Veecumsees, Madras

Vs

Commissioner of Income Tax, Madras

Civil Appeals Nos. 7660-62 of 1996

26.04.1996

JUDGMENT

1. Leave granted.

2. We are concerned with the following questions, which were answered, in the judgment and order of the High Court at Madras which is under appeal, in the negative and in favour of the Revenue.

> "1. Whether, on the facts and in the circumstances of the case, and having regard to the provisions of Section 36(1)(iii) of the Income Tax Act, 1961, the Appellate Tribunal was right in holding that the interest attributable to the loans borrowed by the assessee firm for the purpose of construction of Safire Theatre should be allowed under the head `business' especially when the theatre complex was sold as a going concern on 31-71965 and the business of exhibition of cinematographic films stopped on and from 31-7-1965?

2. Whether the conclusion of the Appellate Tribunal that the business carried on by the assessee as jewellers and in the running of the cinema theatre, restaurant, etc., are composite is based on valid materials and is a reasonable view to take on the facts and in the circumstances of the case?"

3. The assessment years with which we are concerned are Assessment Years 1967-68, 1968-69 and 1969-70.

4. The assessee ran a jewellery business. It then commenced business also in the exhibition of cinematographic films. In 1961 it obtained loans for building a cinema theatre. The said theatre was built in 1962 and was run by the assessee until 31-7-1965, when it was transferred to another firm. For the years during which the assessee exhibited films in the said theatre the interest paid on the loans obtained for constructing it were allowed by the Revenue as a deduction under the provisions of Section 36(1)(iii) of the Income Tax Act, that is to say, as being the amount of interest paid in respect of capital borrowed for the purpose of the assessee's business. For the years in question, however, the Income Tax Officer declined that deduction on the ground that the business of exhibition of films in the said theatre was no longer in existence; therefore, the interest on borrowings attributable to this particular business could not be allowed as a deduction in computing the profits of the other business of the assessee. In appeal the Appellate Assistant Commissioner allowed the deduction as claimed by the assessee.

5. The Income Tax Appellate Tribunal noted the facts aforementioned and found that there was no dispute that for the construction of the said theatre the assessee had made heavy borrowings and the interest on such borrowings had been allowed by the Revenue as a deduction as the assessee was running the said theatre as its own business. The assessee had admittedly paid the interest in

question for the years under appeal in respect of the loans which had been obtained for the purpose of investing in the business of exhibition of films. The Appellate Assistant Commissioner had found that it was not disputed that the moneys were borrowed for the purposes of the business of exhibition of films and for the construction of the said theatre, the income from which had been assessed in the earlier years. It was thus clear that at the time when the borrowings were made they were made for business purposes. The Revenue, the Tribunal noted, did not and could not challenge the correctness of this. The Tribunal also found that there was force in the submission on behalf of the assessee that the business carried on by the assessee as a jeweller and in the running of the said theatre, restaurant, etc., were composite. The assessee was carrying on both the business in jewellery and in the exhibition of films till 31-7-1965, and that only thereafter was the activity of exhibition of films discontinued. The liability to pay interest had arisen in respect of the business carried on by the assessee till 31-7-1965. The Tribunal, accordingly, upheld the decision of the Appellate Assistant Commissioner to permit the deduction under Section 36(1)(iii) of the Income Tax Act.

6. The High Court considered the second question referred to it first and came to the conclusion that, since the closing of the cinema business had not affected in the least the assessee's old business in jewellery, there was no interconnection, interlacing or interdependence between the jewellery business and the cinema business. Unless there was such interconnection, interlacing or interdependence, it was not possible to say that both the businesses constituted a composite or same business. It, therefore, answered the second question against the assessee. In view of that answer, it held that the borrowings made by the assessee for the construction of the said theatre could not be allowed as a deduction under the head of 'business' after the business of running the cinema theatre had been closed as a result of the sale of the said theatre on 31-7-1965 as a growing concern to a different firm. Once the assessee had ceased to carry on that business for which the amount was borrowed, the interest payments could not be deducted as business expenditure as, admittedly, the business had stopped and no income accrued therefrom. The High Court relied upon judgments that related to the benefit of carry- forward losses and carry-forward depreciation.

7. Learned counsel for the assessee drew our attention to the judgment of this Court in B. R. Ltd. v. V.P. Gupta, CIT.[(1978) 3 SCC 70 : 1978 SCC (Tax) 141 : (1978) 113 ITR 647] This Court affirmed what had been held earlier in Produce Exchange Corpn. Ltd. v. CIT.[(1970) 2 SCC 92 : (1970) 77 ITR 739]Both these related to the meaning to be ascribed to the expression "same business" for the purposes of set-off of carry- forward loss. In the former case this Court said: (SCC p. 78, para 16)."

> "... The decisive test, as held by this Court in Produce Exchange Corpn.[(1970) 2 SCC 92 : (1970) 77 ITR 739] is unity of control and not the nature of the two lines of business. ... The fact that one business cannot conveniently be carried on after the closure of the other may furnish a strong indication that the two businesses constitute the same business. But the decision of this Court in Prithvi Insurance Co.,[CIT v. Prithvi Insurance Co. Ltd., (1967) 63 ITR 632 : AIR 1967 SC 854 : (1967) 1 MLJ (SC) 57] shows that no decisive inference can be drawn from the fact that after the closure of one business, another may or may not conveniently be carried on.... Thus the unity of control and the other circumstances adverted to above show that there was dovetailing or interlacing between the business of import and the business of export carried on by the assessee and that they constitute the same business."

8. The fact that the Revenue had during the years when the assessee carried on the business of cinematographic films permitted as a deduction under Section 36(1)(iii) the interest on loans obtained by the assessee for the purpose of constructing the said theatre shows that at the time when

the loans were obtained the said theatre was a part of the business of the assessee. It was interest on these loans, borrowed for the purpose of the business of the assessee, which was being paid in the years in question and the Tribunal was, in our view, right in concluding that such interest had to be treated as a deduction under Section 36(1)(iii). The loans had been obtained for the purposes of the assessee's business. The fact that the particular part of the business for which the loans had been obtained had been transferred or closed down did not alter the fact that the loans had, when obtained, been for the purpose of the assessee's business. The test of "same business" appropriate for set-off of carry-forward losses is not appropriate here.

9. Apart from this, the Tribunal found as a fact that the business carried on by the assessee as jeweller and in running the cinema theatre, etc., was composite. In view of this finding also, the assessee was entitled to the deduction of the interest paid on the loans aforementioned under Section 36(1)(iii) of the Income Tax Act.

10. The appeal is allowed. The judgment and order of the High Court under appeal is set aside and the questions aforequoted are answered in the affirmative and in favour of the assessee.

11. There shall be no order as to costs.