Commissioner of Income-Tax Madras

Vs

S. N. A. S. A. Annamalai Chettiar.

Civil Appeal No. 2016 of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna , I. D. Dua JJ)

27.09.1972

JUDGMENT

HEGDE J. -

1. This appeal by special leave arises from a decision of the Madras High Court in a reference under section 66(1) of the Indian Income-tax, 1922 (to be hereinafter referred to as the Act). As demanded by the assessee the Tribunal submitted the statement of the case to the High Court seeking its opinion on the question : "Whether, on the facts and in the circumstances of the case, the loss of Rs. 1,93,750 was an allowable deduction under section 10 of the Income-tax Act ?"

Material facts are these :

The assessee-respondent was a member of a Hindu undivided family which carried on money-lending business in India and abroad. In the course of such money-lending business, properties were taken over in settlement of debts as and when occasion arose. The family was disrupted on March 28, 1939. The assessee received some shares in some companies, properties and gardens and certain other items in Malaya. Even after the partition the assessee continued the money-lending business in Malaya. During the war, in general with others, the assessee suffered damages to those properties on account of Japanese bombing. This loss occurred on account of bombing in December, 1941, a date falling within the accounting period ending on April 12, 1942, relevant for the assessment year 1942-43. This loss was claimed as a business loss. The Income-tax Officer rejected that claim. The Appellate Assistant Commissioner affirmed the order of the Income-tax Officer. The assessee did not succeed before the Tribunal as well. The Tribunal rejected the claim of the assessee on the sole ground that bombing, which caused the loss, was not incidental to the business of the assessee. The Tribunal held that the loss in question was a loss of stock-in-trade. That finding of the Tribunal has not been challenged. Hence, we have to proceed on the basis that the loss caused to the assessee was a loss of stock-in-trade.

It was contended on behalf of the department that the loss in question cannot be given deduction to, as a business loss, in computing the net income of the assessee under section 10(1). According to the department that was not a loss incidental to the business carried on by the assessee.

We are unable to appreciate the contention of the department. It is established that the assessee was carrying on business in Malaya when the war was going on. Malaya was within the war zone and, therefore, there was very possibility of that area being bombed. If the assessee had earned any profits out of his business during the war, the department undoubtedly would have considered those profits as assessable income. It is strange that when loss had occurred in such a situation the

department should contend that the loss in question was not a business loss. In our opinion, taking into consideration the facts and circumstances of the case the loss occurred must be held to be a loss incidental to the business carried on by the assessee in Malaya during the war.

We are fortified in our conclusion by the decision of the Bombay High Court in Pohoommal Bros. v. Commissioner of Income-tax. The facts of that case are some what similar to the facts before us. The assessee therein, which had its head office in Bombay and branches in various parts of the world, claimed deduction of the losses resulting from the destruction of its stock-in-trade in three foreign branches, at Manila, Saigon and Kuala Lumpur, by enemy invasion, in computing its profits and gains for the purpose of income-tax. The department resisted that claim but the High Court held that the losses in question were trading losses. This decision of the High Court was cited with approval by this court in Commissioner of Income-tax v. Nainital Bank Ltd. In this connection we may also refer to two English decisions. The first case is Green v. J. Gliksten & Son Ltd. The Facts of that case were as follows :

A fire occurred on the company's premises in August, 1921, and destroyed timber, the written down value of which in company's books was Pounds 160,824; the company's valuation of its stock based on cost or market value, whichever was the lower, had been accepted for purposes of taxation. The timber had been insured for many years and the company had been allowed to deduct the insurance premiums in computing its assessable profits. In due course the company received from the insurers a sum of Pounds 477,838 representing the replacement value of the destroyed timber, but only a small part of this was in fact replaced because the current demand was for timber of a different character. The company accordingly credited in its profit and loss account as a trading receipt only Pounds 160,824 of the insurance payment; the balance did not appear in the profit and loss account but was entered as a reserve in the balance-sheet. The Special Commissioner held that no part of the sum pounds 477,838 recovered from the insurers was a trading receipt. But the House of Lords held that the whole sum recovered was trading receipt to be taken into account in computing the profits assessable to income-tax under Case I of Schedule D and to corporation profits tax. This court, in Nainital Bank's case, quoting that decision with approval observed : "If receipt from an insurance company towards loss of stock was a trading receipt, conversely to the extent of the loss not so recouped it should be trading loss."

Next we shall refer to the decision of the Court of Appeal in London Investment and Mortgage Co. Ltd. v. Inland Revenue Commissioners. The facts of that case were as follows :

The assessees were paying compulsory war damage contributions during the war in respect of the properties in which they were dealing. They received payments under the War Damage Act, 1943, in respect of the properties damaged by enemy action. They disposed of some of the properties but retained others as part of their stock-in-trade and either were having them rebuilt or would have them rebuilt. Under the War Damage Act, 1943, contributions made and indemnities given under Part 1 were to be treated for all purposes as outgoings of a capital nature and expenditure on making good war damage was not deductible in computing profits for income-tax purposes. On the question whether the value payments should be included in the receipts of the taxpayers' trade for the purpose of their assessments to income-tax under Case 1 of Schedule D and to profits tax, the Court of Appeal held that the Value payments should properly be treated as part of the taxpayers' trading receipts, since they were money into which their stock-in- trade had been converted. This decision is an authority for the proposition that the compensation received in lieu of loss of stock- in-trade as a result of enemy action is a trading receipt, conversely a loss of stock-in-trade occasioned by enemy action must be considered as a trading loss.

For the reasons mentioned above we agree with the conclusions reached by the High Court and see no merit in this appeal. It is accordingly dismissed with costs.

Appeal dismissed.

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