Patnaik & Co. Ltd vs The Commissioner Of Income Tax, Orissa on 16 July, 1986

Equivalent citations: 1986 AIR 1483, 1986 SCR (3) 207, AIR 1986 SUPREME COURT 1483, 1986 TAX. L. R. 1043, 1986 SCC (TAX) 763, 1986 UPTC 1105, (1986) 58 CURCC 92, 1986 58 CURTAXREP 92, (1986) 27 TAXMAN 287, (1986) JT 202 (SC), 1986 TAXATION 82 (2) 40, (1986) 26 ELT 673, (1986) 161 ITR 365, 1986 (4) SCC 16

Author: R.S. Pathak

Bench: R.S. Pathak, Sabyasachi Mukharji

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           PETITIONER:
PATNAIK & CO. LTD.

        Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX, ORISSA

DATE OF JUDGMENT16/07/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
 1986 AIR 1483            1986 SCR  (3) 207
 1986 SCC  (4)  16        JT 1986   202
 1986 SCALE  (2)12


ACT:
     Business   loss-Purchase   of   Government   bonds   or
securities with  the object  of  increasing  the  assessee's
business with  the Government  and/or retaining the goodwill
of the  authorities for the purpose of its business and loss
incurred thereby-Whether capital loss or revenue loss.
     Jurisdiction of  the High  Court in reference under the
Income Tax  Act-Interference with  finding of facts, whether
permissible.
     Supreme Court  Rules, 1966  Order XLVII  Rule 6-Supreme
Court can  itself decide  the questions referred to the High
Court to avoid further delay instead of remanding the case.
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HEADNOTE:

The assessee deals in automobiles and also sells spare motor parts. For the assessment year 1963-64 the assessee claimed a loss of Rs.53,650 sustained by it on disposing of its subscriptions to the Orissa Government floated Loan 1972. It claimed that the loss suffered by it was revenue loss and, therefore, deductible against the profits for future years. The Income Tax Officer and the Appellate Commissioner of Income Tax negatived the claim of the assessee. But on second appeal, the Appellate Tribunal accepted the contention that the subscription to the Government loan was conducive to its business and that the loss arose in the course of the business, and that therefore, the assessee was entitled to a deduction of the loss claimed by it. But the High Court on a reference to it at the instance of the revenue, held that the loss was a capital loss. The High Court was of the view that the factual substratum of the case had been misconceived by the Appellate Tribunal and that it was, therefore, entitled to re-examine the evidence and arrive at its own findings of fact. Hence this appeal by special leave.

Allowing the appeal, the Court,

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HELD: 1.1 Whether Government bonds or securities were purchased by the assessee with a view to increasing his business with the Government or with the object of retaining the goodwill of the authorities for the purpose of his business, the loss incurred on the sale of such bonds or securities was allowable as a business loss. [212F-G]

1.2. Having regard to the sequence of events and the close proximity of the investment with the receipt of Government orders it is clear that the investment, in the instant case, was made in order to further the sales of the assessee and boost its business. In the circumstances, the investment was made by way of commercial expediency for the purpose of carrying on the assessee's business and therefore the loss suffered by the assessee on the sale of the investment must be regarded as a revenue loss. [211H;212A-B]

1.3 No enduring benefit was brought about by the assessee investing in the loan so far as the orders from the Government Departments were concerned. The material on record shows that on August 30, 1961 it was decided to purchase 16 jeeps, 8 trucks and 4 one-tonne pick up vans. There was nothing to show that there was any reason for the assessee to hold on to the investment in the loan indefinitely. The investment did not bring in an asset of a capital nature, and that in the circumstances of the case the loss suffered by the assessee was a revenue loss and not a capital loss. [212D-F]

Commissioner of Income-Tax v. Industry and Commerce

Enterprises (P) Ltd., [1979] 118 ITR 606 (Orissa); Additional Commissioner of Income-tax, Madras-II v. B.M.S.(P) Ltd., [1979] 119 ITR 321 (Mad); Commissioner of Income-tax, Tamil Nadu-V v. Dhandayuthapani Foundry (P) Ltd., [1980] 123 ITR 709 (Mad) approved.

2. It is now well settled that the Appellate Tribunal is the final fact-finding authority under the Income-tax Act and that the Court has no jurisdiction to go behind the statements of fact made by the Tribunal in its appellate order. The Court may do so only if there is no evidence to support them or the Appellate Tribunal has misdirected itself in law in arriving at the findings of fact. But even there the Court cannot disturb the findings of fact given by the Appellate Tribunal unless a challenge is directed specifically by a question framed in a reference against the validity of the impugned findings of fact on the ground that there is no evidence to support them or they are the result of a misdirection in law. [210E-G]

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India Cements Ltd. v. C.I.T., 60 ITR 52, 64; Hazarat Pirahomed Shah Saheb Roza Committee v. CIT, 63 ITR 490, 495-6; C.I.T. v. Greaves Cotton & Co. Ltd., 68 ITR 200; C.I.T. v. Meenakshi Mills Ltd., 63 ITR 609, 613; C.I.T. v. Madan Gopal Radhey Lal, 73 ITR 652, 656; Hooghly Trust Ltd. v. C.I.T., 73 ITR 685, 690; C.I.T. v. Imperial Chemical Industries (India) Ltd., 74 ITR 17; Aluminium Corporation of India Ltd. v. C.I.T., 86 ITR 11 and Commissioner of Income-tax, Bihar and Orissa v. S.P. Jain, 87 ITR 370 referred to.

3. In the case of a reference under the Income Tax Act which has remained pending through its successive stages for the last several years and as a result of the Supreme Court setting aside the judgment of the High Court, the case has to go back to the concerned High Court to answer the question of law referred to it, the Supreme Court to avoid further delay can itself decide the said question of law. [211C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1359 (NT) of 1974 From the Judgment and Order dated 11.1.1974 of the Orissa High Court in Special Jurisdiction Case No. 62 of 1972.

Govind Das, P.N. Misra, D.C. Taneja and P.K. Juneja for the Appellant.

V.S.Desai, P.K. Bhatnagar and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave is directed against the judgment of the High Court of Orissa and raises the familiar question whether a loss suffered by the assessee is a capital loss or a revenue loss.

The assessee deals in automobiles and also sells spare motor parts. For the assessment year 1963-64, the relevant accounting period being the year ended March 31, 1963, the assessee claimed a loss of Rs.53,650 sustained by it on disposing of its subscription to the Orissa Government Floated Loan 1972. It claimed that the loss suffered by it was revenue loss and, therefore deductible against its profits for the year. The Income-tax Officer disallowed the loss in the view that it was a capital loss. The assessee's appeal was dismissed by the Appellate Assistant Commissioner of Income-tax. But on second appeal the Income-tax Appellate Tribunal accepted the contention of the assessee that the subscription to the Government Loan was conducive to its business and that the loss arose in the course of the business, and that therefore, the assessee was entitled to a deduction of the loss claimed by it. The Accountant Member and the Judicial Member wrote separate but concurrent orders. At the instance of the Revenue the Appellate Tribunal referred the case to the High Court of Orissa for its opinion on the following question of law.

> "Whether, in the facts and circumstances of the case, the loss of Rs.53,650 sustained by the assessee on the sale of the Government Loan is a capital loss or a revenue loss."

Disagreeing with the findings of the Appellate Tribunal the High Court held that the loss was a capital loss and accordingly answered the reference in favour of the revenue and against the assessee.

At the outset, we find it necessary to note that the High Court has taken the view that the factual substratum of the case has been misconceived by the Appellate Tribunal and that it is, therefore, entitled to re-examine the evidence and arrive at its own findings of fact. We think the High Court fell into serious error in doing so. It is now well settled that the Appellate Tribunal is the final fact-finding authority under the Income-tax Act and that the Court has no jurisdiction to go behind the statements of fact made by the Tribunal in its appellate order. The Court may do so only if there is no evidence to support them or the Appellate Tribunal has misdirected itself in law in arriving at the findings of fact. But even there the Court cannot disturb the findings of fact given by the Appellate Tribunal unless a challenge is directed specifically by a question framed in a reference against the validity of the impugned findings of fact on the ground that there is no evidence to support them or they are the result of a misdirection in law. There is a long line of cases decided by this Court laying down this proposition. See India Cements Ltd. v. C.I.T., 60 ITR 52, 64; Hazarat Pirmahomed Shah Saheb Roza Committee v. C.I.T, 63 ITR 490, 495-6; C.I.T. v. Greaves Cotton & Co. Ltd., 68 ITR200; C.I.T. v. Meenakshi Mills Ltd., 63 ITR 609, 613; C.I.T. v. Madan Gopal Radhey Lal, 73 ITR 652, 656; Hooghly Trust Ltd. v. C.I.T., 73 ITR 685, 690; C.I.T. v. Imperial Chemical Industries (India) Ltd., 74 ITR 17 and Aluminium Corpon. of India Ltd. v. C.I.T., 86 ITR 11. The High Court has relied on Com missioner of Income-tax, Bihar and Orissa v. S.P. Jain. 87 ITR 370 to justify its re-examination of the evidence and to supersede the findings of fact rendered by the Appellate Tribunal by findings of fact reached by itself. In that case, however, the questions raised in the Reference before the High Court included questions specifically challenging the findings of fact reached by the Appellate Tribunal as being invalid in law. In the present case the question referred to the High Court was framed on the assumption that it had to be decided in the factual matrix delineated by the Appellate Tribunal: In the circumstances, the findings of fact set forth in the judgment of the High Court must be vacated. We would have sent the case back to the High Court requiring it to answer the question of law referred to it on the basis of the facts found by the Appellate Tribunal but we refrain from doing so and propose to dispose of the Reference ourselves on the statements of fact contained in the appellate order of the Appellate Tribunal. The case has remained pending through its successive stages for the last over 20 years, and it is appropriate that it should be disposed of now without further delay.

According to the statement of the case drawn up on the basis of the appellate order of the Appellate Tribunal the assessee was told that if it subscribed for the Government Loan preferential treatment would be granted to it in the placing of orders for motor vehicles required by the various Government Departments and to the further benefit of an advance from the Government up to 50 per cent of the value of the orders placed. Pursuant to that understanding, an advance to the extent of Rs. 18,37,062 was received by the assessee and a Circular was also issued by the State Government to various Departments to make purchases of the vehicles required by them from the assessee. Because of the advance received from the Government, the assessee was able to save Rs.45,000 as bank interest during the year. It was also noticed that the sales shot up substantially. On September 4, 1961 the assessee made a deposit of Rs.5 Lakhs consequent upon a Resolution of the Board of Directors passed about 6 weeks before after a statement made by the Chairman during the Board meeting that the Government had approached him to subscribe to the Government Loan and that the Company should do so as good orders could be expected. The purchase of the loan was approved by the Board of Directors and was ratified in the Annual General Meeting of the shareholders held on December 31, 1961. The Appellate Tribunal found that having regard to the sequence of events and the close proximity of the investment with the receipt of Government orders the conclusion was ines-

capable that the investment was made in order to further the sales of the assessee and boost its business. In the circumstances, the Appellate Tribunal held that the investment was made by way of commercial expediency for the purpose of carrying on the assessee's business and that therefore, the loss suffered by the assessee on the sale of the investment must be regarded as a revenue loss. We are of opinion that the Appellate Tribunal is right.

The High Court, as has been mentioned, re-examined the facts on the record and found that the investment was not connected with the orders placed by the Government with the assessee and the advance payment made by the Government Departments to the assessee, and it was in that context that the High Court held that the investment in the Loan was a capital assest and the loss was a capital loss. The High Court took the view that the investment was of enduring benefit to the assessee and therefore it could not be allowed. We find it difficult to hold that an enduring benefit was brought about by the assessee investing in the Loan. So far as orders from the Government Departments were concerned the material on record shows that on August 30, 1961 it was decided to purchase 16 jeeps, 8 trucks and 4 one-tonne pick-up vans. There is nothing to show that there was any reason for the assessee to hold on to the investment in the loan indefinitely. There was no enduring advantage. Accordingly we hold that the investment did not bring in an asset of a capital nature, and that in the circumstances of the case the loss suffered by the assessee was a revenue loss and not a capital loss. It was held by the Orissa High Court in Commissioner of Income-tax v.

Industry and Commerce Enterprises (P) Ltd., [1979] 118 ITR 606 and by the Madras High Court in Additional Commissioner of Income-tax, Madras- II v. B.M.S. (P) Ltd., [1979] 119 ITR 321 and again in Commissioner of Income-tax, Tamil Nadu-V v. Dhandayuthapani Foundry (P) Ltd, [1980] 123 ITR 709, that where Government bonds or securities were purchased by the assessee with a view to increasing his business with the Government or with the object of retaining the goodwill of the authorities for the purpose of his business, the loss incurred on the sale of such bonds or securities was allowable as a business loss.

We hold that the High Court has erred in the view taken by it and that the Tribunal was right in allowing the appeal.

In the result the appeal is allowed, the judgment of the High Court is set aside and inasmuch as the loss is a revenue loss the question referred to the High Court is answered in favour of the assessee and against the Revenue. The assessee is entitled to its costs of this appeal.

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S.R.                                   Appeal allowed.
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