

Smt. Padmavati Jaikrishna

Vs

Additional Commissioner of Income Tax, Gujarat, Ahmedabad

Civil Appeal No. 65 of 1975

(CJI R. S. PathakRanganath Misra, K. N. Singh JJ)

22.04.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by certificate is directed against the judgment of the High Court of Gujarat.
2. Assessee is assessed as an individual as and she derived income form "other sources" in the shape of interest dividends etc. The relevant year of assessment is 1966-67. During this year, the assessee claimed deduction of Rs. 26,986 being interest paid to Harivallabhas Kailas Estate loans taken by her. The Income Tax Officer found that out of loans real investment was for a sum of Rs. 1,250 only. He disallowed the claim to the extent of Rs. 10,729 on proportionate basis. According to this claim could not be admitted under Section 57(iii) of the Income Tax Act of 1961.
3. Assessee's first appeal to the Appellate Assistant Commissioner was rejected. The Appellate Authority relied under rate of the decision of the Bombay High Court in Bai Buriben Lallubhai v. CIT ((1956) 29 ITR 543 (Bom)) and dismissed the appeal.
4. In further appeal before the Tribunal the claim of the assessee was reiterated by contending that expenditure under the head of payment of income-tax and wealth-tax and annuity deposits should have been taken as revenue expenditure and the claim of interest in respect of such loans should have been admitted. It was further contended that the assessee instead of liquidating the investments which were return-oriented fund it instead of liquidating the investment which were return-oriented found it commercially expedient and available to raise a loan instead of disturbing the investments and therefore the laid became admissible in law. The Tribunal did not accept this contention and observed like payment of taxes and deposit of annuity and these had nothing to do with the business. The Tribunal also relief upon the ratio of the Bombay High Court decisions referred to above. As the Tribunal dismissed the appeal the assessee asked for the case to be stated to the High Court and the following question was referred for its opinion :

Whether of the facts and in the circumstances of the case, payment of interest to the extent of Rs. 10,279 was not an admissible deduction under Section 57(iii) of the Income Tax Act ?

The High Court referred to various authorities and decided against the assessee by concluding that at the relevant time it was obligatory for the assessee to make the annuity deposit and the earning of interest through such deposit was merely incidental. The High court further found that portion of the loan was not intended to meet expenditure wholly and exclusively for the purpose of earning the

income and therefore did not come under Section 57(iii) of the Act.

5. It is not disputed by Mr. Ramachandran for the assessee that unless the claim comes within the purview of Section 57(iii) of the Act it would not be admissible as a deduction. That section as far as relevant provides :

The income chargeable under the head "income from other sources" shall be computed after making the following deductions, namely :-

(iii) any other expenditure (not being in the nature of the capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income :

#Provided * * *Explanation : * * *##

6. In order that the claim for the deductions could be sustained, it was for the assessee to satisfy the Income Tax Officer that the loan interest respect of which is claimed as deductions was laid out or expense wholly and exclusively for earning the income from out of which the deductions claimed. There is no dispute that the provisions of Section 57 of the Act correspondence to Section 12(2) of the 1922. Dealing with a claim under Section 12(2) of the 1922 Act this court in Eastern Investments Ltd. CIT ((1951) 20 ITR 1,7 (SC) : AIR 1951 SC 278 : (1951) 21 Com Cas 194), summarized the position of law thus :

On a full review of the facts it is clear that this transaction was voluntarily entered into in order indirectly to facilitate the carrying the business of the company and was made on the ground of commercial expediency. It, therefore, falls within the purview of Section 12(2) of the Indian Income Tax Act, 1922, before its amendment.

This being an investment company if it borrowed money utilized the same for its investment on which it earned income, the paid by it on the loan will clearly permissible deduction under Section 12(2) of the Income Tax Act.

7. In CIT v. Rajendra Prasad Moody((1978) 115 ITR 519 : (1979) 1 SCC 250 : 1979 SCC (Tax) 43), this Court observed : [SCC p. 252, SCC (Tax) p. 45, para 2]

The determination of the question before us turns of the true interpretation of Section 57(iii) and it would, therefore, be convenient to refer to that section, but before we do so, we may point out that the Section 57(iii) occurs in a facials of section under the heading, "F - Income from other sources". Section 56 which is the first in this group of sections enacts in sub-section (1) the income of every kind which is not chargeable to tax under any act of the head specified in Section 14, Item A to E shall be chargeable to tax under the head "Income from other sources" and sub-section (2) includes in such income various items, one of which is "dividends". Dividend on shares is thus income chargeable under the head "Income from other sources". Section 57 provides for certain deductions to be made on computing the income chargeable under the head "Income from other sources" and one of such deductions is that set out in clause (iii), which reads as follows : The expenditure to be deductible under Section 57(iii) must be laid out or expended wholly and exclusive for the purpose of making or earning such income

8. In the said decision this Court clearly indicates that : [SCC p.253, SCC (Tax) p. 46, para 3]

It is the purpose of the expenditure that is relevant in determining the applicability of Section 57(iii) and that purpose must be making or earning of income.

The taxing authorities as also the High Court have clearly recorded as factual finding that the expenditure in this case was to meet the personal liability of payment of income tax and wealth tax and annuity. From the order of the tribunal as also the judgment of the High Court it appears the order of the tribunal also the judge of the High Court it appears that the assessee had taken the stand that even if the claim relating to that the assessee had taken the stand that even if the claim relating to income tax and wealth tax was not admissible, that part of the claim relating to annuity deposit should have been admitted as it fetched interest. We are inclined to agree with the High Court that so far as the meeting the liability of income tax and wealth tax is concerned it was indeed a personal one and payment thereof cannot all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income. So far as annuity deposit is concerned the Tribunal and the High Court have come to the right conclusion the dominant purpose was not to earn income by way of interest but to meet the statutory liability of making the deposit. The test to apply is that the expenditure should be wholly and exclusively for the purpose of earning the income. The fact-finding authorities have come to the conclusions that no part of the expenditure came within the purview of the Section 57(iii) of the Act.

9. Mr. Ramachandran then maintained that even if there was an indirect link between the expenditure and the income earned, the claim would be admissible and relied upon the observations of Bose, J. in Eastern Investments case ((1951) 20 ITR 1, 7 (SC) : AIR 1951 SC 278 : (1951) 21 Com Cas 194). No attempt has been made by the assessee to put out before the taxing authorities or even before the High Court by placing the necessary facts to justify such a claim. On mere assumptions such a point cannot be raised there for consideration. In fact unless the loan is incurred for meeting the liability connected with the source itself it would ordinarily be difficult to entertain the claim for deduction.

10. This appeal has to fail and the order of the High Court has to be affirmed. We accordingly dismiss the appeal but leave the parties to bear their respective costs.

</html