

Commissioner Of Income-Tax (Central), ... vs Mcleod & Co. Ltd. on 15 July, 1969

Equivalent citations: [1970]78ITR22(SC), AIRONLINE 1969 SC 56

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Bench: J.C. Shah, G.K. Mitter

JUDGMENT

G.K. Mitter, J.

1. This is an appeal by special leave from an order of the Calcutta High Court in Income-tax Reference No. 99 of 1966 passed on June 18, 1968, discharging a rule nisi issued on February 6, 1967, on the application of the Commissioner of Income-tax (Central), Calcutta.

2. The matter arises thus. The respondent-assessee made a claim in its assessment for the assessment year 1952-53, inter alia, for an allowance of Rs. 95,868 as provision for extraordinary legal and other expenses in computing its profits for the purposes of income-tax. The Income-tax Officer disallowed that claim holding, inter alia, that the payments which were made to different firms of solicitors for legal advice in the matter of certain irregularities of the assessee's directors and officials whereby the funds of certain companies under the management of the assessee were depleted would not be allowed. It is not necessary to state in detail about the irregularities but it is sufficient to note that they were reported by the chairman to the respondent-company and mentioned in the report dated December 12, 1952, of Messrs. Lovelock and Lewis, auditors -of the company. The profit which arose to the assessee by these transactions was in the region of Rs. 11,60,000. The sum of Rs. 95,868 consisted of four items of payments made to three firms of solicitors and expenses of two individuals who appear to have come over to India for straightening out the alleged irregularities. The allegation of the assessee was that following the legal advice a reconstruction of the board of directors and a reorganisation of the general conduct of the business of the assessee were put through for the benefit of the company. The Appellate Assistant Commissioner disallowed the claim on the ground that the irregularities " arose in connection with the fictitious transactions indulged in by the company which were detected by its auditors after investigation. The expenses incurred as a result of such illegal activities were not the legitimate expenses of the appellant company incurred in the course of its business. " On further appeal, the Appellate Tribunal by its order dated January 18, 1958, allowed the respondent's claim for deduction accepting the assessee's plea that the expenses were incurred to protect the assessee's business as managing agents of various public companies and unless the fair name of the assessee

was maintained its business would have suffered and certain managing agencies would have been lost.

3. The Commissioner of Income-tax thereupon applied to the Tribunal under Section 66(1) of the Income-tax Act of 1922 for a case to be stated to the High Court for reference of the following two questions of law :

(1) Whether, on the facts and in the circumstances of the case, the conclusion of the Tribunal that the expenditure of Rs. 95,868 was wholly and exclusively incurred for the purpose of maintaining the goodwill and reputation of the assessee-company was based on no evidence or was perverse in the accepted sense of the term ?

(2) Whether, in any event, on the facts and in the circumstances of the case, the Tribunal was right in holding that the said expenditure was allowable as a proper revenue deduction ?

4. By order dated February 11, 1966, the Tribunal stated a case to the Calcutta High Court and referred only the following question of law :

Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 95,868 incurred for the purpose of maintaining the goodwill and reputation of the assessee-company was a permissible deduction in computing the assessee's profits under Section 10(2)(xv) of the Income-tax Act, 1922 ?

5. With regard to the first question the Tribunal said:

The Commissioner of Income-tax requested that question No. 1 as proposed by him in some form should also be referred. Since that question related to the finding of fact by the Tribunal that the expenditure of Rs. 95,868 was incurred for the purpose of maintaining the goodwill and reputation of the assessee-company no question of law could arise as to whether the finding was supported by any evidence.

6. The Commissioner of Income-tax thereupon applied to the High Court under Section 66(2) of the Act wherein after referring to the finding of the Income-tax Officer and the Appellate Assistant Commissioner he complained that the conclusion to the contrary of the Tribunal was not supported by any material on the record and its finding was perverse in the sense that no reasonable man could have come to that conclusion. The Commissioner's grievance was that on the form of the question drawn up by the Tribunal for the opinion of the High Court, the answer could only be in the affirmative, and against him. He further stated that the question framed did not set out the real point in controversy between the parties, viz., that there was no evidence before the Tribunal to come to the conclusion it did and alternatively on the material on record the conclusion was perverse in the sense that no reasonable man could come to the same finding.

7. It appears to us that the question framed by the Tribunal was suggestive of the answer and the grievance of the Commissioner was not ill-founded. The statement of case by the Tribunal to the High Court was far from complete. In that statement the Tribunal after referring to the facts found by the Income-tax Officer and the Appellate Assistant Commissioner stated that:

Since the major item of Rs. 58,638 pertained to the bills of M/s. Orr Dignam & Co. the Tribunal perused the detailed statements of work done by M/s. Orr Dignam & Co. in connection with straightening out the affairs of the assessee-company. The Tribunal held that the expenditure had been incurred for the purpose of maintaining the goodwill and reputation of the assessee-company and that the expenditure had been wholly and exclusively incurred for this purpose.

8. The above throws no light on the nature of the work done by the named firm of solicitors. An elucidation was necessary to permit the court to take the view that there was evidence to justify the conclusion arrived at by the Tribunal.

9. The real complaint of the appellant before us is that the statement of facts in the case stated by the Tribunal was not complete and that certain further facts should have been incorporated therein so that the questions of law which the appellant wanted the High Court to adjudicate upon could be properly gone into. Nevertheless, it appears to us that the appellant should have proceeded in the way indicated in *N. V. Khandvala v. Commissioner of Income-tax* [1946] 14 I.T.R 635, 637 (Bom.), where Kania J. said :

When a statement of case, with the question of law framed by the Tribunal, is filed in court for disposal, if a party is aggrieved and wants to contend that certain further facts ought to be stated, or certain questions of law should be raised, he can make an application by way of notice of motion. That should be heard along with the case stated by the Tribunal for the court's opinion. At that time the court will consider whether the statement of case is complete for the question of law raised by the Tribunal. The court can also consider whether on the case stated by the Tribunal the proper question is raised or not. That is the proper time for an aggrieved party to bring to the notice of the court that certain further and other facts are necessary to be stated or certain further or other questions of law arise and should be brought for decision by the court.

10. The above was approved of by this Court in the recent decision of *Lakshmirattan Cotton Mills v. Commissioner of Income-tax Civil Appeal No. 2139/1966*, decided on 3-9-1968.-Since reported in [., where the scope of Section 66 of the Income-tax Act of 1922 was considered at some length.

11. We, therefore, allow the appeal and remand the matter to the High Court to rehear the same along with a notice of motion which may be brought on for hearing at the same time as indicated in the judgment of Kania J. The costs will abide by the result of the decision of the High Court.