

Commissioner Of Income-Tax, Kerala vs Pangal Vittal Nayak And Co. P. Ltd. on 22 August, 1968

Equivalent citations: [1969]74ITR754(SC), 1968(0)KLT860(SC), AIR ONLINE 1968 SC 12

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Bench: A.N. Grover

JUDGMENT

Ramaswami, J.

1. These appeals are brought by special lease by the Commissioner of Income-tax Kerala, from the judgment of the Kerala High Court dated September 2, 1964, in I. T. R. No. 69 of 1963.

2. The assessee is a member of an association for speculation in coconut oil. The assessee also speculates on its own. It also receives orders from its constituents who are not members of the association to speculate on their behalf. The procedure is as follows : The assessee receives a phone instruction or telegram to buy or sell a certain quantity. Immediately it enters it into its books and informs that party of the sale or purchase having been effected. But as only members can deal with the association, actually no such purchase or sale is made through the association in the name of that particular person though no doubt there are other purchases or sales in forward transactions by the assessee itself. The dates for settlement as also the rates at which the transactions are entered into are settled. On the relevant date, as per the agreements entered into between the parties settlement is made, profit either being paid to that party or received from it having regard to the rates obtaining on that day and the rate at which the transaction was entered into. On each such transaction the assessee also receives a commission from the party on whose behalf the transaction was done. The assessee claimed that such commission received should be set off against its speculation losses on the ground that the commission received for placing forward contracts of this kind should be taken as part of its income from speculation. The Income-tax Officer rejected this claim. The Appellant Assistant Commissioner on appeal held that the commissioner received was profit arising out of speculation and was incident to the speculation business carried on by the assessee and accordingly deleted the additions from the assessment for three years. The income-tax department appealed to the Appellate Tribunal which upheld the order of the Appellate Assistant Commissioner and dismissed the appeal. The Appellate Tribunal thereafter referred the following question of law to the High Court under section 66 (1) of the Indian Income-tax Act, 1922 :

"Whether, on the facts and circumstances of the case the Appellate Tribunal was

correct in holding that commission received by the company amounting to Rs. 41,197 (for 1958-59), Rs. 39,730 (for 1959- 60), and Rs. 22,652 (for 1960-61), should be assessed under the head 'speculation business' and not under regular business in th company's assessments for the years ended March 31, 1959, March 31, 1960, and March 31, 1961 ?"

3. By its judgment dated September 2, 1964, the High Court answered the question in the affirmative and in favour of the assessee.

4. Section 24 (1) of the Income-tax Act, 1922, hereinafter called "the Act", provides as follows :

"24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year :

5. Provided that in computing the profits and gains chargeable under the head 'Profits and gains of business profession or vocation', any loss sustained in speculative transactions which are in the nature of a business shall not be taken into account except to the extent of the amount of profits and gains if any, in any other business consisting of speculative transaction :.....

Explanation 1. - Where the speculative transactions carried on are of such a nature as to constitute a business the business shall be deemed to be distinct and separate from any other business.

Explanation 2. - a speculative transaction means a transaction in which a contract for purchases and sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips :-

Provided that for the purposes of this section, -

(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for factual delivery of goods manufactured by him or merchandise sold by him; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holding of stocks and shares through price fluctuations; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;

shall not be deemed to be a speculative transaction."

6. It was contended on behalf of the appellant that the view taken by the High Court is erroneous in law and the receipt of commission was a receipt from the business of the assessee as a broker and was not a receipt of income from the business of speculation and therefore the commission should not be assessed under the head "speculation business". In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. The reason is that there is no element of speculation whatever, in the commission income received by the assessee. The commission was earned and received by the assessee independently of any fluctuation in the market and no risk was involved in the earning of the commission and so it must be treated as profit from the other business of the assessee and not as profit from speculation business. To put it differently, the assessee carries on two kinds of business one in speculation and the other as a broker. On behalf of the respondent it was pointed out that the commission earned by the assessee was incidental to his business in speculation and the commission receipts arise out of the speculative transactions carried on by an the assessee and so the commission receipts should be treated as profits arising out of speculation and not as profits from separate business. We are unable to accept this argument as right. In our opinion the receipt of commissioner business is entirely of a different character from the profits and losses of the speculative transactions. The assessee does speculation business on his own account with the members of the association. The assessee also enterest into forward contracts on behalf of his clients. This may result in a profit in which case he recovers the commission from the clients and pays the profits to them. If it is a loss the clients are bound to bear it but the assessee still is entitled to charge the commissioner from his clients. The point to be noted it that the assessee carries on these speculative transaction on behalf of his client and not on his behalf. There is thus no element of speculations in the commission income received by the assessee and the commission is earned and received by him independently of the profits or loss sustained by his clients in the transaction. We are accordingly of the opinion that the assessee is not entitled to get the commission receipts assessed under the head "speculations business" for the assessment years 1958-59, 1959-60 and 1960-61 and the a question referred to the High Court should be answered in the negative and in favour of the Commissioner of Income-tax.

7. For these reasons the judgment of the High Court of Kerala dated September 2, 1964, in I. T. R. No. 69 of 1963 is set aside and these appeals are allowed with costs. One hearing fee.

8. Appeals allowed.