

Commissioner Of Income Tax, Orissa vs Govinda Choudhury & Sons, ... on 22 April, 1992

Equivalent citations: [1993]203ITR881(SC), 1995SUPP(4)SCC515, AIRONLINE 1992 SC 115

Bench: S. Ranganathan, Yogeshwar Dayal

ORDER

1. The assessee-respondent is a partnership firm engaged in the business of contractors, dealers in cement, sugar, iron, paddy, rice and petrol. The appeal relates to the assessment year 1972-73 for which the financial year 1971-72 was the previous year.

2. In its contract business, the assessee declared gross receipts, of Rs. 22,72,997, the details of which are not relevant for our present purposes. A part of the receipts arose to the assessee as a result of an arbitration award. The dispute before us relates to certain amounts awarded by the arbitrators as interest payable to the assessee. The amount of such interest about which there was dispute between the parties was mentioned by the Income-tax Officer as Rs. 4,30,549. But the Tribunal has found that the interest that can be taken into account for the assessment year under consideration was only Rs. 2,77,692.

3. The assessee contended that the amount received by him by way of interest was really in the nature of damages and was not taxable as a revenue receipt. This contention was rejected by the Income-tax Officer as well as the Appellate Assistant Commissioner. Before the Tribunal, again, the assessee urged that the amount of Rs. 2,77,692 was not at all taxable in its hands. However, it also took an alternative contention that, even if it is treated as a trading receipt or as a revenue receipt, it should be treated as part of trading receipts accruing to the assessee from the contract. The assessee's assessment had been completed by applying a net profit rate of 10 per cent, to the trading receipts. The assessee's contention was that this amount of Rs. 2,77,692 should be treated as part of the trading receipts and that what was assessable in his hands as income was only 10 per cent, of this amount. The Tribunal did not accept either contention of the assessee. It held that the sum of Rs. 2,77,692 was a revenue receipt and not a capital receipt. It was also of the opinion that the amount of interest was fully taxable as "income from other sources" and that it had to be delinked from the other trading receipts for this purpose.

4. On the request of the assessee, two questions were referred to the High Court of Orissa (see [1977] 109 ITR 498) :

1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 2,77,692 awarded to the assessee as interest was rightly held to be a revenue receipt ?

2. If the answer to question No. 1 is in the affirmative, whether, on the facts and in the circumstances of the case, the aforesaid sum of Rs. 2,77,692 was rightly separated from the other amounts under the awards and taxed in full ?

5. The High Court answered the first question in favour of the assessee and, in this view of the matter, did not go into the second question.

6. The Commissioner of Income-tax is in appeal. After some arguments before us, learned Counsel for the assessee stated before us that, having regard to the facts and circumstances of the present case, his instructions are to concede the answer to the first question in favour of the Revenue. In other words, he is willing to proceed on the footing that the sum of Rs. 2,77,692 was only in the nature of a revenue receipt. In view of this concession, we express no considered opinion on the question which was argued at some length by learned Counsel for the Revenue but answer the first question in favour of the Revenue.

7. This brings us to a consideration of the second question. The sum of Rs. 2,77,692 was received by the assessee as interest on the amounts which were determined to be payable by the assessee in respect of certain contracts executed by the assessee and in regard to the payments under which there was a dispute between the two parties. The assessee is a contractor. His business is to enter into contracts. In the course of the execution of these contracts, he has also to face disputes with the State Government and he has also to reckon with delays in payment of amounts that are due to him. If the amounts are not paid at the proper time and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by him. It would not be correct, as the Tribunal has held, to say that this interest is totally de hors the contract business carried on by the assessee. It is well-settled that interest can be assessed under the head "Income from other sources" only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to him de hors the business which is carried on by him. In purview, the interest payable to him certainly partakes of the same character as the receipts for the payment of which he was otherwise entitled under the contract and which; payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the; assessee under the awards and treated as "income from other sources". The second question is, therefore, answered in favour of the assessee and against the Revenue.

8. We are conscious that the second question has not been answered by the High Court in view of its answer to the first question. We have considered whether it is necessary to send the matter back for the decision of the High Court. But, having regard to the facts that the appeal relates to a very old assessment year (1972-73) and also that all the necessary facts and the decision of the Tribunal are available before us, we have also proceeded to answer the second question straightaway in order to, avoid further unnecessary delay.