Shree Meenakshi Mills Ltd., Madurai vs Commissioner Of Income-Tax, Madras on 19 September, 1966

Equivalent citations: 1967 AIR 444, 1967 SCR (1) 392, AIR 1967 SUPREME COURT 444, 1967 (1) SCR 392, 1967 2 SCWR 198, 1967 (1) ITJ 91, 1967 63 ITR 207, 1967 (1) SCJ 134

Author: J.C. Shah

Bench: J.C. Shah, Vishishtha Bhargava

PETITIONER:
SHREE MEENAKSHI MILLS LTD., MADURAI

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, MADRAS

DATE OF JUDGMENT:
19/09/1966

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 444 1967 SCR (1) 392
CITATOR INFO :
RF 1971 SC2129 (7)
R 1972 SC 19 (6)

ACT:
Income-tax Act, 1922 (11 of 1922), s. 10(2)(xv)-Expenditure in curred for proceedings to prevent enforcement of order interfering with business-It admissible deduction.

HEADNOTE:
The assessee-mill claimed deduction under s. 10(2) (xv) of the Indian Income-tax Act of the expenses incurred by it and the costs awarded to Government in respect of unsuccessful writ petition and appeals therefrom. The deduction was disallowed by the departmental authorities, and the question was answered against the assessee by the High Court. In

appeals to this Court.
HELD: The appeal must be allowed.
The proceeding started by the assessee was in relation to the business of the assessee.
Expenditure incurred to resist in a civil proceeding the enforcement of a measure-legislative or executive, which imposes restrictions on the carrying on of a business or to obtain a declaration that the measure is invalid would.. if other conditions are satisfied, be admissible under s. 10(2) (xv) as a permissible deduction in the computation of taxable income, even though the expenditure does not directly relate to the earning of income. Expenditure may not be denied admission as a permissible deduction in computing the taxable income merely because the proceeding has failed. Persistence of the assessee in launching the proceeding and carrying it from Court to Court and incurring expenditure for that purpose again cannot be a ground for disallowing the claim. (396 B-C; 399 B)
Commissioner of Income-tax, West Bengal v. H. Hirjee 23 I.T.R- 427, Morgan (Inspector of Taxes) v. Tate & Lyle Ltd. 26 I.T.R. 195 : 35 T.C. 367 and Commissioner of Income-tax, Kerala v. Malayalam Plantations Ltd., (196 HI 7 S.C.R. 693, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 557 & 558 of 1965, Appeal by special leave from the judgment and order dated September 19, 1962 of the High Court of Judicature at Madras (in Tax Case No. 87 of 1960).

R. Ganapathy lyer, for the appellant.

R. M. Hazarnavis and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Shah, J.-Sree Meenakshi Mills Ltd.-a company incorporated under the Indian Companies Act with its registered office at Madurai carries on business of cotton spinning and weaving. In the premises "of the factory of the Company there are installed 80 handloorns These handlooms were found inadequate to weave the yarn pro- duced by the factory and a part of the yarn produced was distributed to weavers outside the factory who were engaged by the Company to weave the yarn into cloth. Under cl. 18-B of the Cotton Cloth and Yarn (Control), Order, 1945, issued by the Government of India, the Textile Commissioner was authorized to direct ally manufacturer or dealer or any class of manufacturers or dealers, inter alia, not to sell or deliver any yarn or cloth of specified description except to such person or persons and subject to such conditions as the Textile Commissioner may specify. On February 7, 1946, the Textile Commissioner issued an order directing the Company not to sell or deliver any yarn manufactured by the Company except to such person or persons as the Textile Commissioner may specify. It was recited in the order that "nothing in this Order shall apply to a sale or delivery made, in pursuance of clause 18-A of the said order, to any dealer in yarn not engaged in the production of cloth on handlooms or powerless". The Company addressed a letter on

February 13, 1946 to the Textile Commissioner submitting that the prohibition in general terms was ultra wires the authority conferred by the Cotton Cloth and Yarn (Control) Order. The Company continued notwithstanding the prohibition to deliver yarn to weavers and did so till February 20, 1946. This yarn was seized under the orders of the Textile Commissioner. On February 20,1946, the Provincial Textile Commissioner, purporting to act in exercise of authority conferred upon him by a notification issued by the Government of India, issued an order addressed to the Company that:

> "You should accordingly confine your delivery to the categories of persons notified below:-
>
> (a) Licensed yarn dealers (in accordance with the said 18-A of the Control Order).
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> (b) to consumers who purchased yarn directly from you during the basic period 1940-42 (in accordance with my circular letter dated 4th January 1946 referred to above).
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> (c) your handloom factory situated in the premises of your Mill at Madurai (just the quantity of yam required).
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> "Note:-Any other delivery of yarn by you which is not covered by a special order or permission of the Textile Control Authorities will accordingly be a contravention of the Textile Commissioner's order under clause 18-B referred to above."

After this order was issued, the Company did not deliver any yarn to weavers.

On March 4, 1946 the Company filed a petition for a writ of nandamus in the High Court of Madras under s. 45 of the Specific Relief Act praying for an order directing the Provincial Textile Commissioner, Madras to desist from seizing the yarn supplied to the weavers at or around Madurai and Rajapalayam for the purpose of converting the yarn belonging to the Company into cloth; to restore to the Company or to direct the Provincial Textile Commissioner and his subordinates to restore the yam already seized; and to forbear from seizing or to direct the subordinates of the Provincial Textile Commissioner to forbear from seizing the yarn that may be entrusted to the weavers by the Company in the -usual course of business according to the practice already obtaining for conversion into cloth. This petition was dismissed by Kunhi Raman, J, and the order of dismissal was confirmed in appeal by the High Court. The matter was then carried in appeal to the Privy Council. The Judicial Committee dismissed the appeal filed by the Company. They held, agreeing with the High Court, that the expression "deliver" in cl. 18-B sub- cl. 1(b) of the Cotton Cloth and Yarn (Control) Order, 1945, is used in its ordinary broad sense of handing over possession, as distinct from passing of property, and would include delivery of possession to a bailer. Accordingly, delivery of part of its yarn by the Company to owners of handlooms outside the mill premises for conversion of the yarn into cloth for the Company was in contravention of the order made under cl. 18-B sub. cl. (1) (b). The Judicial Committee also held that a petition under S. 45 of the Specific Relief Act, 1877, directing the Provincial Textile Commissioner to desist from seizing the yam supplied to the weavers and to restore to the Company the yarn already seized was incompetent as

the acts in respect of which relief was asked for took place outside the limits of the ordinary original civil jurisdiction of the High Court. The Company spent Rs. 20,035/- in prosecuting the proceedings under s. 45 of the Specific Relief Act and had also to pay Rs. 5,912/- as costs to the Government of the unsuccessful appeal to the Judicial Committee. In its returns of income the Company claimed deduction of the amounts of Rs. 20,035/- and Rs., 5,9121/for the assessment years 1949-50 and 1950-51 respectively as being expenditure wholly and exclusively laid out for the purpose of its business. The claims were rejected by the departmental authorities, and by the Income-tax Appellate Tribunal. The Tribunal then referred the following question to the High Court of Judicature at Madras :

> "Whether the expenses of Rs. 20,035/- incurred in the assessment year 1949-50 and Rs. 5,912/- (relating to the assessment year 1950-5 1) being the cost paid to Government as directed by the Privy Council were expenses incurred in the ordinary course of business and allowable as deductions?"

The question as framed is somewhat vague. But it is common ground that the Company claimed deduction under s. 10(2)

(xv) of the Indian Income-tax.Act, 1.922 on the footing that the two amounts represented expenditure laid out wholly and, exclusively by the Company for the purpose of its business. The High Court answered the question in the negative. 'With special leave, the Company has appealed to this Court. The Tribunal has found that after the order dated February 20, 1946 was issued, the Company did not deliver yarn to any weaver. it is recited in the judgment of the Tribunal that a "correct order by the proper authorities was passed" on February 20, 1946 and, thereafter the Company did not distribute any yarn to weavers. The averments made by the Company in the petition under s. 45 of the Specific Relief Act, are somewhat involved, but in substance the claim of the Company was that the Provincial Textile Commissioner was incompetent to pass the order dated February 20, 1946 which placed restrictions on the business of the Company and the order was "likely to cause irreparable and irretrievable injury", and it was prayed that an order do issue under s. 45 of the Specific Relief Act restraining the Provincial Textile Commissioner from enforcing the order and the Textile Commissioner be prohibited by an order from seizing the yarn delivered to the weavers outside the factory and be further ordered to restore the yarn already seized. No clear averment was made in the petition about the date on which the yarn seized had been delivered by the Company to the weavers.

This petition failed, because the High Court had no jurisdiction to entertain the petition, and also because the expression "deliver" used in cl. 18-B of the Control Order included handing over of yarn to the weavers outside the premises of the factory for conversion into cloth. But expenditure incurred in prosecuting a civil proceeding relating to the business of an assessee is admissible as expenditure laid out wholly and exclusively for the purpose of the business even if the proceeding is decided against the assessee. It was held by this Court in Commissioner of Income-Tax, West Bengal v. H. Hirjee(1) that the deductibility of expenditure under s. 10(2) (xv) must depend on the nature and purpose of the legal proceeding in relation to the business whose profits are under computation and cannot be affected by the final outcome of that. proceeding. The proceeding started by the

Company was in relation to the business of the Company. The Company was thereby seeking relief against interference by the executive authorities in the conduct of its business in the manner in which it was being carried on previously. It was also seeking to obtain an order for restoration of its goods which were seized. It may be (1) [1953] S.C.R. 714 : 23 I.T.R. 427.

M15Sup CI/66 12 granted that the Company was, in starting the proceeding, ill-advised. However wrongheaded, ill-advised, unduly optimistic, or overconfident in his conviction the assessee may appear in the light of the ultimate decision, expenditure in starting and prosecuting the proceeding may not be denied admission as a permissible deduction in computing the taxable income, merely because the proceeding has failed, if otherwise the expenditure is laid out for the purpose of the business wholly and exclusively, i.e. reasonably and honestly incurred to promote the interest of the business. Persistence of the assessee in launching the proceeding and carrying it from Court to Court and incurring expenditure for that purpose again cannot be a ground for disallowing the claim.

Under s. 10(2)(xv) of the Indian Income-tax Act as amended by Act 7 of 1939 expenditure even though not directly related to the earning of income may still be admissible as a deduction. Expenditure on civil litigation commenced or carried on by an assessee for protecting the business is admissible as expenditure under s. 10(2) ((xv) provided other conditions are fulfilled, even though the expenditure does not directly relate to the earning of income. Expendi- ture incurred not with a view to direct and immediate benefit for -purposes of commercial expediency and in order indirectly to facilitate the carrying on of the business is therefore expenditure laid out wholly and exclusively for the purposes of the trade. In Morgan (Inspector of Taxes) v. Tate & Lyle Ltd.(1) the House of Lords held that expenditure incurred by a Company engaged in :sugar refining, in a propaganda campaign to oppose the threatened nationalization of the industry was a sum wholly and exclusively laid out for the purpose of the Company's trade and was an admissible deduction from its profits for income- tax purposes. A'. majority of the House held that the object of the expenditure being to preserve the assets of the Company from seizure and -so to enable it to carry on and earn profits, the expenditure was a permissible deduction under r. 3(a) of the Rules applicable to cases (1) & (2) of Sch. D of the Income-tax Act, 1918.

The object of the petition filed by the Company was to secure a declaration that the order dated February 20, 1946 insofar as it sought to put restrictions upon the right of the Company to carry on its business in the manner in which it was accustomed to do was unauthorized and to prevent enforcement of that order: thereby the Company was seeking to obtain an order from the Court ,enabling the business to be carried on without interference. Expenditure incurred in that behalf would without doubt be expenditure laid out wholly and exclusively for the purpose of the business of the Company.

(1) 26 I.T.R. 195 : 35 T.C. 367.

It was argued however that the any delivered by the Company to the weavers contrary to the prohibitory order dated February 20, 1946 was attached under the order of the Provincial Textile Commissioner, and since the Company violated the prohibitory order, the primary object of the petition for mandamus instituted by the Company was to secure protection against prosecution of

the Company and an order for return of the goods in respect of which an offence was committed. Expenditure incurred,in prosecuting that claim was, it was said, not laid out wholly and exclusively for the purpose of the business. Reliance was placed upon the judgment of this Court in H. Hirjee's case(1) in which it was held that a person who was prosecuted for an offence under s. 13 of the Hoarding and Profiteering Ordinance, 1943, on a charge, of selling goods at prices higher than were reasonable, in contravention of the provisions of s. 6 thereof, and a part of his stock was seized and taken away, was not entitled to claim deduction under S. 10(2)(xv) of the Income-tax Act for the sums spent in defending the criminal proceedings against him because the expenditure could not be said to have been laid out and expended wholly and exclusively for the purpose of the business. But the assumption underlying the argument is not true. The Tribunal has in the statement of the case observed in paragraph-2 :

> "Subsequently, on 20th February 1946, a proper order by the appropriate authority was passed and it is common ground that after that date, at any rate no further distribution of yarn was made by the assessee. In the interim (period) between 7th February 1946 and 20th February 1946, the yarn which was distributed to the handloom weavers was the subject of seizure by the provincial Textile Commissioner and this the assesse sought to resist by filing an application under section 45 of the Specific Relief Act 1, of 1877 In the view of the Tribunal the Company did -not act in violation of the terms of the order dated February 20, 1946; it cannot there fore be said that the Company was seeking to protect itself against a criminal prosecution and the consequences arising from infringement of the order dated February 20, 1946.
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> It is true that in the judgment in appeal from the order refusing mandamus, Leach, C.J. speaking for the Court observed: (see Sree Meenakshi Mills v. Provincial Textile Commissioner, Madras(2):
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> "In spite of the fact that this order in effect prohibited the appellant delivering yarn to owners of handlooms situate outside the mill premises, the appellant continued to deliver yarn to such weavers.", and (1) [1953] S.C.R. 714 23 I.T.R. 427. (2) A.I.R. 1947 Mad. 82, the Judicial Committee observed:
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> "Despite. the prohibition the appellant continued to deliver yarn to such owners in order (as already mentioned) that they might turn the yarn into. cloth and bring the article back to the mills."

(See Sree Meenakshi Mills Ltd. v. Provincial Textile Commissioner; Madras(1).

But the Tribunal has observed in its order dismissing the appeal filed by the Company that it was "not disputed before" them that, after February 20, 1946 the Company did not distribute any yam.

The question referred in this case must be decided not on what was found or observed by the High Court in appeal from order, in the proceedings under s. 45 of the Specific Relief Act or by the

Judicial Committee, but upon findings of fact recorded by. the Tribunal. It is unfortunate that the High Court took the facts, not from the statement of the case, but apparently from the judgment. of the Judicial Committee. The High Court assumed that the Company had contravened the law because it delivered yarn to weavers in contravention of the order dated February 20, 1946. But the assumption on which the discussion is founded is erroneous. The High Court also thought that expenditure to fall within the terms of s. 10(2)(xv) must be one for the purpose of earning income, and there was no material on the record to show that the expenditure was so incurred. If it is intended thereby to imply that the primary motive in incurring the expenditure admissible to deduction under s. 10(2)(xv) must be directly to earn income thereby, we are with respect unable to agree with that view. This Court in Commissioner of Income-tax, Kerala v. Malaya- lam, Plantations Ltd.(2) observed:

> "The expression "for the purpose of the business" is wider in scope than the expression "for the purpose of earning profits". It's range is wide: it may take in not only the day to day running of a business, but also the rationalizationof administration and modernization of its machinery: it may include measures for the preservation of the business or for the protection of its assets and property from expropriation coercive process or assertion of hostile title: it may also comprehend payment of statutory dues and taxes imposed as a precondition to commence or for carrying (1)L.R. 76, I.A. 191, 195.
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> (2)[1964] 7 S.C.R. 693,705:53 I.T.R. 140, 150.

on of a business; it may comprehend many other acts incidental to the carrying on of a business."

Expenditure incurred to resist in a civil proceeding the enforcement of a measure-legislative or executive, which imposes restrictions on the carrying on of a business, or to obtain a declaration that the measure is invalid would, if other conditions are satisfied, be admissible, in our judgment, under s. 10(2)(xv) as a permissible deduction in the computation of taxable income.

The appeals are therefore allowed. The question referred is answered in the affirmative.- The appellant-Company will be entitled to its costs in this Court and the High Court. One hearing fee.

y. P. Appeals allowed.