Commissioner of Income-tax, Andhra Pradesh Vs. Chakka NarayanA.

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Court : Andhra Pradesh

Decided On : Mar-31-1961

Reported in : [1961]43ITR249(AP)

Appeal No. : Case Referred No. 36 of 1959

Appellant : Commissioner of Income-tax, Andhra Pradesh

Respondent : Chakka NarayanA.

Judgement :

The question referred for the opinion of this court under section 66(I) of the Indian Income-tax Act is :

'Whether, on the facts and in the circumstances of the case, the loss of Rs. 20,700 on account of theft was a trade loss incidental to the assessees business ?'

The reference relates to the assessment year 1955-56 and the accounting year ending with March 31, 1955. The assessee was a dealer in cloth. He was also having dealings in respect of government securities. It is his case that he went to Madras in January, 1955, to sell government promissory notes through Dalal & Co., stock brokers, sold government securities through that company and obtained a cheque for Rs. 20,790. He encashed it and went to the Madras Central station that evening to entrain for Proddatur, and at the station he was pick-pocketed. He immediately gave a complaint to the police but the money said to have been lost was not found on the person charge-sheeted in that behalf. The assessee claimed this loss of Rs. 20,700 as an allowable deduction from out of the business profits.

The Income-tax Officer disallowed the claim, as he felt that this loss could not be regarded as a revenue loss arising in the course of his carrying on the business or incidental to his trade.

The Appellate Assistant Commissioner, in condirming the assessment, opined that carrying of money in that fashion was not incidental to the business carried on by the assessee. But the Appellate Tribunal, on further appeal by the assessee, held that as the government securities were the assessees stock-in-trade, the amount realised by him represented circulating capital and that it was really necessary for the assessee to bring the amount to his place of business and before that he suffered this theft which resulted in the loss claimed by him and as such it was a trade loss incidental to his business.

On the request of the Commissioner of Income-tax, the Tribuanl made this reference.

The only question that arises for consideration is whether the loss sustained by the assessee in this case could be described as incidental to his business. If it was so, he could claim it as a permissible deduction. Otherwise, not. The question to be decided is whether in computing the profits earned by the assessee, he could deduct this loss under section 10(2) of the Income-tax Act. This depends upon whether theft of money could be treated as loss incidental to the business. In our opinion, every loss sustained by an assessee having some connection with his business would not amount to a loss incidental to his business. In our opinion, every loss sustained by an assessee having some connection with his business would not amount to a loss incidental to his business. It must be directly connecting the business or it must arise out of the business. The mere fact that there is some remote connection between the loss and the business would not bring the loss within the expression 'loss incidental to the business'. It should spring directly from the carrying on of the business and be incidental to it. The loss should be inseparable from the business.

Applying this test to the present case, we must hold that the loss was not incidental to or one arising out of the business. It could not be posited that it was absolutely necessary for the assessee to cash the cheque issued and to carry the money on his person. It is only when it could be posited that it was part of his business to take money with him that it could be said that the loss was incidental to his business.

This opinion of ours gains support from the judgment of the Full Bench of the Madras High Court in Ramaswami Chettiar v. Commissioner of Income-tax. The majority of the Full Bench expressed the opinion that the loss incurred by theft of money used in a money-lending business and in the business premises should not be claimed as a permissible deduction, where the theft was committed by persons who were not at the time of the offence employed as clerks or servants in the business of the assessee.

To a like effect is the judgment of the Patna High Court in Mulchand Hiralal v. Commissioner of Income-tax. In that case, the assessee sent a sum of money through one of his employees to a bank and on the way it was stolen by a cooly from the said employee. It was ruled by a Bench of the Patna High Court that this amount could not be excluded in the computation of the income for the purpose of assessment.

Sri. Swamy, learned counsel for the assessee, relied on the judgment of the Supreme Court in Badridas Daga v. Commissioner of Income-tax. There, the assessee carried on business as money-lender, dealer in shares and bullion and commission agent through an agent to whom he gave a power-of-attorney authorising him inter alia to operate on bank accounts. The agent withdraw from the bank accounts large sums of money and used them to discharge his own debts. The appellant could recover only a small portion of it and he had to write off the balance. The question arose whether the amount thus lost by the assessee could be properly claimed as an admissible deduction in computing the profits of the assessee from business for purpose of income-tax. It was laid down by their Lordships inter alia that when once it was shown that the agent was in charge of the business and there was authority to operate the bank accounts and the withdrawal of monies was in the purported exercise of authority, his action could be referred to his character as agent and the loss resulting from misappropriation of funds was incidental to the carrying on of the business. We cannot see how this ruling affords any analogy here. As pointed out by their Lordships, it was in the course of his business that the assessee had conferred certain powers of management on his agent including authority to operate the bank accounts and, in the exercise of such powers, he withdrew the amounts. Thus, the

assessee was carrying on his business through his agent. Therefore, the loss was incidental to the business. We may also observe that their Lordships of the Supreme Court did not dissent from Ramaswami Chettiar v. Commissioner of Income-tax. On the other hand, they remarked that the Full Bench decision, while it supported the right of the assessee to deduction of loss resulting from embezzlement by an employee, also showed the extent and limits of that right. In the course of the judgment it was observed that it should be emphasised that the loss for which a deduction could be made under section 10(I) must be one that springs directly from the carrying on of the business and not any loss sustained by the assessee, even if it has some connection with his business. In our opinion, this ruling far from lending any assistance to the assessee, furnishes an answer to his argument.

Lords Dairy Farm Ltd. v. Commissioner of Income-tax has also no parallel here. It seems to be of the same category as Badridas Daga v. Commissioner of Income-tax. It was also a case of a cashier of the assessee defalcating various sums of money between May, 1946, and April, 1947. Chagla C.J. and Tendolkar J. ruled that it was necessary for the assessee to employ a cashier and to depute to him the duty of with-drawing monies from the bank and the loss arose directly from his business. Therefore this case does not give any assistance to the assessee.

For these reasons, we hold that the opinion of the Tribunal that the amount in question was a loss in trade is unsustainable and that the view of the department is correct.

In the result, we answer the reference in favour of the Revenue. The assessee will pay the costs of the department. Advocates fee Rs. 100 (one hundred).

Reference answered accordingly.