Commissioner Of Income Tax, West Bengal ... vs Rajendra Prasad Moody, Calcutta Etc on 4 October, 1978

Equivalent citations: 1979 AIR 373, 1979 SCR (1)1047, AIR 1979 SUPREME COURT 373, 1979 (1) SCC 250, 1979 TAX. L. R. 123, 1978 51 TAXATION 52, 1978 UJ (SC) 825, 1978 (115) ITR 519, 1979 (1) SCJ 411, 1978 CURTAXREP 141 (SC), 1978 2 TAX LAW REV 156, (1979) 1 SCR 1047 (SC), 1979 (1) SCWR 410, 1979 (1) ITJ 250, 1979 (11) LAWYER 87, 1979 SCC (TAX) 43, 1979 UPTC 410

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Bench: P.N. Bhagwati, R.S. Pathak, V.D. Tulzapurkar

PETITIONER:
COMMISSIONER OF INCOME TAX, WEST BENGAL III, CALCUTTA

Vs.

RESPONDENT:
RAJENDRA PRASAD MOODY, CALCUTTA ETC.

DATE OF JUDGMENT04/10/1978

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
PATHAK, R.S.
TULZAPURKAR, V.D.

CITATION:
1979 AIR 373 1979 SCR (1)1047
1979 SCC (1) 250
CITATOR INFO :
F 1987 SC1723 (6)

ACT:
Allowable expenditure-Whether interests on monies borrowed for investment in shares is allowable expenditure, when the shares have not yielded any return in the shape of dividend during the relevant assessment year-Interpretation of Sec. 57(iii) of Income-tax Act. 1961.

HEADNOTE:

The respondents assessees in the two references are brothers and each of them had borrowed monies for the purpose of making investments in shares of certain companies and during the assessment year 1965-66 for which the relevant accounting year ended on 10th April 1965, each of the two assessees paid interest on the monies borrowed but did not receive any dividend on the shares purchased with those monies. Each of the two assessees made a claim for deduction of the amount of interest paid on the borrowed monies but this claim was negatived by the Income Tax Officer and on appeal by the Appellate Assistant Commissioner on the ground that during the relevant assessment year the shares did not yield any dividend and, therefore, interest paid on the borrowed monies could not be regarded as expenditure laid out or expended wholly and exclusively for the purpose of making or earning income chargeable under the head "Income From Other Source" so as to be allowable as a permissible deduction under Sec. 57(iii). The Tribunal, however on further appeal, disagreed with the view taken by the Taxing Authorities and upheld the claim of each of the two assessees for deduction under Sec. 57(iii).

Answering in favour of the assessees and against the Revenue the question in the references the Court,

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HELD : (1) The plain and natural construction of the language of Sec. 57(iii) of the Income Tax Act 1961 irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. What Sec. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of Sec. 57(iii) and that purpose must be making or earning of income. Sec. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of Sec. 57(iii) to suggest that the purpose for which expenditure is made should fructify into any benefit. [1051 B-E]

Eastern Investments Ltd. v. Commissioner of Income-tax, 20 I.T.R. (SC) 1 applied.

(2) The contention of the Revenue that the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year but, if there is some income, however small or meagre, the expenditure

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would be eligible for deduction, would lead to a strange and highly anomalous result and the legislature could never have

intended to produce such illogicality. Moreover when a profit and loss account is cast in respect of any source of income what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is x or y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, x or y or nil would be credited. And the ultimate profit or loss would be found. Whatever is proper outgoing by way of expenditure must be debited irrespective whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of Sec. 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances be held to be conditional upon the making or earning of the income. [1051 G, H, 1052 A-D]

(3) It is true that the language of Sec. 37(i) of the Act is a little wider than that of Sec. 5(iii). But that cannot make any difference in the true interpretation of Sec. 57(iii). The language of Sec. 57(iii) is clear and unambiguous and it has to be construed according to the plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more it does not mean that Sec. 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and in fact contrary to such language. This view also accords with the principles of commercial accounting. [1052 E-F, 1053 B]

Hughes v. Bank of New Zealand, 6 I.T.R. 636 quoted with approval.

Appa Rao v. Commissioner of Income-tax, 46 ITR 511; Mohamed Ghouse v. Commissioner of Income-tax, 49 ITR 127, Ormerods (India) Pvt. Ltd. v. Commissioner of Income-tax, 36 ITR 329; Chhail Beharilal v. Commissioner of Income Tax, 39 ITR 696; Commissioner of Income-tax v. Dr. Fida Hussain G. Abbasi, 71 ITR 314; M. N. Ramaswamy Iyer v. Commissioner of Income-tax, 71 ITR 218; Commissioner of Income-tax v. Gopal Chand Patnaik, 111 ITR 86 approved.

Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax, 32 ITR 377; Madanlal Sohanlal v. Commissioner of Income-tax, 47 ITR 1 overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Tax References Nos. 1 and 2 of 1971.

Income Tax Reference under section 257 of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal, Calcutta in R.S. No. 775 (Cal.) 69-70 (I.T.A. No. 12127 of 66-67) R.A. No. 777

(Cal.) 69-70 (R.T.A. No. 12125 of 66-

67).

V. S. Desai and Miss A Subhashini for the Appellant. Anil B. Divan, N. R. Khaitan, S. R. Agarwal, U. K. Khaitan, P. V. Kapur and Praveen Kumar for the Respondent.

The Judgment of the Court was delivered by BHAGWATI, J.-These are two references made by the Tribunal to this Court under section 257 of the Income Tax Act, 1961 in view of a conflict in the decisions of High Courts on the question as to whether interest on monies borrowed for investment in shares is allowable expenditure under Section 57 (iii) when the shares have not yielded any return in the shape of dividend during the relevant assessment year. The preponderance of judicial opinion is in favour of the view that such interest is admissible, even though no dividend is received on the shares, but there are two High Courts which have taken a different view and hence it is necessary for this Court to set the controversy at rest by finally deciding the question. Since the question is purely one of law turning on the true interpretation of section 57 (iii), it is not necessary to set out the facts giving rise to these two references in any detail. It would be sufficient to state that the assessees in these two references are brothers and each of them had borrowed monies for the purpose of making investment in shares of certain companies and during the assessment year 1965-66 for which the relevant accounting year ended on 10th April, 1965, each of the two assessees paid interest on the monies borrowed but did not receive any dividend on the shares purchased with those monies. Each of the two assessees made a claim for deduction of the amount of interest paid on the borrowed monies but this claim was negatived by the Income Tax Officer and on appeal by the Appellate Assistant Commissioner on the ground that during the relevant assessment year the shares did not yield any dividend and, therefore, interest paid on the borrowed monies could not be regarded as expenditure laid out or expended wholly and exclusively for the purpose of making or earning income chargeable under the Head "Income From Other Source" so as to be allowable as a permissible deduction under section 57(iii). The Tribunal, however, on further appeal, disagreed with the view taken by the taxing authorities and upheld the claim of each of the two assessees for deduction under section 57(iii). The Revenue being aggrieved by the decision of the Tribunal made an application in each case for reference of the following question of law, namely:-

> "Whether on the facts, and in the circumstances of the case, interest on money borrowed for investment in shares which had not yielded any dividend is admissible under section 57(iii) ?"

and since there was divergence of judicial opinion on this question, the Tribunal referred it directly for the opinion of this Court.

The determination of the question before us turns on the true interpretation of section 57(iii) and it would, therefore, be convenient to refer to that section, but before we do so, we may point out that section 57(iii) occurs in a fasciculus of sections under the heading 'F- Income From Other Sources'. Section 56 which is the first in this group of sections enacts in sub-section (1) that income of every kind which is not chargeable to tax under any of the heads specified in section 14, Items A to E shall

be chargeable to tax under the head 'Income From Other Sources' and sub-section (2) includes in such income various items one of which is 'dividends'. Dividend on shares is thus income chargeable under the head 'Income From Other Sources'. Section 57 provides for certain deductions to be made in computing the income chargeable under the head "Income From Other Sources" and one of such deductions is that set out in clause (iii) which reads as follows:

> "Any other expenditure (not being in the nature of capital expenditure) laid down or expended wholly and exclusively for the purpose of making or earning such income".

The expenditure to be deductible under section 57(iii) must be laid out or expended wholly and exclusively for the purpose of making or earning such income. The argument of the Revenue was that unless the expenditure sought to be deducted resulted in the making or earning of income, it could not be said to be laid out or expended for the purpose of making or earning such income. The making or earning of income, said the Revenue, was a sine qua non to the admissibility of the expenditure under section 57(iii) and, therefore, if in a particular assessment year there was no income, the expenditure would not be deductible under that section. The Revenue relied strongly on the language of section 37(1) and contrasting the phraseology employed in section 57(iii) with that in section 37(1), pointed out that the Legislature had deliberately used words of narrower import in granting the deduction under section 57(iii). Section 37(1) provided for deduction of expenditure laid out or expended wholly and exclusively for the purpose of the business or profession in computing the income chargeable under the head 'Profits or gains of business or profession'. The language used in section 37(1) was "laid out or expended-for the purpose of the business or profession" and not "laid out or expended-for the purpose of making or earning such income" as set out in section 57(iii). The words in section 57(iii) being narrower, contended the Revenue, they cannot be given the same wide meaning as the words in section 37(1) and hence no deduction of expenditure could be claimed under section 57(iii) unless it was productive of income in the assessment year in question. This contention of the Revenue undoubtedly found favour with two High Courts but we do not think we can accept it. Our reasons for saying so are as follows.

What section 57 (iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that, is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. Section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. It may be pointed out that an identical view was taken by this Court in Eastern Investments Ltd. v. Commissioner of Income tax, where interpreting the corresponding provision in section 12(2) of the Income Tax Act, 1922 which was ipsissima verba in the same terms as section 57(iii), Bose, J., speaking on behalf of the Court observed: "It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned". It is indeed difficult to see how, after this observation of the Court, there can be

any scope for controversy in regard to the interpretation of section 57(iii).

It is also interesting to note that, according to the Revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year, but if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs. 1000/-, if there is income of even Re. 1/-, the expenditure would be deductible and there would be resulting loss of Rs. 999/- under the head 'Income From Other Sources'. But if there is no income, then, on the argument of the Revenue, the expenditure would have to be ignored as it would not be liable to be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the Legislature could have ever intended to produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. And the ultimate profit or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of section 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.

It is true that the language of section 37(1) is a little wider than that of section 57(iii), but we do not see how that can make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and in fact, contrary to such language.

This view which we are taking is clearly supported by the observations of Lord Thankerton in Hughes v. Bank of New Zealand where the learned Law Lord said: "Expenditure in the course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense." We find that the same view has been taken by the Madras High Court in Appa Rao v. Commissioner of Income tax, and Mohamed Ghouse v. Commissioner of Income-tax, the Bombay High Court in Ormerods (India) Private Ltd. v. Commissioner of Income-tax, the Allahabad High Court in Chhail Beharilal v. Commissioner of Income-tax, the Madhya Pradesh High Court in Commissioner of Income-tax v. Dr. Fida Hussain G. Abhasi, the Kerala High Court in M. N. Ramaswamy Iyer v. Commissioner of Income-tax and the Orissa High Court in Commissioner of Income-tax v. Gopal Chand Patnaik. This view is eminently correct as it is not only justified by the language of section 57(iii) but it also accords with the principles of commercial accounting. The

contrary view taken by the Patna High Court in Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax and the Calcutta High Court in Madanlal Sohanlal v. Commissioner of Income-tax must in the circumstances be held to be incorrect.

We accordingly answer the question referred to us for our opinion in each of these two references in favour of the assessee and against the Revenue. The Revenue will pay the costs of both the references to the assessee. S.R. References answered in favour of assessees.