

Sherwani Bros. Co. Ltd., Allahabad vs Commr. Of Income-Tax, United ... on 22 October, 1952

Equivalent citations: AIR1953ALL456, [1953]23ITR51(ALL), AIR 1953 ALLAHABAD 456

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The assessee, Sherwani Bros. Co., Ltd., Lucknow, was started in the year 1937. In the memorandum of association, the various objects for which the company was established were given. The company, however, in the same year, i.e., 1937, took on lease a sugar mill known as Sri Krishna Deshi Sugar Factory. This lease expired on 31-7-1942. It was admitted before the Appellate Tribunal that the only business carried on by the company consisted of manufacture and sale of sugar. This manufacture of sugar, it was again admitted, was stopped on the expiry of the lease on 31-7-1942. The sale, how-ever, of the stock of sugar continued and the fact was admitted that this stock was sold off by 30-11-1942. The assessee company maintained its accounts on the mercantile basis and each year in computing its profits it showed the price of the Sugarcane purchased as expenditure incurred and these figures were accepted by the Income-tax Department in assessing the profits of the company. It appears, however, that though accounts were maintained on the mercantile basis the sugarcane was purchased partly on credit and partly for cash and that even after the whole stock of sugar was sold off on 30-11-1942, payments to the cane-growers continued right upto 17-9-1944.

The assessee claimed that the expenses incurred after 30-11-1942, for maintaining the staff necessary for making deferred payments to the cane growers upto 17-9-1944, should be allowed as expenditure incurred wholly and exclusively for the purpose of their business. This contention did not find favour with the Appellate Tribunal, which on 19-11-1948, held as follows:

"It is admitted by the counsel before us that the price of cane as and when purchased was debited to the cane purchase account in the relevant years when the factory was working and it was duly allowed in working out the profits of the sugar factory in those years and so no further expenses in connection with such purchase can be allowed. The mere fact that the staff had to be maintained for making actual payment to them in the years in dispute cannot entitle the assessee company to a deduction of such expenses as admittedly the accounts are kept on the mercantile basis and not on

the cash basis and admittedly no business in the manufacture and sale of sugar including the sale of old stock of sugar existed after 30-11-1942."

This position is not challenged by learned counsel but an attempt has been made to claim the amount as an allowable expenditure under section 10(2)(xv) of the Income-tax Act on two grounds: Firstly, that, as the company had not gone into liquidation and had not been wound up, it could not be said that it had ceased to carry on its business and the mere fact that it had no venture in hand would not matter and it must be deemed that this was a business expenditure. Secondly, that the company had incurred the expenditure in acquiring other business for which the company was negotiating and the mere fact that there was a period of lull between the termination of the old lease and the acquiring of the new lease would not matter.

2. Neither of the two points urged by the learned counsel, however, appears to arise from the statement of the case. As we have already said, it was admitted by learned counsel that the company carried on only one business, that of manufacture and sale of sugar. Counsel also admitted that the manufacture and sale both were finished, one on 31-7-1942, and the other on 30-11-1942. In the year in question, therefore, the company was not carrying on any business whatsoever and no question of computing profits from that business could arise. Further, it is clear from the appellate order as well as from the statement of the case that the only expenditure which was claimed to have been incurred during this period was the expenditure made for maintaining the staff for making deferred payments. We may quote here the following passages from the order of the Appellate Tribunal which will explain what the Tribunal was called upon to decide:

"The counsel's contention is that though admittedly the sale of sugar did not continue throughout the previous year ended on 30-9-1943, and the last sale was effected on 30-11-1942, the expenses incurred thereafter for making deferred payment to the cane growers right upto 17-9-1944, should have been allowed as per profit and loss account for the years ended 30-9-1943 and 30-9-1944, because as long as such final payments had not been made it could not be said that the business of the assessee company had been closed".

And again, "It has been contended that expenses after 30-11-1942, and right upto 17-9-1944, were incurred over staff maintained in making deferred payments of cane growers from whom cane had been purchased when the sugar factory was working and also other expenses identical (?) to that payment and so much expenses should have been allowed by the Income-tax Officer in the assessment year 1943-44 and 1944-45."

This being the only expense claimed, we fail to see why the Tribunal added in the last part of the reference "and for looking after the affairs of such company during the period of its lull before any other business is started."

It does not appear from the order of the Appellate Tribunal or from the statement of the case that the assessee had claimed any expenses for looking after the affairs of such company during the period of its lull before any other business was started'. Omitting this part, the question reads as

follows:

"Whether in the circumstances of the case a limited company which includes within its ob-ject the running of various kinds of business but actually starts only one business and is not under liquidation or in the process of winding up, is entitled to a deduction or allowance under Section 10 (2) (xv) for expenses incurred over the maintenance of the staff and its travelling and other expenses for making deferred payments in respect of purchases made in connection with the defunct business."

The question of computation of income from business arises only if there is a business that is being carried on of which income has to be com-puted and it is only if a business is being carried on that in computation of its income the In-come-tax Officer has to make an allowance for the expenditure incurred wholly and exclusively for the purpose of such a business. Where no business is carried on at all and no expense is incurred wholly and exclusively for the purpose of such a business, Section 10(2) (xv) can have no application, In some cases, a difficult question at times arises whether the assessee was or was not carrying on business and this had to be decided in accordance with the facts and circumstances of each case. A business concern may have a full during the period of its activity, when it is waiting to acquire a new business, or when it is prospecting for business that is going to be started, and in such a case it may be possible to say, though it is not necessary for us to express any opinion on the point, that the assessee was still carrying on business. On the facts admitted by learned counsel, that question does not arise in this case. It was admitted that the business activities that the assessee was carrying on had ceased. The mere fact that he had maintained a staff to pay some of the cane growers from whom he had purchased cane on credit cannot be said to be an expenditure incurred wholly and exclusively for the purpose of the business.

3. We have pointed out that the last part of the question does not arise in this case. The answer to the rest of the question can only be in the negative.

4. The Department is entitled to its costs which we assess at Rs. 300/-.