

Vijaya Laxmi Sugar Mills Ltd.

Vs

Commissioner of Income-Tax

Civil Appeal Nos. 1103 and 1104 of 1979

(V. Ramaswami – II, K. Jayachandra Reddy, Yogeshwar Deyal JJ)

06.08.1991

JUDGMENT

V. RAMASWAMI J. –

1. The appellant is a private limited company in liquidation. The winding up order was made by the High Court on november 8, 1949, and the liquidator was directed to submit reports once in every three months respecting the progress of the winding up proceedings and realisation of the assets. In the course of winding up, the liquidator sold certain assets and deposited the money in fixed deposits with certain banks. During the previous year relevant to the assessment year 1966-67, the appellant earned by way of interest from fixed deposits a sum of Rs. 32,237.60. The liquidator had, in the relevant previous year, incurred the following expenditure totalling Rs, 12,379.45 :

# Rs.Salaries 1,215.00	Legal fees 9,725.00	Liquidation expenses 538.85	T.A. and D.A
751.51	Postage 95.34	Stationery 53.75	_____ Total 12,379.45
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The assessee-company claimed deduction of the above-said sum of R. 12,379.45 from the interest income of Rs. 32,237.60. The Income-tax Officer did not allow any part of the expenditure claimed by the assessee-company and assessed the entire amount of Rs. 32,237.60 as taxable under section 56 of the Income-tax Act. 1961 (hereinafter referred to as "the Act"), under the head "Income from other sources". This assessment order was confirmed by the Appellate Assistant Commissioner and the Tribunal on appeal.

In the assessment year 1967-68 also assessee earned certain amounts of money by way of interest from fixed deposits and the liquidator incurred identical expenditure as in the assessment year 1966-67 except for the difference in the amount. The Income-tax Officer refused to allow any deduction of any part of the expenditure claimed by the assessee. Even in this assessment year, the entire interest income was taxed under section 56 of the Act under the head "Income from other sources", the appeals filed in respect of this assessment year also were unsuccessful.

In respect of both these assessment years, the following identical question was directed to be referred by the High Court under section 256(2) of the Act on the refusal of the Tribunal to refer the samn under section 256(1) :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction of the whole or any part of the expenses incurred by the liquidator in the computation of the assessee's total income ?"

It may be mentioned that, in respect of the assessment year 1962-63, the assessee had claimed deduction of similar expenditure from the interest income earned from fixed deposit. At the instance of this assessee, the Tribunal referred the following question :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 13,023 is an admissible charge against the income of the previous year ?"

In the decision in *Vijay Laxmi Sugar Mills Ltd., v. CIT* (1972) 86 ITR 402 (All), the High Court answered that reference holding that the income from the fixed deposit has to be considered as income from other sources and only that expenditure can be deducted which, under section 57 (iii) of the Act, can be considered as incurred for earning that income and that the expenses claimed are not related to the earning of that income. Accordingly, the High Court answered the question in the negative and in favour of the Revenue. It may also be mentioned that the Assessing Officer and the Tribunal followed this decision which was the assessee's (own case for the earlier assessment year, in the assessments now in question.

Learned counsel for the appellant canvassed the correctness of the view propounded in *Vijay Laxmi Sugar Mills Ltd., v. CIT* (1972) 86 ITR 402 (All). Learned counsel contended that, among the objects mentioned in the memorandum of association of the company, provision is made for advancing and lending money, investment of the company's money and dealing in debentures, shares, stocks and other securities and carrying on various other businesses which the company considered desirable in lieu of any other business which it was authorised to carry on. Therefore, in effecting sale and realising of the assets of the company in liquidation and investing in fixed deposits, the liquidator was engaged in the business of making investment in fixed deposits, the liquidator was not engaged in the business of making investment in fixed deposits. The interest income earned therefrom is business income taxable under section 28 of the Act and not under section 56 of the Act, under the head "Income from other sources", if this contention of his is right, the expenditure incurred by the liquidator shall also be considered as for the purpose of earning the above-mentioned income or at least could be said to be wholly and exclusively laid out or expended for the purposes of that business and hence deductible from the total income earned by the company during the relevant previous year. We are wholly at a loss to understand how this argument is possible on the facts and circumstances of this case. As already stated, the company had been directed to be wound up and a liquidator was appointed by the High Court as early as in 1950. The company, before its liquidation, was engaged in the manufacture of sugar. The records do not disclose that the liquidator was carrying on the business of manufacture of sugar or any trading activity for the purpose of facilitating the winding up. The statement of facts on record shows that the liquidator realised certain amounts by way of sale of the assets of the company in liquidation and it is those sale proceeds that were invested in fixed deposit which earned the interest. The liquidator, in merely realising the assets of the company, could not be considered as carrying on any business of the company. The activity of realising the assets and banking them in fixed deposit was in the course of winding up and it was not in furtherance of any business activity carried on by the company before its winding up.

There may be cases where the liquidator may be said to carry on the company's business in so far as it is necessary for the winding up or to facilitate the winding up or for realising the assets of the company in such a way as to involve the carrying on of trade. But, in this case, there is no evidence in this regard. In fact, the winding up order was made as early as in 1950 and nothing of the winding up activity is in evidence. The only accepted fact is that the interest income was derived from fixed deposits purchased out of the proceeds of sale of assets during winding up. The assessee,

therefore, could not be said to have carried on any business to bring the interest income within the meaning of section 28 of the Act and, therefore, the interest income was liable to be assessed only under the head "Income from other sources".

Very near to the facts of this case is the decision in *Morvi Mercantile Bank Ltd., v. CIT* (1976) 104 ITR 568 (Guj). In that case, the assessee, a banking company, was compulsorily wound up and its licence was suspended by the Reserve Bank. The official liquidator realised the assets and invested the money in short-term deposits pending distribution. It was contended on behalf of the company in liquidation that the income realised by the liquidator was business income and that the Income-tax Officer was not right in treating it as "Income from other sources". Rejecting this contention the Gujarat High Court held (p. 580) :

"That the assets of which the liquidator was seized and which he tried to realise for purpose of winding up were of capital nature and they cannot be said to be business assets, not can it be said that merely because he was investing the realisations, assuming that the was permissible either under the memorandum or under the statute. The activities which he was carrying on as a liquidator were those of a businessman. In the circumstances, therefore, we cannot uphold the contention of Mr. Patel that the liquidator was making for mercantile necessity the investment of realisations as a business for beneficial winding up of the company. The Tribunal has found as a fact that the main business of the assessee-company having gone as a result of the winding up order, there did not remain any other activity which can be legitimately said to be a business activity and whatever the liquidator did was merely as a liquidator for purpose of liquidation of the company.

This is indeed the view to be taken even in this case also. The Tribunal was, therefore, right in holding that the interest income in the instant case is not governed by section 28 but falls to be considered under section 56.

The next submission of learned counsel for the assessee was that, in the course of effecting the winding up of the assessee-company. The liquidator has been incurring expenses such as salaries, legal fees, travelling and other liquidation expenses and that these expenses are allowable as deduction from income earned by way of interest from fixed deposits in the relevant year. In computing the income chargeable under the head "Income from other sources". Section 57(iii) provides that deduction is to be made in respect of expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The question for consideration, therefore, is whether the expenses of the type incurred by the liquidator in this case can be said to have been incurred solely for the purpose of earning the interest income. It is true that the connection between the expenditure and the earning of income need not be direct and it may be indirect. But, since the expenditure must have been incurred for the purpose of earning that income, there should be some nexus between the expenditure and the earning of the income. There is not even some sort of evidence to show that the expenses incurred by the liquidator were to facilitate the earning of or at least for protecting the income. The interest accrues *sui generis*. The interest is payable by the bank whether it is claimed or not and whether there is any establishment or not.

Normally, there was no necessity for spending anything separately for earning the interest. However, we may hasten to add that, if any expenditure was incurred like commission for collection or such similar expenditures which may be considered as spent solely for the purpose of earning that income, the position may be different. But that was not so in this case. It could not also be said that

the expenditure incurred was to preserve to acquire the asset. Nor could it be said that the expenses were incurred for the purpose of maintenance of the source. The requirement under section 57(iii) that the expenditure should have been incurred "for the purpose of making or earning such income" shows that the object of spending or the end or aim or the intention of such spending was for earning the interest income. There could be no doubt that the expenditure incurred by the liquidator in this case can, by no stretch of imagination, be said to have been incurred with the object or for the purpose of earning the interest income. The Tribunal was, therefore, right in holding that the expenses claimed are not related to the interest income and were not deductible expenditure under section 57.

We are, therefore, of the view that the High Court correctly answered the reference in the negative and in favour of the Revenue. The appeals are, accordingly, dismissed with costs.

Appeals dismissed.

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