends Colony, New Delhi, was assessable under sections 22 to 27 and not u/s 28 of the income tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in disregarding the evidence filed before it at pages 63 to 111 holding the same to be inadmissible ?

3. Whether, on the facts and in the circumstances of the case, the order of the Appellate Tribunal is not vitiated for non-consideration of material evidence ?

4. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that sufficient evidence was not on record to establish that the property at 21, Community Centre, Friends Colony, was purchased with the intention of carrying on the business of dealing in property ?

5. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee had not commenced the business of dealing in properties in the year in appeal as per ?other objects of the company? stated in Column 8 of the Memorandum and Articles of Association ?

6. Without prejudice to the above and in the alternative, whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in concluding that the assessee-company was not even entitled to the statutory deduction provided in sub-section (1) of section 24 of the income tax Act ?

7. Whether, on the true interpretation of the agreements entered by the assessee-company with the tenants it could be held that the tenants had undertaken to bear the cost of repairs, thus, disentitling the assessee to get the deduction provided u/s 24(1) of the income tax Act ?

8. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in disallowing the depreciation and other expenses claimed by the assessee holding them to be disallowance from ?income from house property? ?

9. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in observing that there was no evidence to show that maintenance charges of lift were incurred during the previous year which ended on 30th June, 1987, and whether the aforesaid observation is contrary to the evidence placed by the appellant on record ?

10. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee would not be entitled to set off and carry forward of loss computed in the preceding year ?"

During the course of hearing, the learned counsel for the petitioner reframed the questions of law to read as under :

"1. Whether, on the facts and in the circumstances of the case and on the basis of material on record, was the Appellate Tribunal right in holding that the income from property at 21, Community Centre, Friends Colony, New Delhi, should be assessed under the head ?Income from ?property? instead of ?Income from business or other sources? ?

2. Whether, on the facts and in the circumstances of the case and having regard to rule 29 of the Income Tax Appellate Tribunal Rules was the Tribunal right in law in disregarding the additional supporting evidence filed before it ?

3. Whether, on the facts and in the circumstances of the case, was the Appellate Tribunal right in holding that the assessee had not commenced the business in dealing in properties ?

4. Whether, the Appellate Tribunal was right in law in holding that the expenses incurred by the assessee-company including the depreciation claimed could not

have been allowed while computing the total income of the assessee-company ?

5. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee would not be entitled to the set-off and carry-forward of loss computed in the preceding year ?"

2. It may, however, be mentioned that out of the several questions suggested, the following question has been held to be a question of law arising from the order of the Tribunal and directed to be referred by the Tribunal to the High Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law to hold that the assessee is not entitled to deduction for repairs in respect of property let out to tenants ?"

3. The main dispute is that rental income in respect of house property is sought to be assessed by the assessee under the head ?Income from business? whereas the revenue has assessed it as ?Income from house property?.

4. The company had completed the construction of a building at 21, Community Centre, Friends Colony, New Delhi, in the previous year relevant to the assessment year 1977-78. The building was given on lease in separate portions to Samtel Colour Ltd., Oriental Bank of Commerce and UNI Products Ltd. The assessee had pleaded before the revenue authorities that the building had been constructed on the plot of land acquired from the DDA for commercial purposes. The building had been let for commercial purposes and as such, it was contended that income derived therefrom should be assessed as income from business. Section 22 to section 27 of the Act, were said to be not applicable in respect of commercial properties. The income had been assessed in the preceding year ? Income from business? as disclosed by the assessee and as such, it was contended that for the year in appeal the income should be assessed under the head as income from business. The contention of the assessee was, however, not accepted by the Assessing Officer for the reasons mentioned in his assessment order. The Commissioner (Appeals) was also not impressed with the contentions raised on behalf of the assessee.

5. The company had acquired leasehold rights of the plot from DDA in March 1983 on the basis of auction conducted on 28-2-1978. Construction of property on the said land had been completed by the end of the preceding year. As per the balance sheet as on 30-6-1987 relevant to the assessment year 1988-89, the fixed assets were disclosed at Rs. 20,62,333 as per schedule. In the schedule of fixed assets, the value of land was reflected at Rs. 2,97,793 whereas that of the building as on 1-8-1976 value was reflected at Rs. 17,63,532. Depreciation was claimed in respect of the building and value reduced accordingly. In the profit and loss account, depreciation in respect of fixed assets was written off.

6. Before the Tribunal, documents available at pages 63 to 111 of the paper book before the Tribunal were produced for the first time and as fresh evidence.

However, no reasons were advanced for not filing this additional evidence nor any explanation was given by the petitioner-assessee for filing these documents before any of the authorities below. The Tribunal chose to ignore these documents as inadmissible and proceeded to decide a case on the basis of the evidence available on record.

7. The Tribunal refused to agree with the contention of the petitioner-assessee for many reasons. The Tribunal found that (i) the main objects with which the company was incorporated were to manufacture and deal in machinery tools, etc., and to carry on engineering works. The objects of the company did not include the object of dealing in the properties even as an incidental and ancillary object of the company; (ii) the land and property was reflected in the balance sheet as fixed assets and was not shown as stock-in-trade; (iii) there were two resolutions passed by the company which envisaged that the intention of the assessee was not to sell the property as stock-in-trade but to sell commercial space so as to enable the assessee to complete the construction of the building. Thus, from an appreciation of the evidence adduced by the assessee, the assessing authorities have arrived at a finding that the construction of building was not in furtherance of the intention of the company to start dealing in immovable property. As a corollary to the abovesaid finding, the assessing authorities have held that the company was not entitled to set off and carry forward loss computed in the preceding year. The finding arrived at is purely a finding of fact and does not raise any question of law referable to the High Court.

8. The learned counsel for the petitioner-assessee submitted that once the documents were produced by the assessee on the record of the Tribunal, they should not have been excluded from the consideration and the Tribunal should have looked into them for the purpose of correctly determining the tax liability of the assessee. We are not impressed. A belated production of document cannot be allowed as of right at the stage of appeal and that too second appeal. Otherwise the whole purpose behind enacting rule 29 of the income tax (Appellate Tribunal) Rules, 1963 would be defeated. Rule 29 opens with the words. ?The parties to the appeal shall not be entitled to produce additional evidence either, oral or documentary, before the Tribunal?.

9. We are, therefore, of the opinion that the Tribunal did not err in rejecting the petitioners application u/s 256(1).

10. The learned counsel for the petitioner relied on a decision of this Court in CIT v. New India Construction Co. Ltd. [IT Case No. 113 of 1992] and submitted that a similar question whether income from property should be assessed under the head ?Income from other sources? was held to be a question of law referable to the High Court. It was a case of construction-company and one of the objects of the company was to sub-let, rent, lease, etc., of properties. The case is apparently distinguishable. The learned counsel also relied on Shiv Parkash Vs. Commissioner of Income Tax and Another, and Commissioner of Income Tax Vs. Gambhir Mal Pandya, In both these cases also, the question of law directed to be

referred to the High Court arose in a different setting of facts which do not bear any similarity with the facts of the case at hand and, hence, are distinguishable.

11. The learned counsel also submitted that if one of the questions suggested by the assessee was already referred to for the opinion of the High Court, as a matter of practice or procedure this Court should call for a reference on the questions left out. This argument has also not impressed us. There is no practice in vogue as is sought to be canvassed. u/s 256, only questions of law and that too arising out of the order of the Tribunal can be referred to the High Court. Questions of fact cannot be permitted to be referred. The practice sought to be canvassed by the learned counsel for the petitioner-assessee would be contrary to the law and, hence, cannot be accepted.

12. The requisite foundation for attracting applicability of rule 29 of the income tax (Appellate Tribunal) Rules so as to permit additional documents being adduced in additional evidence was not laid. This aspect would not also, therefore, raise any question of law. The petition is held liable to be dismissed and is dismissed accordingly.

