

(1980) 01 MAD CK 0005

In the Madras High Court

Case No : Tax Case No"s. 345 and 346 of 1976 (Ref. No"s. 244 and 245 of 1976)

Waterfall Estates Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 32, 36, 38, 38(1), 38(2)

Citation : (1981) 131 ITR 223

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : K. Srinivasan and R. Gangadharan, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Sethuraman, J.—The Appellate Tribunal has referred the following questions u/s 256(1) of the I.T. Act, 1961 :

(1) Whether, on the facts and in the circumstances of the case, the conclusion of the Appellate Tribunal that the managing agency commission and

head office expenses claimed in the accounts was not an allowable deduction as per the ratio of the decision of the Supreme Court in the case of

Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, was valid in law ?

(2) Whether, on the facts and in the circumstances of the case, the decision of the Tribunal for the assessment year 1970-71, that the various lines

of activity like the tea estate, coffee estate, coffee curing plant, etc., did not constitute one single and integrated activity or business but were

independent units of business is a correct inference on the facts found and is valid in law ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate

Tribunal was justified in its conclusion that the managing agency commission and the head office expenses had to be allocated between the various sources of income, i. e., tea, coffee, curing works, and done in the manner set out in the order ?

(4) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the entire depreciation in respect of assets in the head office should be deducted from the taxable income and that there was no justification as far as depreciation was concerned for making a bifurcation and disallowing any portion thereto ?

2. It is not in dispute that questions (1) to (3) are covered by a decision of this court in T.C. No. 426 of 1974 (Waterfall Estates Ltd. v. CIT)

dated January 11, 1979 (see p. 207 supra) in the case of the very same assessee. The facts are identical except for the difference in the

assessment year and the amounts claimed as deduction. It is not, therefore, necessary to rehear the facts over again. It is enough for our purpose to

state that for the reasons given in the said judgment, the questions (1) to (3) referred to this court are answered in favour of the revenue.

3. The only question that survives for consideration is question No. 4. The facts relevant to this question are as follows :

4. The assessee carries on business in running tea and coffee estates, and also coffee curing. There is a common head office. The business in tea is

liable to be taxed to the extent of 40 per cent. under the Central I.T. Act. The income from coffee is wholly exempt and the income from the coffee

curing works is wholly taxable. The finding of the Tribunal is that these businesses are separate. Since there was a common head office and a

portion of the expenses incurred by the head office was considered to be related to the coffee and tea estates, the ITO made an apportionment

of the expenditure in the head office as well as of depreciation. In answering the three questions, as indicated already, we have held in effect that

the expenditure in the head office would have to be apportioned among the different businesses. We are now concerned with the depreciation

claimed by the assessee. The ITO allowed only a proportionate part of the depreciation, and the AAC upheld this action of the ITO. The amount

so disallowed is Rs. 28,810. The assessee took the matter on appeal to the Tribunal. The Tribunal pointed out that the assessee had to maintain a

head office and that merely because the head office also supervised the coffee estates the income from which was not taxable, a bifurcation could

not be made between the user of the assets towards taxable sources of income and non-taxable sources of income. In any event, as the assets had

to be and were utilised for earning the taxable income, there was no justification in the Tribunal's view for making a bifurcation and disallowance of

a portion of the depreciation allowance in the manner done by the ITO. The result was that the assessee was given the relief to the extent of Rs.

28,810. It is this conclusion of the Tribunal that is under challenge in the fourth question extracted already.

5. This question has to be considered in the light of Section 32 of the I.T. Act, 1961, which, in so far as it is material, runs as follows :

32. (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or

profession, the following deductions shall, subject to the provisions of Section 34, be allowed.....

6. It is unnecessary to refer to the rest of the provisions. There are two conditions set out in Section 32 of the I.T. Act, 1961; one is that the

buildings, machinery, plant or furniture should be owned by the assessee and the other is that it should be used for the purposes of the business or

profession of the assessee. In this case, we are concerned with the business. The learned counsel for the assessee pointed out that there is no

dispute about the ownership of the assets and that there could be no dispute about the using of the assets for the purposes of the business carried

on by the assessee. In the submission of the learned counsel for the assessee, the fact that the assessee's head office looks after certain other

activities does not mean that the assets are not exclusively used for the purposes of the business, income of which is brought to tax.

7. On this aspect, the learned counsel for the Commissioner drew our attention to Section 38 which runs as follows :

38. (1) Where a part of any premises is used as dwelling house by the assessee,--

(a) the deduction under Sub-clause (i) of Clause (a) of Section 30, in the case of rent, shall be such amount as the Income Tax Officer may

determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum

paid for repairs, such sum as is proportionate to the part of the premises used for the purpose of the business or profession ;

(b) the deduction under Clause (b) of Section 30 shall be such sum as the Income Tax Officer may determine having regard to the part so used.

(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under

Sub-clause (ii) of Clause (a) and Clause (c) of Section 30, Clauses (i) and (ii) of Section 31 and Clauses, (i), (ii) and (iii) of Sub-section (1) and

Sub-section (1A) of Section 32 shall be restricted to a fair proportionate part thereof which the Income Tax Officer may determine, having regard

to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

8. Sub-section (1) of Section 38 confines the allowance of the expenditure allowable u/s 30, viz., rent, rates, taxes, repairs, etc., of only to that

part used for the purpose of business. Sub-section (2) provides for cases where any building, machinery, plant or furniture is not exclusively used

for the purposes of the business or profession. In such a case, the deduction, inter alia, u/s 32(1) is to be restricted to a fair proportionate part

thereof which the ITO may determine having regard to the user of the depreciable assets for the purposes of the business or profession.

9. The question is whether the depreciable assets in the present case are not exclusively used for the purpose of the business. On a prima facie

basis, it may be pointed out that the assessee has been using the assets for purposes of the business, the income from which has been brought to

tax. It may be that the assets are useful for other businesses, but that does not in any way affect the conclusion that the assets have been used for

the purposes of the business, the income from which is brought to tax.

10. Section 37 of the Act provides for allowance of any expenditure laid out or expended wholly and exclusively for the purposes of the business

or profession. In dealing with the construction of these words, the Supreme Court in *The Commissioner of Income Tax, Bombay Vs. Chandulal*

Keshavlal and Co., Petlad, , Commissioner of Income Tax, West Bengal Vs. Royal Calcutta Turf Club, and Eastern Investments Ltd. Vs.

Commissioner of Income Tax, West Bengal, , has taken the view that the mere fact that to some extent, the expenditure enured to a third party's

benefit or the expender independently obtained some advantage in some character other than that of an assessee, could not in law defeat the effect

of the finding as to the whole or exclusive purpose of the expenditure. In other words, so long as the expenditure was incurred wholly and

exclusively for the purpose of the business, the fact that some other person or some other activity also gets the benefit thereof will not stand in the

way of the allowance. Applying this principle to the present case, the assessee would be entitled to the depreciation, as the relevant assets were

used for the purpose of the business whose income is being taxed. If some other activity of the assessee which does not bring in taxable income

has also had the benefit of the assets, it does not mean that the assessee cannot get the deduction under this provision.

11. In our opinion, Section 38 has to be understood as a whole and Sub-section (1) cannot be divorced from Sub-section (2). Sub-section (1)

deals with the cases where the expenditure is partly personal and partly for the purpose of business. Similarly, Sub-section (2) of Section 38

applies to cases where part of the expenditure was with reference to non-business activities. In such a case a proportionate allowance is

contemplated. In a case where the claim would have been allowed on the ground that the expenditure was laid out for purpose of the business,

then the circumstance that it is beneficial to a non-business activity is beside the point, and Section 38(2) does not apply to such a case. In other

words Section 38 is applicable only to those cases where the expenditure or allowance relates to a business only in part. It does not apply where

the asset is wholly, and not partially, used for the purpose of the business.

12. The learned counsel for the Commissioner drew our attention to Section 36(1) (iii) and a decision rendered by this court under that provision.

Section 36 provides that the deductions provided for in the said section should be allowed in respect of the matters dealt with therein, in computing

the income referred to in Section 28, and one of the items of expenditure is the amount of the interest paid in respect of capital borrowed for the

purposes of the business or profession. This provision came up for construction in *M.S.P. Raja and Another Vs. Commissioner of Income Tax*, .

In that case, money had been borrowed for the purpose of investment in agricultural estates the income from which was not liable to be taxed. That

was therefore, a clear case where capital had been borrowed, not for the purpose of the business or profession but for some other non-taxable

activity. It is in that context, it was held, that the interest paid by the assessee would have to be disallowed. Section 32 cannot be taken as

analogous to Section 36(1)(ii).

13. The learned standing counsel referred us also to the decision of the Supreme Court in *The Liquidators of Purna Limited Vs. Commissioner of*

Income Tax, Bihar, . There, construing the expression "'used for the purposes of the business'" occurring in Section 10(2)(iv) of the Indian I.T. Act,

1922, it was held that the user must be for the purpose of enabling the owner to carry on the business to earn profits in the business. In other

words, the machinery or plant must be used for the purpose of that business which was actually carried on and the profits of which were

assessable u/s 10(1) and not for any other purpose which had already been closed down. Their Lordships had not to go into the question in the

context of the language of Section 32(1). It is not, therefore, possible to apply the said decision to the facts of this case. In that case, there was no

reference to Section 10(3) of the 1922 Act, which is the predecessor of Section 38(2). If Section 10(3) had been construed, then it would have

been necessary to examine how far the interpretation applies to Section 38, which is not identically worded. Section 10(3) was not referred to in

that decision. The result is, question No. 4 referred to us is answered in the affirmative and in favour of the assessee. There will be no order as to

costs.