SUPREME COURT OF INDIA

Dr. T. A. Quereshi

Vs.

Commissioner of Income Tax, Bhopal

C.A.No.5635 of 2006

(S.B.Sinha and Markandey Katju JJ.)

06.12.2006

JUDGMENT:

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the impugned judgment dated 29.11.2004 passed by the Madhya Pradesh High Court in I.T.A. No. 33 of 1999.

Heard learned counsel for the parties and perused the record.

The appellant is an assessee. He is a doctor by profession at a place called 'Garoth' in District Mandsaur. On 18.7.1985, CBI sleuths arrested the appellant while transporting a huge quantity of contraband article (the narcotic drugs heroin) in a Jeep (Jonga) RSO 3592. This led to further raid in his residential premises. In this raid, one clandestine laboratory to manufacture heroin powder along with several contraband drugs was recovered. All these contraband articles were seized and proceedings under the NDPS Act were initiated against the assessee. We are not concerned with these proceedings.

So far as proceedings under the Income Tax Act are concerned, with which we are concerned, the assessee-appellant filed his return for the Assessment Year 1986-87. In this assessment the assessee claimed that since the heroin seized from him forms part of his stock in trade hence its loss on account of seizure is an allowable deduction while computing his profits and gains of business/profession. The Assessment Officer by order dated 28.3.1989 did not accept the contention of the assessee and added a sum of Rs. 5,50,000/-, being the assessed value of the heroin seized, as an income from undisclosed source. In appeal filed by assessee the CIT (Appeal) upheld the order of Assessment Officer by his order dated 1.2.1990. The assessee then filed a second appeal before the Tribunal. By its order dated 31.3.1993 the Tribunal reduced the value of the heroin seized to Rs.2 lacs, but refused to deduct this amount from the assessee's income as a business loss, since according to the Tribunal the assessee had not claimed it as a business loss. However, subsequently on an application under Section 254(2) the Tribunal by order dated 26.4.1994 accepted that the assessee had in fact claimed it as a loss, and consequently it recalled its order dated 31.3.1993.

Ultimately, the Tribunal by order dated 14.10.1998 allowed the appeal and held that the assessee is entitled to claim the deduction as a business loss. In other words, the Tribunal was of the view that since the seizure has resulted in loss in trade hence, relying upon the law laid down by this Court in CIT vs. Piara Singh 124 ITR 40, the Tribunal allowed the deduction of Rs.2 lacs out of the gross total income of the assessee. It is against this view of the Tribunal that the revenue felt aggrieved and filed the appeal before the High Court which, as stated above, was admitted for final hearing on the following questions of law:

1. Whether possession of heroin in contravention of provision of the NDPS Act, 1985 can be treated to be stock and trade possessed by a Medical Practitioner ?

2. Whether such Medical Practitioner can be permitted to deduct Rs. 2 lacs from such stock of heroin as loss during the trade ?

3. Whether the order passed by the Income Tax Appellate Tribunal, Indore Bench in IT-272/89-90 for Assessment Year 1986-87 is perverse and illegal ?

By the impugned order the High Court allowed the appeal and set aside the order of the Tribunal. Hence, this appeal.

In paragraph 7 of its judgment, the High Court has relied on the explanation to Section 37 of the Income Tax Act which states :

"S.37 Explanation - For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure".

Learned senior counsel for the appellant Mr. M. L.Verma, contended that Section 37 of the Act has no application in this case since Section 37 relates to business expenditure, and in this case we are not concerned with business expenditure but with business loss. We agree with this contention.

No doubt, it was initially contented by the assessee before the Income Tax authorities that the apparatus for manufacturing heroin from opium did not belong to the assessee but belonged to one V. T. Madan. However, the Assessing Officer did not agree with this contention and the Tribunal in its earlier order dated 31.3.1993 has recorded a finding (in paragraph 7 of its order) that the assessee was involved in the manufacture and selling of heroin for material gain. Thus, it has been held by the Income Tax authorities that the appellant was engaged in manufacture of heroin and selling it for material gain.

No doubt, the assessee had contended that he was only earning income from his medical profession and was not doing any illegal activity of manufacturing and selling of heroin. However, the finding of fact of the Tribunal in its order dated 31.3.1993 is that the assessee was engaged in manufacture and selling of heroin. Thus the Income Tax authorities themselves have recorded a finding that the assessee was engaged in manufacture and selling of heroin. No doubt the order of the Tribunal dated 31.3.1993 was subsequently recalled by the Tribunal, but since with ultimate order dated 14.10.1998 the Tribunal has held that the heroin seized was the assessee's stock in trade it is implicit that the Tribunal reiterated to view that the assessee was doing the business of manufacture and sale of

heroin.

Once the Income Tax authorities records such a finding of fact, it follows that any loss from such a business is a business loss.

The facts of this case are squarely covered by the decision of this Court in CIT vs. Piara Singh AIR 1980 SC 1271 which was a case of an assessee carrying on smuggling activity and this Court held that the loss arising out of confiscation of currency notes must be allowed as a business loss.

In the order of the Tribunal dated 14.10.1998 there is a finding of fact in paragraph 8 to the effect that the heroin forms part of the stock in trade of the assessee. In view of this finding, the Tribunal allowed the assessee's claim of deducting the loss of 5 kg. of heroin whose value was assessed by the Tribunal at Rs. 2 lacs as a business loss.

We fully agree with the view taken by the Tribunal.

The High Court, however, in paragraph 10 of its judgment observed:

"The assessee in this case was engaged in profession of doctor. He had nothing to do with the contraband article Heroin for carrying on his profession. It is an admitted fact that possession of Heroin is an offence under NDPS Act. In this view, the rigour of explanation to Section 37 was fully satisfied and hence the question claiming any deduction for the value of seized article did not arise nor was an assessee entitled to claim any such deduction who was bound in indulging in such heinous and illegal business unconnected with his pious professional activity. Indeed, it was disgrace for a doctor community where one doctor was found indulging in doing such kind of activities against the humanity".

In our opinion, the High Court has adopted an emotional and moral approach rather than a legal approach. We fully agree with the High Court that the assessee was committing a highly immoral act in illegally manufacturing and selling heroin. However, cases are to be decided by Court on legal principles and not on one's own moral views. Law is different from morality, as the positivist jurists Bentham and Austin pointed out.

As already observed above, the facts of the case are squarely covered by the decision of this Court in CIT vs. Piara Singh (supra).

The explanation to Section 37 has really nothing to do with the present case as it is not a case of a business expenditure, but of business loss. Business losses are allowable on ordinary commercial principles in computing profits. Once it is found that the heroin seized formed part of the stock in trade of the assessee, it follows that the seizure and confiscation of such stock in trade has to be allowed as a business loss. Loss of stock in trade has to be considered as a trading loss vide Commissioner of Income- Tax vs. S.N.A.S.A. Annamalai Chettiar AIR 1973 SC 1032.

For the reasons given above, the impugned judgment of the High Court cannot be sustained and it is hereby set aside and the order of the Tribunal stands restored. The appeal is allowed. No costs.