Seth Banarsi Dass Gupta & Anr. Etc vs Commissioner Of Income-Tax, Delhi on 29 April, 1987

Equivalent citations: 1987 AIR 1664, 1987 SCR (3) 101, AIR 1987 SUPREME COURT 1664, 1987 (3) SCC 441, 1987 TAX. L. R. 1003, (1987) 166 ITR 783, 1987 SCC(TAX) 264, (1987) 64 CURTAXREP 142, (1987) 2 JT 584 (SC)

Author: Misra Rangnath

Bench: Misra Rangnath, G.L. Oza

PETITIONER:
SETH BANARSI DASS GUPTA & ANR. ETC.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, DELHI.

DATE OF JUDGMENT29/04/1987

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
OZA, G.L. (J)

CITATION:
1987 AIR 1664 1987 SCR (3) 101
1987 SCC (3) 441 JT 1987 (2) 584
1987 SCALE (1)949

ACT:
Income-tax Act, 1922 : s. 10(2)(vi), s. 24---Depreciation--Benefit of--Admissible only where assessee full owner of property--Assessee alone entitled to maintain claim--Carried forward loss--Claim for set off--When admissible--Assessee surrendering lease of partnership share for annuity--Nature of receipts--Whether profit for the interest held in business.

HEADNOTE:
'A', a partner in a firm running a sugar factory, instituted a suit for its dissolution in 1948 and a Receiver was appointed by the Court. The arrangement arrived at for the factory was that it would be leased out for a term of five

years to the highest bidder from amongst the six partners. In July, 1948, 'A' transferred his 1/6th share to the appellant for Rs.4,50,000. The appellant had taken a loan against shares of that value held by him in another sugar mill for purchase of the share. In May, 1950, another partner 'B' leased out his 1/6th share to the appellant on an annual payment of Rs.50,000. In July, 1950 yet another partner 'C' leased out his 1/6th share to the appellant for a similar sum. In 1951 'C' sued for cancellation of the lease. In April, 1954 the dispute was compromised and the lease terminated. 'C' undertook to pay the appellant at the rate of Rs. 16,000 for the first three years and at the rate of Rs. I0,000 for the subsequent two years. 'B's 1/6th share was also returned on mutual arrangement and he agreed to pay the appellant a sum of Rs.39,000 and odd annually.

During the assessment proceedings for the year 1953-54 the nature of these receipts came to be considered. The assessee-appellant maintained that these were in the nature of capital receipts in lieu of the lease-hold interest. The assessee also claimed depreciation on the 1/6th share in the sugar mill that he had acquired from 'A'. Similar questions also arose for the assessment years 1954-55 and 1955-56. The assessee had suffered a loss in the sugar business in the assessment year 1953-54, a part of which remained unabsorbed, and claimed set off of that unabsorbed loss against the share of the rent received by him from the Receiver in the assessment year 1954-55. Since the sugar mill was being assessed as an association of persons, for the assessment year 1960-61

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the Receiver claimed that for the purpose of computing depreciation allowance, the written down value of the business assets be enhanced so as to reflect the sum of Rs.4,50,000 in place of 16th share representing the share of 'A'. The Revenue negatived the assessee's contentions, which view was upheld by the High Court.

Dismissing the appeals by certificate, the Court,

HELD: 1. The amounts the assessee received under the compromise or by amicable arrangement from other partners were in the nature of profits to be received by the assessee for the interest held in the business and, therefore, constituted taxable income. [106B]

2. The benefit of s. 10(2)(vi) of the Income-tax Act, 1922 would be admissible only where the assessee is the owner of the property. It too is not admissible in respect of a fractional claim. [106A]

In the instant case, all that is claimed for the assessee is 1/6th share in the machinery. Such a fractional share does not suffice for granting an allowance for depreciation under s. 10(2)(vi) of the Act. [105F]

3. Two conditions had to be fulfilled under s. 24 of the Incometax Act, 1922 before the claim for set off of carried forward loss could be admitted, firstly, the income against

which the loss has to be set off should be income from business and secondly, the business should be same in which the loss was suffered. [107C]

In the instant case, the letting out of the sugar mill was not the business of the assessee. The Receiver was appointed for dissolution of the firm and the main reason for allowing the sugar factory to work was to dispose it of as a running mill so that proper price could be fetched. [107DE]

4. Under the scheme of 1922 Act, it is the assessee who alone is entitled to maintain claim of depreciation. Within the framework of that scheme it is difficult to maintain separate value of a part of the asset to work out depreciation. The book-value, as shown must in the instant case, therefore, be applicable to the entire assets of the firm including the 1/6th share which 'A' had given to the appellant. The claim of the Receiver for depreciation cannot, therefore, be sustained. [108B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 850 of 1973 etc. From the Judgment and Order dated 3.9. 1970 of the Allahabad High Court in Civil Miscellaneous (ITR) No. 461 of 1961.

With CIVIL APPEAL No. 941 of 1975.

From the Judgment and Order dated 5.5. 1972 of the Allahabad High Court in I.T. Reference No. 236 of 1969. Raja Ram Agarwal and Mrs. Rani Chhabra for the Appellants. B.B. Ahuja and Ms. A Subhashini for the Respondents. The Judgment of the Court was delivered by RANGANATH MISRA, J. CA. No. 850 of 1973 This appeal is by certificate and is directed against the judgment of the High Court of Allahabad. Assessee and five of his brothers constituted a Hindu Joint Family. The relevant assessment year is 1953-54 corresponding to the accounting period ending on 30th June, 1952. The Joint Family which owned inter alia a sugar factory at Bijnore. In 1930 there was partition in the family and the members of the erstwhile Joint Family constituted themselves into a partnership firm which took over the sugar factory and operated the same. In the year ,1944, Sheo Prasad, one of the brothers who was a partner of the firm instituted a suit in the Lahore High Court for dissolution of the firm. Partition of the country followed and after the parties shifted over to India a fresh suit was instituted at Bijnore for purposes of partition. The properties were put in charge of a receiver appointed by the Court. So far as the sugar factory is concerned, the arrangement was that at five yearly rest an auction was to be held confined to the partners and the highest bidder would be given lease to operate the factory for that period under the receiver. On 16th July, 1948, Sheo Prasad trans- ferred his 1/6th share to Banarsi Dass at a stated valuation of Rs.4,50,000. On 3rd May, 1950, another brother, Devi Chand, leased out his 1/6th share to Banarsi Dass on an annual payment of Rs.50,000. On 13th July, 1950, yet another brother, Kanshi Ram, similarly leased out his 1/6th share to Banarsi Dass for a similar sum. In 1951, Kanshi Ram sued for

cancellation of the lease. On 6th April, 1954, the dispute was compromised and the lease was terminated. Kanshi Ram undertook to pay to Banarsi Dass at the rate of Rs. 16,000 for the first three years and at the rate of Rs. 10,000 for the subsequent two years. Devi Chand's 1/6th share was also returned on mutual arrangement and he agreed to pay a sum of Rs.39,000 and odd annually to Banarsi Dass for the lease period. During the assessment proceedings, the nature of these receipts came to be debat- ed-the assessee maintained that these were in the nature of capital receipt lieu of the lease hold interest and the Income-tax Officer maintained that those were revenue re- ceipts. In due course, the Tribunal ultimately upheld the view of the Revenue.

One more question that arose was the admissibility of a claim of expenditure being payment of interest on a loan taken for purchase of shares in the sugar factory. The Income-tax Officer had allowed the claim of Rs.75,211. The Appellate Assistant Commissioner gave notice to the assessee and disallowed the same. The Appellate Tribunal reversed the finding of the Appellate Assistant Commissioner in regard to the admissibility of the claim. Thus the assessee as also the Revenue applied to the Tribunal to refer the case to the High Court. As far as relevant, the following questions were referred for the opinion of the High Court under section 66(1) of the Act at the instance of the assessee.

1. Whether on the facts and in the circum-

stances of the case, the sums of Rs. 16,000 and Rs.39,262 received from Kanshi Ram and Devi Chand respectively were assessable as income of the assessee?

2. Whether on the facts and in the circum-

stances of the case, depreciation is allowable on the 1/6th share in S.B. Sugar Mills, Bij- nore which the assessee had acquired from Seth Sheo Prasad?

So far as the first question is concerned, the High Court referred to the arrangement entered into by the parties as also the terms of compromise and referred to certain deci- sions and came to the conclusion that the sum of Rs. 16,000 received as a part of the total sum of Rs.68,000 constituted an assessable receipt. On the same reasoning, the High Court held that the amount of Rs.39,262 received from Devi Chand was also liable to tax.

So far as the other question is concerned, the High Court held:-

> "The question, however, remains whether the assessee is entitled to claim depreciation on the ground that it has acquired 1/6th share in the S.B. Sugar Mills. It is to be noted that the asses- see does not claim to be full owner of the property. All that the assessee claims is 1/6th share in S.B. Sugar Mills."
>
> "The assessee claims allowance under clause

(vi) of subsection (2) of section 10 of the Indian Income-tax Act of 1922. Clause (vi) is:

'In respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee ....."

"In order to qualify for an allowance under clause (vi), the assessee has to make out that the building, machinery, plant or furniture is the property of the assessee. Mr. Shanti Bhushan appearing for the assessee urged that clause (vi) is attracted even where an asses- see owns a fractional share in the machinery. On the other hand, Mr. Brij Lal Gupta appear- ing for the Department urged that ownership of a fractional share in machinery does not attract clause (vi). The point is not free from difficulty."

The High Court ultimately came to hold:

"In order to qualify for an allowance under clause (vi), the claimant must make out that the machinery is the property of the assessee. That test is not satisfied by the present assessee. The assessee does not claim to be the full owner of the machinery in question. All that is claimed for the assessee is 1/6th share in the machinery. Such a fractional share will not suffice for granting an allow- ance for depreciation under section 10(2)(vi) of the Act."

We have heard learned counsel for the assessee-appellant at length. He has referred to several authorities in support of the assessee's stand of admissibility of the claim' on both scores. According to him, the proper test to be adopted should have been to find out whether the arrangement constituted an apparatus to earn profit. whether the arrangement was one in course of business activity, and whether what was received constituted a part of the circulating capital or was a part of the fixed asset. We have considered the sub- missions of the learned counsel for the appellant but are not in a position to accept the same. There is hardly scope to doubt that the benefit of section 10(2)(vi) of the Act would be admissible only where the assessee is the owner of the property. It too is not admissible in respect of a fraction- al claim. Similarly, we are of the view, in agreement with the High Court. that the amounts which the assessee received under the compromise or by amicable arrangement was in the nature of profits to be received by the assessee for the interest held in the business and, therefore, constituted taxable income. No other point was canvassed before us. This appeal has to fail and is hereby dismissed. Parties are directed to bear their own costs throughout.

This appeal between the parties is also by certificate granted by the Allahabad High Court and relates to the assessment year 1955-56 for the accounting period ending on 30th June, 1954. Leave has been confined to two questions--as would appear from the order granting the certificate, namely, as to whether one of the instalments received by the assessee out of the said amount of Rs.68,000, as referred to above, in respect of an earlier assessment year constituted a taxable receipt. The second question relates to acquisition of the 1,6th share under a deed of exchange from Devi Chand under the exchange deed dated 16th July, 1948, which indicated that the valuation of that interest was shown to be Rs.4,50,000 and depreciation was claimed in regard to it. Both the

questions raised here are covered by our aforesaid judgment. The appeal of the assessee has therefore to fail. The appeal is accordingly dismissed. Parties are directed to bear their own costs. C.A. No. 1101 of 1975.

The relevant assessment year in this case is 1954-55 corresponding to the accounting period ending June 30, 1953. Three questions survive for consideration: One relating to the receipt of Rs. 16,000 and Rs.42,957 in the same manner as already indicated, and the other depreciation in regard to the 1/6th share, said to have been valued at Rs.4,50,000. Both the questions have to be answered against the assessee for the reasons already indicated. In this case, there is a third question which is relevant, namely, whether in the facts and circumstances of the case. the unabsorbed carried forward loss of Rs.78,084 was liable to be set off against the share of the rent received by the assessee from the Receiver. Dealing with this question, the High Court ob- served:.

> "During the previous year relevant to the assessment year 1953-54, the assessee had suffered a loss in sugar business. After setting off the loss against other heads of income there remained an unabsorbed loss of Rs.78,084. In the assessment year in dispute the assessee claimed that the unabsorbed loss of the preceding year should be brought for- ward and set off against its share in lease money received from the Receiver in respect of S.B. Sugar Mills. This claim of the assessee has been disallowed and the question arises as to whether the assessee was entitled to carry forward and set off the loss as claimed by it."

The High Court referred to section 24 of the Income-tax Act of 1922 and indicated that two conditions had to be ful- filled before the claim of set off of carried forward loss could be admitted, firstly, the income against which the loss has to be set off should be income from business and secondly, the business should be same in which the loss was suffered. The High Court referred to certain decisions including the one of this Court in 26 ITR 765 and ultimately negatived the claim of the assessee by saying that the question would not arise because the letting out of the sugar mill was not the business of the assessee. In fact the receiver was appointed for dissolution of the firm and the main reason. as found by the High Court. for allowing the sugar factory to work was to dispose it of as a running mill so that proper price would be fetched. Having heard learned counsel for the parties, we are satisfied that there is no merit in the assessee's stand and the same has got to be dismissed. The appeal is accordingly dismissed. Parties are directed to bear their own costs throughout.

This appeal is by certificate from the judgment of the Allahabad High Court. The assessee is the sugar mill which during the relevant assessment year 1960-61 corresponding to the accounting period ending 30th June, 1959, was in the hands of a Court Receiver. The sugar mill was being assessed as an Association of Persons. Banarsi Dass. a partner, had 1/6th share therein. He had acquired under a deed of ex- change dated 16th July, 1948 1/6th share of Sheo Prasad in exchange of shares held by Banarsi Dass in Lord Krishna Sugar Mills valued at Rs.4,50.000. In this assessment year, the receiver claimed that for the purposes of computing the depreciation allowance, the written down value of the busi- ness assets be enhanced so as to reflect the sum of Rs.4,50,000 in place of 1/6th share representing the share of Sheo Prasad. Similar claim had been raised by Banarsi Dass in

his own assessment. The Income-tax Officer rejected the claim and such rejection has been upheld throughout. We have already turned down the claim of Banarsi Dass. This claim has, therefore, to be rejected. We may additionally point out that under the scheme of the Act, it is the assessee who alone is entitled to maintain such claim of depreciation and it would indeed be difficult, within the framework of the scheme contained in the statute, to maintain a separate value of the part of the asset to work out depreciation. The book-value as shown must be applicable to the entire assets of the firm including the 1/6th share which Sheo Prasad had given to Banarsi Dass. The claim has rightly been rejected in the forums below including the High Court. The appeal has no merit and is dismissed. Parties will bear their own costs.

P.S.S. Appeals dis-
missed.