

Supreme Court of India

Commissioner Of Income Tax vs Matubhai C. Patel on 30 April, 1997

Equivalent citations: AIR 1999 SC 2634, 1999 228 ITR 403 SC, JT 1998 (7) SC 270, 1999 (1) SCALE 301 b, (1998) 9 SCC 95

Bench: S Agrawal, D Wadhwa

ORDER

1. These appeals by the Revenue are directed against the judgment of the Gujarat High Court dated 27-8-1980 in Income Tax Reference No. 251 of 1975. The High Court has granted certificate of fitness under Section 261 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The appeals relate to the Assessment Years 1966-67 to 1969-70.

2. The assessee's father died on 7-7-1965. On his death the assessee inherited various assets amounting to Rs. 12,38,000 and liabilities worth Rs. 2,47,000 in respect of the borrowing from the Bank of India (hereinafter referred to as "the Bank") by the assessee's father. In order to meet his income tax liability the assessee's father had, in his lifetime, borrowed certain amount from the Bank and the said Bank had granted overdraft facilities to the assessee's father. The amount that was advanced in the overdraft account was secured by the assessee's father by pledging with the Bank various shares which he was owning at the relevant time. When the assessee inherited the properties from his father, he was also required to meet the liability which had accrued out of inherited assets and he was obliged to pay interest to the Bank (on the amount outstanding in the overdraft account with the Bank). The dividend income which the assessee derived from the shares pledged with the Bank was sought to be brought to tax during the assessment years concerned. The assessee claimed that since he has also paid interest to the Bank on the overdraft account the said amounts of interest which he had paid to the Bank were required to be deducted from the gross receipts in order to compute the real income earned by the assessee during the relevant assessment years for the purpose of income tax. This claim of the assessee was turned down by the Income Tax Officer as well as by the Appellate Assistant Commissioner and ultimately by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"). The Tribunal referred the following questions for the opinion of the High Court.

Whether on the facts of the case, the Tribunal was right in law in holding that the assessee was not entitled to deductions of the interest payment of Rs. 20,435. Rs 54,632, Rs. 50,025 and Rs. 5497 for the Assessment Years 1966-67 to 1969-70 respectively?

3. By the impugned judgment the High Court has answered the said question in favour of the assessee and against the Revenue. The High Court has placed reliance on its earlier judgment in Udayan Chinubhai v. CIT and has held that the principles laid down by the High Court in the said decision were fully applicable to the present case. According to the High Court once it is held that the various amounts of interest the assessee had paid to the secured creditor, i.e., the Bank, were for meeting the claims of the secured creditor emanating out of the overriding title in his favour then the logical conclusion which follows is that these amounts did not form part of the real income of the assessee at all and they were required to be deducted before the chargeable income of the assessee could be computed for the relevant assessment years.

4. Shri S.C. Sharma, the learned Senior Counsel appearing for the Revenue, has urged that the view taken by the High Court is not in consonance with the law laid down by this Court and has pointed out that the decision of the Gujarat High Court in Udayan Chinubhai on which reliance has been placed by the High Court in the impugned judgment, has been reversed by this Court in CIT v. Udayan Chinubhai , wherein this Court has laid down:

If a man incurs a debt, he will have to pay the debt and till the debt is paid in full, he may have to pay interest on that debt. But whether the interest is allowable as a deduction or not will depend upon the provisions of the Income Tax Act, No question of diversion of income by overriding title can arise in a case like this. A man has to pay his debts out of his income. Merely because of the liability to pay the debts, it cannot be said that the income from the assets that he received on partition stood diverted by overriding title to the creditOrs.

* * * * * The basic principle to be borne in mind in this type of cases is that when a person pays his debts or maintains his wife or children or anybody else whom he is obliged to maintain, the expenditure incurred in such cases will be application of the assessee's income and not diversion of the income at source. If he does not pay what he should have paid and is compelled by a court order to pay, it will still not be a case of diversion of income at source. Even if a charge is created on the properties of the assessee for enforcing payment, the position in law will not change. [Para 36]

5. Shri Sharma has pointed out that a distinction has to be made between the assets being charged with the obligation to discharge the liability and income from the assets being charged with the liability to pay interest. In the present case the pledging of the shares was effected by the assessee's father to secure the loan advanced by the Bank and it is not a case where the income from the shares had been charged with payment of interest payable on the loan. We find merit in this contention, We may, in this context, refer to the decision of the Privy Council Raja Bejoy Singh Dudhuria v. CIT (1933) 1 ITR 135 (PC). In that case there was a court decree under which the assessee was obliged to make a monthly payment of a fixed sum to his stepmother and this payment was declared a charge on the ancestral estate in the hands of the assessee. The Judicial Committee of the Privy Council held that the decree of the court by charging the assessee's whole resources with a specific payment to the stepmother had to that extent diverted his income from him and had directed it to his stepmother. Lord MacMillan has said :

It is not a case of the application by the appellant of a part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes income in his hands.

(emphasis supplied) This is not so in the present case.

6. It must, therefore, be held that the Tribunal was right in taking the view that the assessee could not claim deduction in respect of the interest that was paid to the Bank on the loan advanced in the overdraft account on the ground that the said loan was paid out of the dividend received on the shares pledged with the Bank for securing the overdraft. The High Court was in error in taking the contrary view. In these circumstances, the question referred must be answered in favour of the Revenue and against the assessee.

7. The appeals are, therefore, allowed and the impugned judgment of the High Court is set aside and the question referred is answered in favour of the Revenue and against the assessee. No order as to costs.