Tirunelveli Motor Bus Service Co. vs Commissioner Of Income Tax, Madras on 11 August, 1970

Equivalent citations: AIR1971SC123, [1970]78ITR55(SC), (1971)3SCC110A, AIR 1971 SUPREME COURT 123

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Bench: A.N. Grover, J.C. Shah

JUDGMENT

A.N. Grover, J.

1. This is an appeal by certificate from a judgment of the Madras High Court answering the following question which had been referred to it under Section 66(1) of the Indian Income-tax Act, 1922, hereinafter called the "Act" in the affirmative and against the assessee.

Whether on the facts and In the circumstances of the case, the sum of Rs. 54,479 is assessable in the year 1957-58 under the provisions of Section 10(2A) of the Income-tax Act of 1922?

The assessee is a private limited company, it runs a fleet of buses. For the assessment year 1950-51 the assessee returned an income of Rupees 14,555/-. The Income-tax Officer required the assessee to furnish various particulars and documents under Section 22(4) of the Act. These were not furnished. Apart from committing a default under Section 22(4) it committed a default under Section 23(2). The Income-tax Officer made an assessment under Section 23(4) estimating the assessee's Income at Rs. 1,80,000/-. On appeal to the Appellate Assistant Commissioner it was reduced to Rs. 1,30,000/-.

2. In the accounts relating to the assessment year 1950-51 the assessee had claimed a sum of Rs. 4,09786/- as establishment charges which included a sum of Rs. 71,949/- representing the annual bonus payable to the employees. This amount had actually not been paid but had been shown on the debit side. The assessee ran into financial difficulties and the bonus remained unpaid for some years. In the accounting year relevant to the assessment year 1957-58 with which we are now concerned a sum of Rs. 17,470/-was paid to the employees as bonus in full settlement and the balance of Rs. 54,479/- was credited to the profit and loss account. The Income-tax Officer treated the credit of Rs. 54,479 so made as income accruing in the year of account. The Appellate Tribunal while dealing with the appeal observed:

> Regarding the second contention, In the return made by the assessee for 1950-51, the

assessee claimed bonus to employees and thereafter arrived at the business income at Rs. 14,555. The assessment, however, was completed under Section 23(4) having as a guide the earlier year's assessment or a total income of about Rs. 130,000/-. No doubt in the assessment of 1949-50, there was a bonus claim too. From this feature alone, it is difficult to conclude that the Income-tax Officer had scrutinised the computation and has considered the bonus too in his estimate. Actually, in the manner the estimate has been made, it would appear that the book position had beer given the go-by. Unless the department is able to identify any particular Item of expense as having been already allowed as a deduction in an earlier assessment conclusively Section 10(2A) is not available for recoupment. This contention too is accordingly accepted.

The High Court did not agree with the above view of the Tribunal although It appears that it did not disagree with the conclusion of the Tribunal that the record did not contain any indication that the Income tax Officer had made any allowance in respect of bonus for which provision had been made while making the assessment for the assessment year 1950-51. On that finding of the Tribunal it could hardly be regarded as established that either, any allowance or deduction had been granted in respect of a trading liability of the assessment year 1950-51 or it had been proved that the assessee had obtained any benefit relating to such trading liability in the assessment year 1957-58 which would attract the provisions of Section 10(2A) of the Act. That provision only applies when an allowance for deduction has been made in the assessment of any year in respect of any loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year the assessee receives any amount in respect of such loss or expenditure or has obtained some benefit in respect of such trading liability by way of remission or cessation thereof in which event the amount received by him has to be deemed to be profits and gains. On the finding of the Tribunal the condition of Section 10(2A) could not be said to have been satisfied and the addition of Rs. 54,479 made by the Income-tax Officer in the assessment for the year 1957-58 was not justified. It is apparent that the question whether an allowance had been granted or a deduction made in respect of a trading liability had to be decided by referring to the Order relating to the assessment year 1950-51 and it could not be determined by drawing inferences from what was done in respect of the assessment of an earlier year.

3. In our judgment the finding of fact of the Appellate Tribunal did not warrant the answer returned by the High Court which is hereby discharged. The answer would thus be in the negative and in favour of the assessee. The appeal is accordingly allowed with costs.