

CALCUTTA HIGH COURT

Mannalal Ratanlal

Vs

Commissioner of Income-Tax

(Shankar Prasad Mitra J.)

05.02.1964

JUDGMENT

Shankar Prasad Mitra J.

1. This is a reference under section 66(1) of the Indian Income-tax Act, 1922. The assessment year is 1952-53. The corresponding accounting year is 2007-8 Dewali. The assessee is a partner in the registered firm of Messrs. Sadharam Tolaram. From this firm the assessee derived one-third of the income in each of the three heads, namely, property, business and other sources. In the year of account relevant to the said assessment year, the assessee borrowed a certain sum of money for the purpose of paying income-tax in respect of assessments for preceding years. The assessee paid a sum of Rs. 1,934 (Rupees one thousand and nine hundred and thirty-four) as interest on this borrowing. The Income-tax Officer refused to allow deduction of this sum of interest from the total income of the assessee. Before the Appellate Assistant Commissioner the assessee contended that if he had not borrowed money, he would have been compelled to liquidate part of his income yielding assets, which would have resulted in the reduction of his assessable income. It was said that the borrowings was for the purpose of maintaining income-yielding assets intact. The Appellate Assistant Commissioner held that there was no connection between the expenditure incurred and the income earned. He confirmed the disallowance by the Income-tax Officer.

On appeal to the Appellate Tribunal, the assessee contended that :

- (1) his share of interest income from Messrs. Sadharam Tolaram was Rs. 20,394 (Rupees twenty thousand and three hundred and ninety-four);
- (2) there was litigation between the partners of the firm in the relevant accounting year, which prevented the withdrawals of money for paying the income-tax dues of the assessee and which necessitated the loss that the assessee had obtained;
- (3) to the extent the borrowing had been made, the income-yielding asset had been preserved which otherwise would have been liquidated and would have interfered with the income brought to assessment; and (4) the payment of interest was an allowable deduction against the income. The departmental representative argued before the Appellate Tribunal that in the absence

of connection between the expenditure and the income sought to be taxed, the payment of interest claimed ought not to be allowed. The Tribunal has held that the assessee was not entitled to claim the allowance of interest as a charge against the taxable income. Both the Appellate Assistant Commissioner and the Appellate Tribunal have relied on the judgment of the Bombay High Court in Bai Bhuriben Lallubhai v. Commissioner of Income-tax. On these facts the following question has arisen :

"Whether, on the facts and in the circumstances of the case, the payment of Rs. 1,934 (Rupees one thousand and nine hundred and thirty-four) constituted an allowable deduction against the 1/3rd share of income from M/s. Sadhuram Tolara ?"

In view of the points urged before the Appellate Assistant Commissioner and the Appellate Tribunal, Mr. J.C. Pal, learned counsel for the assessee, has argued that the connection between the income and the expenditure may be direct or indirect. In the instant case, continues Mr. Pal, there was an obligation to pay the income-tax; the assessee had liquid money with the firm of Sadhuram Tolaram; because of quarrel between the partners of the firm the assessee could not withdraw the money from the firm to pay his income-tax dues; the assessee, in the circumstances, was forced to make a saving which had an income; and for the purpose of paying tax on that forced income the assessee was compelled to borrow money. In other words, according to Mr. Pal, it is a case of *è*compulsory saving which necessitated compulsory borrowing to clear off the tax liabilities. Mr. Pal contends that on these facts it is clear that there was a direct or at any rate indirect connection between the income and the expenditure and the tax authorities have wrongly decided this case. In this reference the assessee is claiming a deduction out of his assessable income which is admittedly liable to tax. If he claims a deduction or allowance it is for him to satisfy the court that there is some statutory provision under which such a claim can be allowed. There are a number of decisions in which it has been laid down that where an assessee seeks to deduct from his business profits certain items as allowance under sub-section (2) of section 10, the onus of proving that such allowances are permissible falls on him. Reference may be made in this connection, amongst others, to the judgment of the Supreme Court in Commissioner of Income-tax v. Calcutta Agency Ltd. In the course of the argument we invited Mr. J. C. Pal to show to us specifically the statutory provision on which the assessee in the instant case bases his claim for deduction or allowance. Learned counsel mainly relied on section 10(2)(iii). He also referred to section 10(2)(xv) and section 12(2). Now, section 10(2)(iii) speaks of allowances in respect of capital borrowed for the purpose of business, profession or vocation and the amount of interest paid thereon. On the facts of this case, it is obvious, that no capital was borrowed for the purpose of the business at all. This clause, it is well known, relates to borrowing of capital for acquiring capital assets, paying trading debts, etc. No such situation had arisen in the instant case. Similarly, section 10(2)(xv) provides for any expenditure laid out or expended wholly and exclusively for the purpose of business, profession or vocation. It cannot be said that the payment of interest on borrowed capital by the assessee in the present reference was an expenditure wholly and exclusively for the purpose indicated in clause (xv). Section 12(2) is the only other sub-section learned counsel for the assessee pointed out to us. This sub-section speaks of income from "other sources" and provides for expenditure incurred solely for the purpose of making or earning income, profits or gains. It is impossible to contend that the interest paid by the assessee in the case before us was an expenditure solely for the purpose of making or earning any income derived from "other sources." The result, therefore, is that our attention has not been drawn to any provision in the statute wherein a deduction or allowance of this nature

has been contemplated. And in the absence of any statutory provision we do not see how the assessee's claim could be entertained by the taxing authorities. We may, in this connection, refer to a decision of the Patna High Court in *Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax*. It has said that the amount of income-tax paid by an assessee cannot be deducted as a business expenditure. The reason is that income-tax is not a deduction before you arrive at the net profits of the assessee. It is not an expenditure for the purpose of earning profits; it is, on the contrary, a case of application of profits after they have been earned and not expenditure necessary to earn such profits. The Patna High Court has held in this case that interest on money borrowed for payment of tax is not a legitimate deduction in computing business profits. The borrowing of money by an assessee for the payment of advance tax is not made for any purpose of commercial expediency but for the discharge of a statutory obligation imposed upon him under section 18A of the Income-tax Act. The interest paid by the assessee, the Patna High Court is of the opinion, on money borrowed by him for payment of advance tax cannot be deducted under the provisions of section 12(2) of the Income-tax Act. We express our respectful agreement with this view. In our judgment, income-tax is not part of an expenditure of an assessee. Therefore, the interest that is paid by the assessee on any sum borrowed by him for payment of income-tax is not deductible from his net income. In other words, when the tax is not an allowable expenditure no expenditure in relation to the tax can also be allowed. An expenditure to become liable must be, in our opinion, incurred in the earning of the income or profit. In the result, therefore, the answer to the question referred to us is in the negative. The applicant will pay to the respondent the costs of this reference.

SEN J. - I agree.

Question answered in the negative.