

L.M. Chhabda And Sons vs Commissioner Of Income-Tax, Gujarat on 21 March, 1967

Equivalent citations: [1967]65ITR638(SC), AIRONLINE 1967 SC 29, (1967) 65 ITR 638

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Shah, J.

1. The appellants were lessees of a cinema theatre called "Prakash Talkies" at Ahmedabad and carried on the business exhibiting cinematograph films in that theatre. After the expiry of the lease the landlord filed an action in the civil court in ejectment against the appellants and obtained a decree for possession of the theatre and an order for payment of mesne profits. The civil court in ejectment against the appellants and obtained a decree for possession of the theatre and an order for payment of mesne profits. The civil judge at Ahmedabad determined in a proceeding under Order XX, rule 12, of the Code of Civil Procedure, the liability of the appellants to pay mesne profits at Rs. 2,57,963. In appeal the claim of the landlord for mesne profits was settled by consent and the amount was reduced to Rs. 1,90,220.

2. In proceedings for assessment of income for the assessment year 1955- 56 the appellants claimed Rs. 92,240 out of the amount of mesne profits as a permissible allowance in the computation of their business income. The Income-tax Officer disallowed the claim holding that the business of Prakash Talkies was not carried on by the appellants during the previous year relevant to the year of assessment 1955-56. The Appellate Assistant Commissioner confirmed the order of the Income-tax Officer holding that mesne profits which the appellants had to pay for wrongfully using the landlord's property must be treated not as a legal charge on the business but as an ex gratia or capital payment. In the appeal to the Income-tax Appellate Tribunal it was held that since it was not proved that the appellants carried on an "integrated cinematograph business" in the manner claimed by them, the outgoing in respect of a closed business was not an admissible allowance. The Tribunal observed that what the appellants were doing" is acquiring various theatres from time to time either on lease or otherwise and run each of them independently with separate identifiable books; opening of a new theatre or closure of another will not affect the working of the remaining ones. This is after all the proper test of an integrated and interlaced business. The Prakash Talkies had been run quite independently of the other cinemas and, as such, a source had dried up in 1952 itself."

3. Two questions were referred by the Tribunal to the High Court of Gujarat, the first of which alone need be set out :

"Whether, on the facts and in the circumstances of the case, the amount of Rs. 92,240 was allowable as a deduction in determining the business income of the assessee for the assessment year 1955-56 ?"

4. The High Court answered that question in the negative. With special leave, the appellants have appealed to this court.

5. It was common ground before the High Court that mesne profits payable by an assessee under a decree for possession of the premises used for the purpose of the assessee's business is an item which is properly chargeable to profits under section 10(1) of the Income-tax Act in computing his taxable income. It was also common ground that the burden of proving year (calendar year 1954) relevant to the assessment year 1955-56 lay upon the appellants. The Commissioner contended that the business of "Prakash Talkies" was independent of the other business carried on by the appellants, and since the former business was closed in 1952, any outgoing in respect of that business was not a permissible allowance against the income of the other business carried on by the appellants in the calendar year 1954. The appellants contended that diverse ventures carried on by them in Ahmedabad and elsewhere were parts of the same business, and admissibility of the allowance claimed by them did not depend upon the branch of their business called "Prakash Talkies" being carried on in the year 1954.

6. Section 10(1) of the Indian Income-tax Act, 1922, provides :

"The tax shall be payable by an assessee under the head 'profits and gains of business, profession or vocation' in respect of the profits or gains of any business, profession or vocation carried on by him."

7. For income of a business to be taxable under section 10 of the Act it is one of the conditions that the assessee must carry on the business in the relevant year of account. If the business is discontinued before the commencement of the accounting year, the income attributable to that business received in the year cannot be taxed under section 10, because the source of income had ceased to exist. If the income of a business is not taxable under section 10 as income of a particular year because the business was not carried on in that year, the assessee can obviously not seek to debit the expenditure incurred for carrying on that business, against his other income, for the outgoings are chargeable only against the income of a business which was carried on in the previous year. It follows that if an assessee carries on several distinct and independent businesses, and one of such businesses closed before the previous year, he cannot claim allowance under section 10 of the Act of an outgoing attributable to the business which is closed against the income of his other business in that year.

8. The only question which therefore fell to be determined is whether in business in respect of which the allowance is claimed was carried on in the year of account 1954. The appellants were carrying on business of exhibiting cinematograph films in Ahmedabad and Bombay. The appellants contended that they were carrying on only one business of exhibiting cinematograph films, and in the course of that business they conducted three theatres in Ahmedabad and one in Bombay. The business of

exhibiting films in the Prakash Talkies was according to the appellants a part of that business and was not an independent business, and the outgoing attributable to the business of Prakash Talkies was a permissible deduction in the computation of total taxable income of the appellants from the business of exhibiting cinematograph films carried on by them in the year of account. In support of that contention counsel submitted that where an assessee is carrying on business ventures of the same character at different places it must be held as a matter of law that the ventures are parts of single business. In our view, no such broad proposition of law can be accepted. Whether different ventures carried on by an assessee form parts of the same business must depend on the facts and circumstances of each case.

9. Counsel for the appellants then contended that in any event there was one business carried on by the appellants of exhibiting cinematograph films at different places. He contended that the question whether different ventures carried on by an individual or a company form the same business or different business is a mixed question of law and fact and not a pure question of fact. Counsel relied upon the judgment of this court in Setabganj Sugar Mills Ltd. v. Commissioner of Income- tax. It is true that the question whether different ventures and activities of business carried on by an individual constitute one by business of different businesses is not a pure question of fact. As pointed out by this court in Setabganj Sugar Mills Ltd.'s case in determining whether different ventures may be said to constitute the same business it has to be seen whether there was any interconnection, any interlacing, any interdependence, any unity embracing the ventures, and whether the different ventures were so interlaced and so dovetailed into each other as to make them into the same business. These principles have to be applied to the facts before a legal inference can be drawn that different business ventures constitute one business. In the determination of the question, findings of fact are involving, because a variety of matters bearing on the unity of the business have to be investigated, such as unity of control and management, conduct of the business through the same agency, the inter-relation of the business, the employment of the same staff to run the business, the nature of the different transaction, the possibility of one being closed without affecting the texture of the other and so forth.

10. The Tribunal proceeded to found its conclusion substantially upon two principal facts. They observed that the cinema theatres acquired by the appellants from time to time on lease or otherwise were run independently of one other with "separate identifiable books" and that the opening of a new theatre or closure of another did not affect the working of the remaining theatres. Counsel for the appellants contended that in raising an inference that Prakash Talkies constituted an independent business, the Tribunal ignored certain other relevant facts. Counsel said that the books of account in respect of the business in different theatres were separately maintained, but the result of the accounts was incorporated in the head office at Ahmedabad, and that the Appellate Assistant Commissioner had held that the litigation expenses in connection with the dispute relating to mesne profits were properly allowable as expenditure against the business income of the appellants.

11. It is true that the appellants were conducting cinema theatres in Ahmedabad and Bombay, and the result of the accounts of the different ventures was entered in the accounts maintained at the head office, but from that circumstances no inference necessarily arises that the exhibition of film in

different theatres constituted the same business. It was for the appellants to establish that different ventures constitute parts of the same business. There is in this case no evidence about unit of control and management, or inter-relation of the business, or employment of the same staff to run the business, or the possibility of one theatre being closed without affecting the rest of the business. The Appellate Assistant Commissioner did, it appears, in the computation of taxable income allow certain litigation expenses in connection with the suit relating to the Prakash Talkies. But the Appellate Assistant Commissioner did not expressly find that the business of Prakash Talkies was part of a larger business carried on by the appellants, and no such inference may be raised by implication. From the fact that no appeal was filed by the revenue against the allowance of litigation expenses it does not follow that the department acquiesced in the contention of the appellants.

12. On the facts found by the Tribunal it is difficult to hold that the appellants have made out their case that the venture of Prakash Talkies was a part of a general business of exhibiting films in cinema theatres carried on by the appellants.

13. The appeal therefore fails and is dismissed with costs.

14. Appeal dismissed.