
(1997) 02 MAD CK 0026

In the Madras High Court

Case No : Tax Case No. 205 of 1982 10 February 1997 A.Y. 1974-75

V. RAMAKRISHNAN SONS LTD.

APPELLANT

Vs

COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 10-02-1997

Acts Referred:

Citation : (1998) 148 CTR 383

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

Bench : Full Bench

Advocate : M. Uttam Reddy, for the Assessee C.V. Rajan, for the Revenue, for the Appellant;

Judgement

Thanikkachalam, J.

In pursuance of the directions given by this court in TC No. 486 of 1980 dated 23-2-1981, the Tribunal referred the following question, for the

opinion of this court u/s 256(2) of the Income Tax 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 assessment year 1974-75, the accounting year was the year ended 30-9-1973. The gross total income as determined by the Income

Tax Officer by his order date 21-12-1976 was Rs. 15,33,909. The Income Tax Officer 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 Income Tax Officer, the assessee claimed that the lease income was income

from the business. The Income Tax Officer 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 Appellate Assistant Commissioner

confirmed the order passed by the Income Tax Officer. On further appeal, it was contended before the Tribunal that the Appellate Assistant

Commissioner was not correct in treating the lease income as income from the other sources. The Appellate Assistant Commissioner 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 Appellate Assistant

Commissioner, 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 machinery 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 machinery

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, , cited supra, would not be applicable to the facts of this case because that decision is concerned that 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 u/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 u/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 machinery 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 machinery 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 machinery to a sister-concern and derived lease income therefrom. The said lease income was assessed under the head other sources

for the assessment year 1966-67 onwards. In the present assessment year 1974-75 the assessee claimed that the said lease income should be

assessed under the head business income. According to the assessee, the foundry machinery were later on transferred to another company. In the

meanwhile, the assessee was letting out the machinery 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 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*, , cited supra, 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 machinery 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.