

Vr.Kr.S. Firm vs Commissioner Of Income-Tax, Madras on 17 December, 1965

Equivalent citations: [1966]60ITR425(SC)

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Shah, J.

1. The Income-tax Appellate Tribunal referred under section 66 (1) of the Indian Income-tax Act, 1922, the following question for the opinion of the High Court of Judicature at Madras :

"(1) Whether the war damage receipts of Pound 13,889 and Pound 85,479 constitute income of the assessee for assessment in the years 1954-55 and 1956-57 respectively ?

(2) Whether replantation dividend receipts of Pound 20,272 and Pound 14,408 constitute income of the assessee for assessment in the years 1954-55 and 1956-57 respectively ?

2. The answer to the second question will be governed by judgment in Civil Appeals Nos. 157-158 of 1965, V. S. S. V. Meenakshi Achi v. Commissioner of Income-tax, and need not be considered in these appeals. The only question which has to be decided is the first question.

3. Facts which are material are briefly these. The assessee is a firm carrying on business in real estates at Kualakangsar in the Federated States of Malaya. Some of the properties belonging to the assessee and which constituted its stock-in-trade suffered damage during the second world war. On August 14, 1947, the Government of India notified a scheme to give relief to Indian nationals doing business in the Federated States of Malaya who had sustained loss when the territory was under Japanese occupation. An assessee who opted for the scheme was entitled to have his losses incurred or suffered during five years relevant to the assessment years 1942-43 to 1946-47 to be aggregated and to set off the losses against his profits for the two years relevant to the assessment years 1942-43 and 1941-42, and to claim refund of any excess tax for those two years after adjustment. Under the scheme, losses suffered by the assessee in Malaya during the war period were allowed to be set off against the assessment year 1942-43 and 1941-42 and the assessee obtained the benefit of Rs. 65,197 and Rs. 1,29,028 in the two years in reduction of tax liability. The Government of Malaya set up war damage commission to compensate persons whose properties has sustained damage due to war

conditions, and under the scheme devised by the Government of Malaya the assessee received compensation amounting to Pound 14,169 and Pound 5,479 in the previous years relevant to the assessment years 1954-55 and 1956-57.

4. The Income-tax Officer, Tiruchirappalli, in proceedings for assessment years 1954-55 and 1956-57 brought to tax the amounts received by the assessee as war damages from the Government of Malaya. The order of the Income-tax Officer was confirmed by the Appellate Assistant Commissioner. The Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner, subject to a slight modification, which is not material for the purpose of this appeal. Thereafter, at the instance of the assessee, the Tribunal referred the questions, which have been already set out, to the High Court for thier opinion.

5. The assessee had opted for the special scheme formulated by the Central Board of Revenue and losses incurred by it had been allowed to be set off against the tax assessed in the years 1942-43 and 1941-42. Properties in Malaya belonging to the assessee were damaged during the war. Payments received by the assessee to compensate for the loss to those properties were subject to tax on the income included therein. That is conceded by counsel for the assessee. But counsel for the assessee submitted that under the scheme framed by the Central Board of Revenue, full compensation for loss suffered by the assessee was not paid, and therefore from the amount of compensation received from the Government of Malaya under the War Damage Compensation Scheme, in ascertaining the taxable income the book value of the assets should be deducted, and only the balance should be brought to tax. It was urged that since under the scheme framed by the Central Board of Revenue, only a fraction of the value of the property lost was allowed as compensation to the assessee and the current book value of the properties was the market value less the compensation received from the Central Government, only the excess over that book value received from the Government, of Malaya was taxable.

6. In our view this contention is not open to assessee. Before the Income-tax Officer it was urged that the compensation received from the Government of Malaya was a capital receipt of a casual and non- recurring nature, and on that account not liable to be brought to tax. The Income-tax Officer rejected the contention and held that the receipt was revenue in that it represented recovery of a revenue loss. In appeals to the Appellate Assistant Commissioner and to the Appellate Tribunal the same contention was raised and negatived. The only contention raised before the revenue authorities and the Tribunal was therefore that the receipts were not taxable because they fell within section 4(3)(vii) of the Income-tax Act : it was never pleaded that only the excess over the book value was liable to be taxed. The first question referred to the High Court was also on the footing that the entire amount claimed was capital receipt. It was for the first time argued before the High Court that since the assets lost or damage retained a certain value in the books of account, only the difference between the amounts received by the assessee and the book value of the assets should be brought to tax. Even if that contention was open to the assessee, in our judgment, when the assessee put forward the claim for compensation under the scheme framed by the Central Board or Revenue that its entire property had been lost through enemy action and it obtained relief under the special scheme on that basis, the value of the assets must after receipt of compensation be taken to be nil, and the assessee by not writing off the value in his books of account on and after accepting the

benefits of the special scheme could not invest those assets for the purpose of assessment to tax with any book value which was liable to be taken into account. Compensation received in replacement of those assets by the assessee from the war damage commission must therefore be treated in its entirety as profit liable to tax.

7. The appeals therefore fail and are dismissed with costs. One hearing fee.

8. Appeals dismissed.