Commissioner of Income-tax, Madras Vs. Jagannatha Govindas.

LegalCrystal Citation : legalcrystal.com/817238

Court : Chennai

Decided On : Nov-01-1961

Reported in : [1962]45ITR61(Mad)

Appeal No. : Tax Case No. 53 of 1958

Appellant : Commissioner of Income-tax, Madras

Respondent : Jagannatha Govindas.

Judgement :

SRINIVASAN J. - The question referred to us :

'Whether on the facts and in the circumstances of the case, the claim for municipal tax paid was allowable expenditure under section 12(2) of the Income-tax Act ?'

The assessee is the owner of the property known as the Maharani Talkies. He leased out this property together with the cinema equipment, machinery and furniture. During the assessment year 1955-56, the sum realised by this lease was Rs. 26,295. The assesses claimed a deduction of Rs. 2,870, being the municipal tax paid for this property. His request that the income should be assessed as income from business was rejected. The department proceeded to assess this income under section 12 of the Act as income from other sources. Certain allowances such as for fire insurance and depreciation were allowed. On the dis-allowance of this item of expenditure, the assessee appealed to the Appellate Assistant Commissioner, who confirmed the order of the Income-tax Officer in this regard. On further appeal to the Appellate Tribunal, the Tribunal took the view that the income was rightly assessed under section 12 of the Act and that further that the deductions contemplated under section 12(2) and 12(4) of the Act are not mutually exclusive. It took the view that this expenditure was a necessary expenditure incurred for the purpose of earning the income in question and allowed the claim of the assessee. The department being dissatisfied with the finding of the Tribunal moved the Tribunal under section 66(1) of the Act with the result that the question set out above stands referred to us.

It would be clear from what we have stated above that the assessee leased out under a single lease a certain property of his own along with machinery, furniture, etc. We have our own doubts as to whether in this particular case the assessment of the entirety of the income under section 12 of the Act is justified. The income derived from property of which the assessee is the owner would properly come within the scope of section 9 of the Act. Where income is derived by the hiring out of machinery, plant or furniture belonging to an assessee, the assessment would fall within the scope of section 12 of the Act. In a case where such an income is derived by the hire of machinery, plant or furniture belonging to the assessee, but the hire is in

association of the buildings let out, the buildings not belonging to the assessee and the letting of the buildings is inseparable with the letting of such machinery, etc., certain allowances are prescribed under section 12(4) of the Act. The implication would appear to be that in case income is derived in cases such as the above, it should be regarded as income derived from other sources under section 12 of the Act. We are not persuaded to believe that whether an assessee lets out buildings of his own along with machinery, plant and furniture, also belonging to him, under a composite lease, the assessment would fall under section 12. The various categories of such lettings dealt with under section 12 would appear to suggest that the property income could and should be separated from the income from machinery, plant, furniture, etc., and the two parts of the income dealt with under the separate heads of income provided by the Act. Though we are making these observations, it is not open to us to interfere with the assessment made under section 12 of the Act, as that question has not been referred to us.

Assuming that the assessment has been properly made under section 12 of the Act, the question that we have to examine is whether the expenditure incurred by the assessee by the payment of the municipal tax is an expenditure incurred solely for the purpose of making or earning such income, profits or gains as laid down in section 12(2) of the Act. What the department purports to contend for is that having regard to clauses (3) and (4) of section 12, which deal specifically with the hire of machinery, plant and furniture under clause (3) and with the hire of machinery, plant and furniture belonging to the assessee as well as the building under clause (4), certain specified allowances alone are contemplated and that in so for as the buildings are concerned, any allowance not covered by these clauses cannot be brought within the scope of clause (2). In clause (4) of section 12, the allowances contemplated in respect of building are those set out in clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10. These clauses relate to insurance charges, current repairs and depreciation. In the case of property income, however, which would fall under section 9, it is not denied by the department that certain other allowances are awardable. We are not however concerned with that aspect of the matter because the assessment has been made under section 12. It seems to us that the several clauses of section 12 which provide for these allowances are not framed as in the alternative. The view that the Tribunal took that these clauses are not mutually exclusive seems to be correct on a plain reading of the provision. Strictly speaking, it may also be pointed out that it is not the case of the department that the income now in question was derived by a lease of the kind that is contemplated by clause (3) or clause (4) of section 12. These clauses will not apply to the present case even on the stand taken by the department itself.

The point we have to consider accordingly is whether the municipal taxes paid by the assessee can come within the description of any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains. We are of the view that in a lease of this kind, the income from which the department seeks to tax as income from other sources, it is not the category of income labelled as municipal tax that is determinative of the question. If the assessment is under section 12 and it does not fall within clauses (3) and (4) of that section, the assessee should be entitled to an allowance of all those items of expenditure which have been incurred for the purpose of earning that income. We are unable to see how the payment of municipal tax which is a statutory levy and which the assessee is in law bound to pay can be taken out of the expression 'expenditure incurred for the purpose of earning the income.' We are conscious that in a manner of

speaking this expenditure is not an outlay which the assessee voluntarily makes in order to enable him to earn the income. But that it is an involuntary item of expenditure which the relevant statute enjoins upon him to pay does not to our minds render it any the less an allowable expenditure.

Reliance has been placed upon Commissioner of Income-tax v. Maharani Janki Kuar Sahiba. This was a case of income derived from forest produce. Under the Bengal Cess Act 1818, forest cess was levied on the annual net produce from immovable property. In an assessment made under 12 of the Act, the assessee claimed to be entitled to deduct, under section 12(2) of the Income-tax Act, the expenditure by way of cess. The Patna High Court took the view that as the cess was an imposition on the annual net profits from forest produce, it could not be said that the expenditure aided the assessee in earning the income or that it was incurred for the purpose of earning the income from forest produce. In coming to that conclusion, the learned judges followed an earlier decision of that same High Court in In re Jyoti Prasad Singh Deo. They also referred to a Calcutta decision in Isabella Coal Co. v. Commissioner of Income-tax. In that case, an assessment under section 10 was in question. The view expressed by the Calcutta High Court was contrary to the view expressed by the Patna High Court. In the Patna case, the payment of cess was claimed as an allowable deduction under section 12(2) of the Act. The Appellate Tribunal in that case observed :

'The authorised representative for the department contends that the cess on immovable property is determined on the basis of the annual value, that is, on the basis of the profits earned by the assessee from the immovable property. It appears to us that this circumstance is of no consequence for the purpose of determining the admissibility of cess as a deduction under section 12 of the Income-tax Act. It is significant that in section 12 there is no provision corresponding to section 10(4) of the Income-tax Act.'

In the Patna case referred to, it appeared that the local cess in question was a cess on the annual net profits of the immovable property. The learned judges observed :

'As a matter of fact, there is no relation between this expenditure and the income derived from the forest produce. Again the expenditure must be incurred as a condition precedent to the production of the income. In this case the cess was assessed after the income from the forest had already been derived. There was assessment of cess on the income from the forest produce, and the income-tax authorities assessed tax upon the said income. It cannot be reasonably argued that in assessing the cess the income-tax payable on that produce would be deducted. Similarly, on the same reasoning, it cannot be reasonably urged that the amount of cess will be deducted from the amount of forest produce in assessing the income-tax. The cess paid in this case cannot be said to be incidental to the making of the income.'

The basis of the Patna decision seems to be that since the cess itself was assessed on the net income derived from the property, it could not be said that that expenditure was incurred for the purpose of earning the income. The case of a municipal tax would, however, appear to stand on a different footing. Municipal taxes are levied on the basis of a percentage of the capital value of the property and are not based on the income that is derived from the property. We are unable to agree with the contention of the department that the expenditure in question was not incurred for the purpose

of earning the income from the property. The Calcutta decision seems to us to be more to the point in the circumstances of the present case.

We answer the question in favour of the assessee, who is entitled to his costs. Counsels fee Rs. 250.

Question answered in the affirmative.