# Commissioner Of Income Tax, Karnataka vs M/S Bedi & Company Private Limited on 18 February, 1998

## Equivalent citations: AIR 1998 SUPREME COURT 1061, 1998 (2) SCC 759, 1998 AIR SCW 847, 1998 TAX. L. R. 336, (1998) 97 TAXMAN 43, (1998) 1 SCR 932 (SC), 1998 (1) SCR 932, (1998) 2 JT 51 (SC), 1998 (1) UPTC 495, 1998 (1) SCALE 654, 1998 (2) ADSC 173, (1998) 143 TAXATION 721, (1998) 1 SCALE 654, (1998) 145 CURTAXREP 309, (1998) 28 CORLA 505, (1998) 230 ITR 580, (1998) 2 SUPREME 433

## Bench: Sujata V. Manohar, Syed Shah Mohammed Quadri

PETITIONER:
COMMISSIONER OF INCOME TAX, KARNATAKA

Vs.

RESPONDENT:
M/S BEDI & COMPANY PRIVATE LIMITED

DATE OF JUDGMENT: 18/02/1998

BENCH:
SUJATA V. MANOHAR, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T QUADRI, J.

The Revenue is in appeal, by special leave, against the order of the karnataka High Court dated August 4, 1980, in I.T.R.C. No. 180 of 1975, answering the following question referred to it under Section 256(1) of the Income Tax Act. 1961, in the negative, that is, in favour of the assessee and against the Revenue.

"Whether on the facts and circumstances of the case the Tribunal was justified in law in upholding the assessment of the sum of Rs. 32,58,500/- as the income of the assessee for the assessment year 1960-61."

A brief narration of the facts leading to reference of the said question to the High Court, may be necessary to appreciate the contention urged before us. On December 5, 1961 an order of regular assessment of the respondent/assessee was passed for the assessment year 1960-61 for which the relevant accounting year ended on May 31, 1959. Subsequently it came to the notice of the Income Tax Officer that a sum of Rs 32.58,500/- had been received by the assessee purporting to be loan advanced under agreement dated November 15, 1958 entered into between the assessee and Parsons & Whittemore. The assessee promoted M/s. Mandva National Paper Mills (for short "the Paper Mills"). The capital requirement of the Paper Mills was proposed to be met by issue of equity and redeemable preference shares of rupees two crores and by arranging supply on machinery of Rs. 1.82 crores from two of the associates of Parsons & Whittemore. In that connection three agreements including the loan agreement in question, were entered into among different parties on the same date.

On the said information, the Income Tax Officer, reopened the assessment of the assessee and issued notice under Section 147(a) of the Income Tax Act on November 25, 1968. Finding that the reply given to the said notice was not satisfactory, and disbelieving the plea that the amount was advanced as loan, the Income Tax Officer treated it as income received from business and accordingly passed the order of assessment, under Section 144 of the Income Tax Act, bringing to tax the said amount of Rs. 32,58,500/- on December 2, 1970. The respondent-assessee pursued the appeal before the Appellate Assistant Commissioner who dismissed the same on December 16, 1972. The assessee's appeal before the Income Tax Appellate Tribunal was also dismissed on May 21, 1974. From that order of the Tribunal the above said question arose.

In the Tribunal the Accountant Member and Judicial Member wrote separate orders but concurred on the dismissal of the appeal filed by the assessee. The Accountant Member agreed with the reasoning and conclusion of the Income Tax Officer and the Appellate Assistant Commissioner that the loan was not bonafide transaction; the Judicial Member took the view that many of the circumstances relied upon by the Revenue were neutral and the others raised suspicion against the assessee but concurred in the conclusion reached by the Accountant Member on the ground that the assessee had suffered the assessment under Section 144 and there was paucity of material.

The High Court took note of all the factors mentioned in the order of the Tribunal but opined that the apparant set of things disclosed that the said amount was loan and that the burden of showing that the apparant was not real, lay heavily on the Revenue but apart from relying on certain circumstances no material was brought on record by the Revenue to hold that the said amount was income from business.

Mr. K.N. Shukla, learned counsel for the appellant- Revenue, argued that the High Court erred in arriving at its own finding of fact and that unless the findings recorded by the Tribunal were perverse the High Court ought not to have interfered with the findings of facts. In our view the

submission is too broad to merit acceptance. There cannot be any doubt that High Court will not address itself to recording findings of facts, unless the subject matter of the question referred to it by the Tribunal, either under sub-section (1) or sub-section (2) of Section 256 of the Income Tax Act, relates to the perversity of the finding arrived at by the Tribunal. That sort of question has to be distinguished from a mixed question of facts and law, which also requires consideration and discussion of facts but does not warrant returning findings of facts inconsistent with the findings recorded by the Tribunal while giving its opinion on the question referred to the High Court. In answering the question, in this case, the High Court had to deal with various facts on record to determine whether the amount in question was loan on income. if such discussion of facts has led to arriving at the conclusion that the amount was loan but not income. It cannot be urged that the High Court disturbed the finding of fact recorded by the Tribunal.

Here the Tribunal did not find any material to record specific finding that the amount in question is in the nature of commission paid by Parsons & Whittemore to the assessee: it took note of the fact that the loan was advanced by agreement dated November 15, 1958 and that the Reserve Bank of India had accorded permission for obtaining the loan; it has also taken into consideration an earlier memorandum of understanding between the assessee and the representative of foreign Creditor, of July 19, 1957, recording that the proposal to grant loan would materialise alongwith implementation of other agreements to be entered into with the paper Mills Limited. The High Court in regard to the loan agreement dated November 15, 1958, observed that the agreement provided that the amount would be utilised for purposes of purchasing shares in the said Paper Mills and that the shares were accordingly purchased and they were treated as belonging to the assessee-company. The High Court also referred to a letter of the foreign Creditor addressed to the income Tax Officer in November 1970 in response to his querry letter and opined that the Foreign Collaborator maintained that the transaction was loan as late as in November 1970. It also noticed the reasoning of the Revenue as reflected in the orders of the Income Tax Officer and the Appellate Assistant Commissioner. The High Court is also justified in its comment that without recording any finding that the amount was commission or business receipt, the Tribunal was not justified in coming to the conclusion that it could be assessed as income. In our view the High Court has rightly held that the circumstance taken singally or cumulative did not justify conclusion that the amount was not received as loan as it purported to be but was anything in the nature of commission or any receipt or business. In arriving at the conclusion to which it did, it was necessary for the High Court to refer to the facts and discuss them to answer the mixed question of facts and law and that is what the High court had done.

The facts on record apparantly indicate that the transaction was one of loan. The circumstances relied upon by the Revenue, namely that the loan had been advanced without security, that the loan had not been repaid and no interest on the loan was paid by the assessee and that the agreement of loan was executed contemporaneously with other two agreements with regard to supply of machine and construction of building for the Paper Mill can not, without any further material, lead to the inference that the amount was not loan but business income. It appears to us that the last mentioned circumstance supports the plea of the assessee that the said amount was received as loan. For the aforementioned reasons we do not find any illegality in judgment of the High Court under appeal. The appeal is, therefore, dismissed, but in the circumstances of the case without costs.