

Supreme Court of India

S. K. Sahana And Sons Ltd. And ... vs Commissioner Of Income-Tax. on 12 December, 1997

Equivalent citations: 1999 236 ITR 432 SC, 1999 104 TAXMAN 86 SC

JUDGMENT This is an appeal against a decision of a Full Bench of the Patna High Court (see [1988] 169 ITR 617) in respect of the assessment years 1967-68, 1968-69 and 1969-70. The question raised in this case came up for consideration earlier before a Division Bench of the Patna High Court in the case of CIT v. S. K. Sahana and Sons Ltd. [1976] 102 ITR 437 which was called upon to consider the following question of law (page 438) :

"Whether, on the facts and in the circumstances of the case, income of the assessee received from the managing contractor was income from business ?"

The assessment years involved in that case were 1963-64 and 1964-65. In that case the Tribunal found that the assessee was a public limited company deriving income from mining business known as New Bansjora Colliery. The assessee and Khas Ganeshpur Coal Mines (P.) Ltd. entered into an agreement dated April 22, 1959 (annexure "C/2"), to some of the terms of which I shall refer at a proper and appropriate place. By this agreement, Khas Ganeshpur Coal Mines (P.) Ltd. (hereinafter referred to as "the managing contractor"), was allowed to carry on the coal business of the assessee and to pay to it profit at a certain rate on the amount of coal raised and soft and hard coke manufactured subject to a minimum guaranteed amount. This income which the assessee received from the managing contractor aforesaid was assessed by the Income-tax Officer as income from other sources and not from business. The assessee having preferred appeals before the Appellate Assistant Commissioner and having failed there too, pursued further appeals before the Tribunal. The contention put forward on behalf of the assessee before the Tribunal was that the income received by the assessee from its managing contractor in respect of the two assessment years in question was an income from business since it arose out of a contract between a principal and an agent, the principal still carrying on the business through its agent-the managing contractor. The question for determination before the Tribunal was as to whether, on a true construction of the deed of agreement between the parties, it was a transfer of the business, or a letting out of the commercial assets, or was there merely a contract of agency so that the assessee could still be held to be carrying on the business through its agent. The Tribunal, by its appellate order, found that the relationship created between the assessee and the managing contractor was clearly one of principal and agent. The power of attorney executed by the assessee in favour of the managing contractor strengthened the conclusion that the legal relationship between the parties was that as between a principal and an agent and the cumulative effect of all the various clauses of the agreement established that the managing contractor aforementioned was only working as an agent of the assessee and the transaction was not at all that of letting out. In other words, there was not even a lease executed in favour of the managing contractor. The Tribunal further held that the managing contractor aforesaid was carrying on the colliery business under the effective control and guidance of the assessee, which (control and guidance) militated against any contention that the relationship between them was one of lessor and lessee. On these findings, the Tribunal accepted the contention of the assessee that there was absolutely no question of any transfer either out and out or even by way of lease of the business of the assessee ; on the contrary, the assessee was very much carrying on its business through its agent, the managing contractor. The income, thus, according to the

Tribunal, clearly fell within the purview of "income from business" and could not be assessed as "income from other sources".

The High Court, on reference, took into consideration the findings of fact made by the Tribunal and answered the question in the affirmative and in favour of the assessee. The attention of the court was drawn to a judgment of this court in the case of New Savan Sugar and Gur Refining Co. Ltd. v. CIT [1969] 74 ITR 7, and it was argued that the transaction between the assessee and its contractor should not be treated as anything but transfer of the business of the assessee altogether.

The High Court observed that it was well settled that each case must be decided on its own facts and on a proper construction of the documents in question. The High Court pointed out that in the case of New Savan Sugar's case [1969] 74 ITR 7, this court found that the intention of the assessee was to part with the entire machinery of the factory and the premises with the obvious purpose of earning of rental income. This court held that (page 14) "it was not the intention of the assessee to treat the factory and machinery, etc., as a commercial concern during the subsistence of the lease."

The High Court felt that in view of the findings made by the Tribunal, the question before the High Court had to be answered in favour of the assessee. The Revenue did not pursue the case any further.

The very same question once again cropped up in the course of the assessment years 1967-68, 1968-69 and 1969-70. The Appellate Assistant Commissioner held in favour of the assessee. The Tribunal merely followed its own findings of fact and its decision given in the earlier year's case. A Full Bench was constituted to examine the question afresh. The Full Bench came to the conclusion that the earlier judgment of the Division Bench in the assessee's own case in the assessment made in the years 1963-64 and 1964-65 was erroneous.

The Full Bench, on a review of a large number of cases, came to the conclusion that not only the decision of the Division Bench of the Patna High Court in the assessee's own case, in the earlier years but also a large number of other High Court decisions were erroneous. One of the decisions with which the Full Bench disagreed was the judgment of the Allahabad High Court in the case of CIT v. Vikram Cotton Mills Ltd. [1977] 106 ITR 829.

The judgment of the Allahabad High Court in Vikram Cotton Mills' case 19 771106 ITR 82 9 was affirmed by this court in the case of CIT v. Vikram Cotton Mills Ltd. [1988] 169 ITR 597. It was held that in the facts of that case the rent received by the assessee was to be treated as business income. This decision was given on the basis of the finding of the Tribunal that the assessee had no intention to permanently discontinue its business. On behalf of the Revenue, it has been strenuously contended that each case must be decided on its own facts. Even though the decision of the Allahabad High Court in the case of CIT v. Vikram Cotton Mills Ltd. [1977] 106 ITR 829, was held to be erroneous by the Full Bench, in the instant case, in coming to its decision the mere fact that the decision of the Allahabad High Court has been affirmed by this court will not make any difference to the position in law. He took us through the various clauses of the agreement between the parties and contended that the judgment of the Full Bench must be upheld. In particular, he relied on the

decision of this court in the case of New Savan Sugar's case [1969] 74 ITR 7, and contended that the principles laid down in that case are applicable to the facts of this case.

We are unable to uphold the contention made on behalf of the Revenue. It has to be borne in mind that New Savan Sugar's case [1969] 74 ITR 7 (SC), was decided on its own facts. In that case it was recorded by this court in its judgment (page 10) :

"On appeal, the Appellate Assistant Commissioner found that it was a simple lease of the building and machinery in a sugar factory, and as such the method of payment based on production could not affect the character and nature of the income derived under the said lease. In further appeal the Appellate Tribunal came to the conclusion that on the facts stated the case fell under section 12 and not under section 10 and that since sub-section (3) of section 12 did not include clauses (via) and (vib) of section 10(2) the claim of additional depreciation and development rebate could not be allowed."

On the basis of this finding and analysis of the agreement, this court came to the conclusion that the Tribunal had come to a correct decision.

In the instant case, the Tribunal has merely followed its earlier decision for the assessment years 1963-64 and 1964-65 in which the Tribunal had categorically found that the managing contractor was carrying on the colliery business under the effective control and guidance of the assessee and the relationship between the contractor and the assessee was not of lessor and lessee. The Tribunal came to the conclusion that the assessee was carrying on its business through its agent, the managing contractor.

This finding of fact was not challenged before the High Court. No question was raised about the perversity of this finding. The Full Bench entirely overlooked the findings of fact made by the Tribunal in coming to its decision in this case. We are, therefore, of the view that the decision of the Full Bench, in view of the facts of this case, as found by the Tribunal, was erroneous. The appeals are allowed. The judgment under appeal is set, aside. There will be no order as to costs.