Setabgunj Sugar Mills Ltd.

Vs

The Commissioner of Income-Tax, Central, Calcutta

Civil Appeal No. 143 of 1958

(J.L. Kapur, M. Hidayatullah, J.C. Shah JJ)

17.11.960

JUDGMENT

HIDAYATULLAH, J. -

These are two consolidated appeals by special leave. The first is directed against an order of the Income-tax Appellate Tribunal, Calcutta Bench dated March 15, 1955, and the other, against an order of the Calcutta High Court dated April 27, 1956, declining to ask for a statement of the case under section 66(2) of the Indian Income-tax Act.

The facts are as follows : Setabgunj Sugar Mills, Ltd., is the appellant. This Company was incorporated in 1934, and was established to take over some sugar mills run by a firm. Included in the objects for which the Company was established

was the business of buyers, sellers and dealers in jute, gunnies, oil seeds, etc. For the first few years, the Company carried on the business of manufacture and sale of sugar only. In the accounting year ending August 31, 1945, the Company had some transactions in gunnies and made a profit. In the next accounting year ending August 31, 1946, the Company made also a profit in transactions in gunnies and jute. In the accounting year ending August 31, 1947, (corresponding assessment year being 1948-49), the Company did business in mustard seeds, gunnies and hessian and made profit. After this assessment year, the Company ceased to have any business other than the manufacture and sale of sugar.

We are concerned with the assessment year 1948-49, corresponding to the accounting year ending August 31, 1947. In that year, the profits from the sale of gunnies, mustard and jute amounted to Rs. 6,14,018. Some of the business was done by purchases or sales in the territory now in Pakistan. During the same accounting year, the sugar business resulted in a loss of Rs. 2,09,306. The loss in sugar business was set off against the profits of the other businesses, and the Income-tax Officer by his order assessed the Company on an income of Rs. 4,04,712. The Company claimed to set off against this profit, business losses of back years in its business in sugar amounting to Rs. 13,43,069, which had been brought forward from the previous year. The contention of the Company was that there losses were of the same business, and that section 24(2) of the Indian Income-tax Act applied. This contention was not accepted. On appeal to the Appellate Assistant Commissioner, the contention of the Company was accepted. The Commissioner of Income-tax then preferred an appeal before the Income-tax Appellate Tribunal (Calcutta Bench), which was allowed. The Tribunal gave reasons why the various activities of the Company could not be construed as the same business for the application of section 24(2).

The Company then asked the Tribunal to make a reference to the High Court on four questions of law which, it stated, arose out of the Tribunal's order. The Tribunal declined to make a reference. The Company next moved the High Court under section 66(2) of the Act for calling upon the Tribunal to state a case on the four questions, but its application was summarily dismissed. The Company has now, with special leave, appealed against the order of the Tribunal reversing the decision of the Appellate Assistant Commissioner and also against the order of the High Court declining to call for a statement of the case.

The question whether, on the application of the settled tests, different ventures carried on by an individual or a company form the same business is a mixed question of law and fact. Certain principles are applied to determine whether on the facts found a legal inference can be drawn that he different ventures constitute separate businesses or viewed together, can be said to constitute the same business. These principles were stated by Rowlatt, J. in Scales v. George Thompson & Co. Ltd. ((1927) 13 T.C. 83, 89.) The learned Judge observed :

> "..... the real question is, was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses."

The learned Judge also observed that what one had to see was whether the different ventures were so interlaced and so dovetailed into each other as to make them the same business. These principles have to be applied to the facts, before a legal inference can be drawn that a particular business is composed of separate businesses, and is not one business. No doubt, findings of fact are involved, because a variety of matters bearing on the unity of the business have to be investigated, such as unity of control and management, conduct of the business through the same agency, the inter-relation of the businesses, the employment of same capital, the maintenance of common books of account, employment of same staff to run the business, the nature of the different transactions, the possibility of one being closed without affecting the texture of the other and so forth. When, however, the true facts have been determined, the ultimate conclusion is a legal inference from proved facts, and it is one of mixed law and fact, on which depends the application of section 24(2) of the Act. In our opinion, a question of law did arise in the case, on which the High Court should have asked for a statement of the case. That question of law is :

> "Whether on the facts and circumstances of the case, the business activities of the Company to wit, manufacture and sale of sugar and sale and purchase of gunnies, jute, mustard seeds constituted the same business within the meaning of section 24(2) of the Indian Income-tax Act, 1922 ?"

We accordingly allow Civil Appeal No. 144 of 1958, with costs, and direct the High Court to call for a statement of the case from the Tribunal on this question, and dispose of it, according to law.

As regards Civil Appeal No. 143 of 1958, which questions the order of the Tribunal, we express no opinion, though we may state that the learned counsel for the Department attempted to show that the order of the Tribunal in the circumstances of the case was correct, and that no other decision but the one given by the Tribunal was possible. In view of the fact that the Appellate Assistant Commissioner had drawn an inference contrary to that of the Tribunal, it cannot be said that the legal inference was one and one alone. We, however, express no opinion either way, because we are satisfied that a question of law did arise in the case, and have, therefore, allowed the other appeal, so that the matter may be examined by the High Court in the first instance, on a statement of the case by the Tribunal.

Civil Appeal No. 143 of 1958, will, therefore, be dismissed, but without any order as to costs.

C.A. No. 144 of 1958 allowed. C.A. No. 143 of 1958 dismissed.##

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