

BOMBAY HIGH COURT

Bal Bhuriben Lallubhai

Vs.

Commissioner of Income-tax

I. T. Ref. No. 45 of 1954

(Chagla, C.J. and Desai, J.)

21.04.1955

JUDGMENT

Chagla, C.J.

1. This reference raises a fairly short and simple question. The assessee for the assessment years 1949-50 and 1950-51 had various sources of income and one of the sources of income was interest on fixed deposit. That income was assessable to tax under Section 12 as being an income from other sources in the year 1949-50, she received interest on fixed deposit in the sum of Rs. 2,256-0-0 and in the year 1950-51 she received a sum of Rs. 2,904-0-0. Now, in these two years, she borrowed various sums of money for the purpose of meeting her household expenses, purchasing jewellery and meeting advance tax payment and she had to pay interest on these borrowings. In the year 1949-50, she paid Rs. 1,643-0-0 as interest and in the year 1950-51 she paid Rs. 2,530-0-0 as interest. The assessee claimed to deduct these two sums from the interest earned by her from her fixed deposit and her claim was based on Section 12(2) of the Indian income-tax Act. The Tribunal has negatived her claim and the assessee has come on this reference.

2. Before we examine the facts, it is necessary, first, to turn to the section itself. The deduction which is permissible under Sub-Section (2) of Section 12 is an expenditure incurred solely for the purpose of making or earning the income which has been subjected to tax. Therefore, in order to decide whether a deduction is permissible under Sub-Section (2), we have to examine the nature of the expenditure. The purpose for which the expenditure is incurred must be in order to earn the income. The expenditure may be incurred for any commercial purpose. The connection between the expenditure and the earning of the income may not be direct. However indirect the connection may be, there must be a connection or a nexus between the expenditure incurred and the income earned. If we apply this test to the facts of this case, it is clear that the expenditure incurred by the assessee which she claims as a deduction under Sub-Section (2), has no connection whatsoever whether direct or indirect with the income she has earned on her fixed

deposit. For the sake of argument, confining ourselves to the case of jewellery, the position put simply is this the assessee wants to purchase some jewellery, she has no spare cash with her she borrows money to purchase jewellery and on the borrowing she has to pay interest. It is this interest which she pays which she claims is a permissible deduction under Sub-Section (2) of Section 12. Now, the purpose for which this interest was paid was in order that she should have money to buy the jewellery. This is clearly the purpose and obviously that purpose has no connection whatever direct or indirect with the income which she earns from her fixed deposit. The purchase of jewellery does not facilitate the earning of the income. Her fixed deposit is not affected by the fact of her purchasing the jewellery or not purchasing the jewellery. But what is rather ingeniously urged by Mr. Mehta is that the assessee had the option either of taking the money from the fixed deposit and thereby reducing the income or borrowing money and paying interest on it. Inasmuch as she exercised the option of borrowing money, she preserved the source of the income and therefore this expenditure is an allowable expenditure.

3. Now, what Sub-Section (2) emphasises is the purpose for which the expenditure is incurred. The Court is not concerned with the motive of the assessee, and what Mr. Mehta in fact asks us to do is to probe into the motive of the assessee. It may be that the assessee's motive was to save her fixed deposit and interest accruing from it and to purchase jewellery by means of loan borrowed from some person or other. But that consideration is entirely irrelevant. What we are concerned with is the actual action on the part of the assessee and not the action she could have taken under the circumstances.

If she had chosen to purchase this jewellery by withdrawing money from the fixed deposit, then undoubtedly her income would have been reduced and to that extent the tax on that income would also be reduced. But because she chose to borrow money to buy the jewellery, it does not establish the purpose, namely that she borrowed money in order to maintain or preserve the fixed deposit or help her to earn interest.

4. It is suggested by Mr. Mehta that whatever may be the position with regard to the jewellery and household expenses, the position is different with regard to the advance tax which she had to pay, and Mr. Mehta says that if she earned 2 per cent, interest on the advance payment and inasmuch she had to borrow money in order to pay this advance tax and earn 2 per cent. interest, she should have been allowed deduction at least to that extent. It may be that if an assessee borrows money in order to purchase securities which would earn interest, the interest which she may have to pay on the loan would be a permissible deduction. But then the purpose of borrowing the money is to purchase securities which is the source of the income. In this case, the purpose of borrowing the money in order to pay advance tax was not to earn 2 per cent, interest. Obviously the purpose was to discharge the statutory obligation which was upon the assessee to make the advance tax payment. The simple test that may be applied is whether the assessee could have claimed this deduction if no interest was payable to her on the advance tax payment. Mr. Mehta had to concede that if no interest was payable, the assessee could not have claimed the payment of interest on the moneys borrowed for the purpose of paying this tax as a permissible

deduction. If she could not have claimed interest paid by her on the loan borrowed for the purpose of making advance tax payment if no interest was payable on the advance tax payment, it is difficult to understand how on principle she can claim this deduction merely because the Legislature provided that she should receive interest on the advance tax payment. Payment of interest is purely incidental, so is the receipt of the interest, the only purpose which the assessee had in mind when she borrowed the money was, as we said before, to discharge her statutory obligation.

5. Now, let us see whether the authority cited by Mr. Mehta can put any different complexion upon the view that we have taken on the question raised in this reference. Mr. Mehta has relied on a decision of the Supreme Court reported in - '*Eastern Investments Ltd. v Commissioner of Income Tax, West Bengal*', and what he relies on are certain observations in the judgment of Mr. Justice Bose.

The learned Judge enunciates certain relevant principles for determining whether a particular expenditure comes within the ambit of Section 12(2), and what is relied upon by Mr. Mehta is the third principle and this is how the learned Judge puts it (p. 279) :

"it is enough to show that the money was expended 'not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial expediency, and in order indirectly to facilitate the carrying on of the business' and what is emphasized by Mr. Mehta is that Mr. Justice Bose had laid down that the payment need not directly facilitate carrying on of business, even indirect facility given to the carrying on of the business shall be sufficient. Applying this test to the facts of the present case, it is clear that the test will not be satisfied."

In the first place the payment is not made on the ground of commercial expediency, no commercial expediency was involved in the purchasing of jewellery or the payment of household expenses or the payment of advance tax, nor was the carrying on of the business facilitated either directly or indirectly by the borrowing of the loan or the payment of the interest of the loan. In the particular case with which we are concerned the only business which realises the income was the fact that the assessee maintained a fixed deposit and earned interest on it. As we have pointed out it is really difficult to understand how the earning of the income was facilitated by the borrowing of this loan or the payment of interest on that loan.

6. The next authority on which reliance is placed is a well-known decision of this Court reported in - '*Commissioner of Income-tax. Bombay v. Tata Sons Ltd.*', Sir John Beaumont, C.J. at p. 285 deals with the question of the assessee having paid part of a commission to which they were entitled in order to arrange to finance the managed company through F. E. Dinshaw and this is what the learned Chief Justice says :

"..The question whether the payment of part of a commission to a third person can be regarded as expenditure incurred solely for the purpose of earning that commission is a question which must be answered on the facts of each case and on a commercial basis. Now it is to my mind clear in this case that the assessee were bound either to lose the commission which they were getting from the Tata Iron and Steel Co. Ltd., or to arrange for financing that Company, and we must assume that the arrangement, which they made as to finance was the wisest which could be made in the circumstances",

and Mr. Mehta says that in the case before the learned Chief Justice the assessee was confronted with these alternatives that either he had to lose the commission or to pay a share of the commission so that finance may be available and he may continue to earn the income. In the case before us also the assessee was confronted with the same alternatives.

¹ AIR 1951 SC 278

² AIR 1939 Bom 283

In our opinion the facts of the case in 'Tata Sons Ltd. (B)' were entirely different from the facts before us. It cannot be said that if she had not borrowed the money in order to pay for the jewellery or the household expenses or the advance tax, she would have lost the interest on the fixed deposit. The interest would have continued and the fixed deposit would have been maintained if she had bought no jewellery, had incurred no household expense, and had not paid advance tax. Therefore, the alternatives which the learned Chief Justice was considering must be alternatives which must connect the incurring of the expenditure with the carrying on of the business. If an assessee has no option except to incur an expenditure in order to make the earning of an income possible, then undoubtedly the exercise of that option is compulsory and any expenditure incurred by reason of the exercise of that option would come within the ambit of Section 12(2). But where the option has no connection with the carrying on of the business or the earning of the income and the option depends upon personal considerations or upon motives of the assessee, that expenditure cannot possibly come within the ambit of Section 12(2). In our opinion, therefore, the Tribunal was right in the view that it took and the answer we proceed to give to the question submitted to us is in the negative. The assessee to pay the costs.

Question answered in negative.