

The Standard Refinery and Distillery Ltd.

Vs

Commissioner of Income-Tax (Central) Calcutta

Civil Appeal No. 1586 of 1968

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

06.05.1970

JUDGMENT

SHAH, J. -

1. The Income-tax Appellate Tribunal referred the following question for opinion to the High Court of Calcutta under Section 66(2) of the Income-tax Act, 1922 :

"Was there any evidence before the Tribunal on which it could hold that the business in dealing with shares was distinct and separate from the business of sugar-manufacturing and distillery ?"

2. The High Court recorded their answer in the affirmative. The assessee appealed to this Court with certificate granted by the High Court under Section 66-A(2) of the Income-tax Act, 1922. At the hearing of the appeal this Court was of the view that the statement of the case was insufficient to determine the question raised. The Court observed :

"In the present case however it is not possible for us to satisfactorily dispose of this appeal because the statement of the case submitted by the Tribunal is incomplete and has omitted to state material facts bearing upon the question referred. For instance, it is not clear as to whether the assessee adduced any evidence as to why it started purchasing the shares of the lessor company about six months after the commencement of the lease. It is also not stated by the Tribunal whether there is any evidence of inter-relation between the purchase of shares and the manufacture of sugar ?

The Court ordered that the Tribunal be directed to submit the supplementary statement of the case on the following points :

- "1. What is the nature and description of the refinery acquired by the assessee in 1943 ?
2. What are the dates of commencement of various ventures carried on by the assessee company ?
3. What is the date of the commencement of the share business ? Did the share business of the assessee company relate only to the shares of the lessor company or whether it related to shares of other companies ?
4. The Articles of Association of the assessee company and the memorandum be made part of the case.

5. Was the manufacture of sugar by the assessee company in any way benefited by the purchase of the shares of the lessor company ?

6. For what reason was the entire block of shares sold in April, 1947 to the Produce Exchange Corporation ?"

3. The Tribunal has submitted a supplementary statement of the case and has annexed thereto the Articles of Association of the assessee. Even after considering those findings, we find ourselves unable to record our opinion on the question referred. We may observe that the question which the Tribunal was directed to and did refer was defective and restricted the scope of the enquiry. In our judgment, the question should have been in the following form :

"Whether the business of the Company of dealing in shares and the business of manufacturing sugar and other commodities constitute the same business within the meaning of Section 24(2) of the Indian Income-tax Act, 1922, in force in the year of assessment ?"

We reframe the question accordingly.

4. As pointed out by this Court in commissioner of Income-tax, Madras v. Prithvi Insurance Company Ltd. (63 ITR 632 : AIR 1967 SC 853) in determining whether two lines of business constitute the "same business" within the meaning of Section 24(2) of the Income-tax Act, the income-tax authorities must consider the inter-connection, inter-lacing, inter-dependence and unity furnished by the existence of common management, common business organisation, common administration, common fund and a common place of business.

5. In the present case the statement of the case does not refer to the evidence relating to the existence or otherwise of inter-connection, inter-lacing or inter-dependence between the two lines of business. There is no reference to the evidence about the method of management, the business organisation, the administration, the fund and the place of business in the statement of the case or even in the judgments of the income-tax authorities. Since, however, a restricted question was framed, it is probable that in submitting the statement of the case the Tribunal was misled into assuming that it was not necessary to set out the evidence relating to the management, business organisation, the administration, the fund and the place of business in the statement of the case or even in the judgments of the income-tax authorities. Since, however, a restricted question was framed, it is probable that in submitting the statement of the case the Tribunal was misled into assuming that it was not necessary to set out the evidence relating to the management, business organisation, the administration, the fund and the place of business which may not have found place in the statement of the case.

6. In order to enable us to answer the question as re-framed, we deem it necessary to direct that the Tribunal should state a case on the amended question in the light of the tests suggested by this Court in Prithvi Insurance Company's case (supra).

7. The Tribunal will submit the statement of the case within three months from the date on which the papers reach the Tribunal. We may state that the Tribunal will restrict itself to the materials on the record and will not allow fresh evidence to be led.

</html