IN THE HIGH COURT OF PATNA

Miscellaneous Judicial Cases Nos. 1274 and 1275 of 1960

Decided On: 05.10.1963

Appellants: **Commissioner of Income Tax, Bihar**

Vs.

Respondent: **Ramnik Lal Kothari.**

Income Tax Act, 1961 – Section 10(2), Section 66(1)

The Income Tax Appellate Tribunal has submitted the following question of law for the opinion of the High Court under section 66(1) of the Income Tax Act:-

"Whether the expenses incurred by the assessee(who was not carrying on an independent business of his own), in earning income from various firms in which he was a partner, are allowable in law as deduction?"

Held – If the assessee was able to establish in this case that the expenditure claimed by him was incurred as a matter of commercial expediency for the purpose of earning profits from the partnership business, the assessee would be entitled to claim the deduction of the amount u/s-10(2)(XV) of the Income Tax Act or under the general principle laid down by the Privy Council in commissioner of Income Tax vs. S.M. Chitnavis.

Decisions of Bombay High Court in *Shanti Kumar Narottam Morarji vs. Commissioner of Income tax*, and *Commissioner of Income Tax vs. New Digvijaysinhi Tin Factory* were relied on.

Question answered in favour of the assessee.

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Vs.
Respondent: **Ramnik Lal Kothari.**

Hon'ble Judges/Coram:
Vaidynathier Ramaswami, N.L. Untwalia and N.L. Untwalia, JJ.

JUDGMENT

In this case the assessee was assessed to tax in the status of an individual. He had no independent business of èhis own, but he was deriving income form various firms of which he was a partner. For the assessment year 1955-56 the assessee declared an income of Rs. 77,027 and for the assessment year 1956-57 the assessee declared an income of Rs. 53,340 with regard to the four firms of which he was a partner. As against these share incomes the assessee claimed expenses of Rs. 12,283 in the first year and Rs. 19,380 in the second year. Both these amounts of expenses included items of interest of Rs. 1,935 in the first year and Rs. 1,956 in the second year. These amounts of interest were paid by the assessee to the bank named Virjee and Company from which the assessee had borrowed money to finance the partnership firms. With the exception of these items of interest the Income Tax Officer disallowed the other expenses. The order of the Income Tax Officer was affirmed by the Appellate Assistant Commissioner in appeal. The assessee took the matter in second appeal before the Income Tax Appellate Tribunal which held that the profits and gains earned from a partnership were to taxed as business income in the hands of the assessee who was entitled to claim all the deductions which are permissible under section 10(2) of the Income Tax Act. The Tribunal accordingly ordered that the assessee was entitled to have the expenditure incurred by him in earning his income from the firms allowed in his personal assessment. The Income Tax Appellate Tribunal accordingly remanded the matter to the Income Tax Officer for examining the nature of the expenses alleged to have been incurred by the assessee in order to earn his income from the firms and to deduct the same in computing his income.

At the instance of the commissioner of Income Tax the Income Tax Appellate Tribunal has submitted the following question of law for the opinion of the High Court under section 66(1) Income Tax Act :

"Whether the expenses incurred by the assessee (who was not carrying on an independent business of his own), in earning income from various firms in which he was a partner, are allowable in law as deductions ?"

On behalf of the Income Tax department the learned standing counsel put forward the argument that the profits which have come to the assessee from the partnership business have come to him as net profits, and after these profits have so come to the assessee, there cannot be any further deductions on account of expenditure incurred

by the partner who received his share of the income. In support of this proposition the learned standing counsel referred to the decision of the Calcutta High Court in Messrs. Ishwardas Subhkaram v. Commissioner of Income Tax (Income-tax Reference No. 38 of 1952, decided on 2nd June, 1953). With great respect of the Calcutta High Court, we are unable to accept the proposition of law laid down in Income Tax Reference No. 38 of 1952 as correct. It is not correct as a general legal propositions to state that a partner of a registered firm is not entitled to claim any deduction against the share of the profits included in his total income, the share having been arrived at on the assessment of the firm with regard to its profits. It èwould be open to the partner in a proper case to claim a deduction provided he satisfies the taxing authority that such deduction represents a necessary expenditure, the expenditure being incurred in order to enable him to earn the profits which are being subjected to tax. In the circumstances of the present case, it cannot be doubted that the income earned by the assessee from his share of the partnership business is income derived from business and so falls within the ambit of section 10(1) of the Income Tax Act. It is also manifest that the profits and gains contemplated by the legislature under section 10 are the true profits and gains, and ordinarily the true profits and gains of the assessee must be ascertained form the point of view of commercial expediency and commercial accounting. If, therefore, the assessee was able to establish in this case that the expenditure claimed by him was incurred as a matter of commercial expediency for the purpose of earning profits from the partnership business, the assessee would be entitled to claim the deduction of the amount under section 10(2)(xv) of the Income Tax Act or under the general principle laid down by the Privy Council in Commissioner of Income Tax v. S. M. Chitnavis. The view that we have expressed is borne out by the decision of the Bombay High Court in Shanti Kumar Narottam Morarji v. Commissioner of Income Tax and also by a subsequent decision of the Bombay High Court in Commissioner of Income Tax v. New Digvijayasinhji Tin Factory. The same view has been taken by a Division Bench of this High Court in Jitmal Bhuramal v. Commissioner of Income Tax. In view of the principle laid down by these authorities we are of opinion that the Income Tax Appellate Tribunal has taken the correct view of the law in this case in holding that "the assessee was entitled to have the expenditure incurred by him in earning his income form the firms allowed in his personal assessment" and remanding the matter to the Income Tax Officer for examining the nature of the expenses in order to find out how far those expenses are allowable.

For these reasons we hold that the question of law referred to the high Court by the Income Tax Appellate Tribunal must be answered in favour of the assessee and against the department. The assessee is entitled to the costs of the reference. Hearing fee Rs. 250.

Question answered in favour of the assessee.