
(1997) 02 MAD CK 0112
In the Madras High Court
Case No : Tax Case No. 205 of 1982

V. Ramakrishnan Sons Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-02-1997

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 28

Citation : (1999) 235 ITR 457

Hon'ble Judges : S.M. Siddick, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—In pursuance of the directions given by this Court in TC No. 486 of 1980 dt. 23rd February, 1981, the Tribunal referred the following question, for the opinion of this Court under s. 256(2) of the IT Act :

"In the facts and circumstances of the case, was the Tribunal correct in holding that the company had no income from business and that the income from the lease was income from other sources ?"

2. For the asst. yr. 1974-75, the accounting year was the year ended 30th September, 1973. The gross total income as determined by the ITO by his order dt. 21st December, 1976 was Rs. 15,33,909. The ITO had treated no part of the income as arising from business. The assessee owned plants and machinery relating to a foundry. The foundry had been leased out from 1965 onwards and during the accounting year the lessee was subsidiary of the assessee. Before the ITO, the assessee claimed that the lease income was income from the business. The ITO on the ground that the foundry was leased from 1966 onwards held that the assessee had ceased to run the foundry as a business of its own and treated the lease income as income from other sources. On appeal, the AAC confirmed the order passed by the ITO. On further appeal, it was contended before the Tribunal that the AAC was not correct in treating the lease income as income

from other sources. The AAC should have held that the assessee was carrying on money lending business and regarding the foundry business, it was contended that the main object of the assessee was promoting business and during this process had acquired the foundry business and hence, the lease income should be treated as business income. The Tribunal held that from the inception, i.e., from 1965 onwards, the assessee has no business income arising out of the foundry and that it had leased out the plant and machinery to its sister concern. Hence, the Tribunal upheld the decision of the AAC, relying on the decision of the Supreme Court in *New Savan Sugar and Gur Refining Co., Ltd. Vs. Commissioner of Income Tax, Calcutta*, . The Tribunal also held that the assessee was not carrying on moneylending business and that the lease income was assessable under other sources of income only.

3. Before us, the learned counsel appearing for the assessee submitted that the assessee was the managing agent of KCP Ltd., which was doing business in manufacture of sugar mill industries. The assessee acquired machinery relating to the foundry in the year 1965 and the machineries were let out to the business concern. According to the assessee the idea was to get the managing agency of the company to which the foundry machineries would be transferred in future. The fact that in the earlier years the lease income by letting out the machinery was assessed under the head other sources would not preclude the assessee from contending this year that the said income should be assessed under the head business income. According to the learned counsel, the decision of the Supreme Court in *New Savan Sugar and Gur Refining Co., Ltd. Vs. Commissioner of Income Tax, Calcutta*, , would not be applicable to the facts of this case because that decision is concerned that the company which is doing the business and the claim of managing agency does not arise in that case. The learned counsel also submitted that the managing agency system was abolished in 1970. Even under s. 28, the compensation received was directed to be assessed as business income.

4. On the other hand, the learned standing counsel for the Department, while supporting the order passed by the Tribunal, submitted that the compensation received was directed to be assessed under the head business under s. 28(ii) of the Act specifically. Therefore, the same cannot be assessed under other sources of income. The assets are not commercial assets and therefore, income derived therefrom cannot be assessed under the head business. The learned standing counsel further pointed out that in the earlier years the lease income was assessed under the head other sources and that would go to show the intention of the assessee not to do the foundry business. For these reasons, it was submitted that the Tribunal was correct in holding that the lease income derived from the foundry machineries is assessable under the head other sources.

5. We have heard the rival submissions.

6. The fact remains that the assessee was doing managing agency business for KCP Ltd., which was manufacturing machineries for sugar mills. The managing

agency system was abolished in the year 1970. The assessee acquired certain foundry machinery in the year 1965. The assessee let out the foundry machineries to a sister-concern and derived lease income therefrom. The said lease income was assessed under the head other sources for the asst. yr. 1966-67 onwards. In the present asst. yr. 1974-75 the assessee claimed that the said lease income should be assessed under the head business income. According to the assessee, the foundry machineries were later on transferred to another company. In the meanwhile, the assessee was letting out the machineries to the sister-concern and earning the lease income. The lessee is a subsidiary company of the assessee.

7. The point for consideration is whether the lease income derived by the assessee by letting out the foundry machinery to a sister-concern can be assessed under the head business income when the assessee was not doing the managing agency business during the assessment year under consideration. Neither before the authorities below nor before the Tribunal the assessee categorically claimed that the lease income should be assessed under the head business income of managing agency. According to the assessee the lease income was derived while promoting the business. The fact that the assessee was doing managing agency business was not disclosed. Perhaps it may be due to the fact that the managing agency system was abolished from the year 1970. According to the Tribunal the assessee was doing money lending business. The assessee never claimed the lease income should be assessed under the head assessee's moneylending business. But it was claimed as business income under the head managing agency business. Without any pleading to this effect, it is not possible to treat the lease income as the income from the business of the managing agency. It is no doubt true that the assessee is entitled to ask the assessee's lease income in the assessment year under consideration under the head business income though in the earlier years such business income was assessed under other head. It remains to be seen from the fact that the lease income was assessed under the head other sources in the earlier years would go to show that there is no intention on the part of the assessee in doing the foundry business. The learned standing counsel for the Department rightly pointed out that the assets in question are not in the nature of commercial assets and therefore, the income derived therefrom cannot be assessed as business income. It is significant to note that in the present case the assessee has not mentioned the lease income should be assessed under what business income. In *New Savan Sugar and Gur Refining Co., Ltd. Vs. Commissioner of Income Tax, Calcutta*, the Supreme Court held that the lease income derived by the assessee-company cannot be assessed under the head business income. No doubt, the question of claiming the lease income to be assessed under the head business income did not arise in that case. But, the fact remains that as per the decision of the Supreme Court, cited supra, leasehold income cannot be assessed under the head business when the assessee let out the machineries to a third party. When there is no claim that the lease income should be assessed under

the head business income of the managing agency business and since the managing agency system is not prevailing in the assessment year under consideration, we are unable to accede to the contention made by the learned counsel appearing for the assessee. Accordingly, we see no infirmity in the order passed by the Tribunal in holding that the lease income should be assessed under the head other sources.

8. In that view of the matter, we answer the question referred to us in the affirmative and against the assessee. No costs.