(1994) 208 ITR 1023 :(1994) 074 TAXMAN 0641

EASTERN AVIATION AND INDUSTRIES LTD. v. COMMISSIONER OF INCOME-TAX.

Income-tax Reference No. 100 of 1989, decided on July 29, 1993.

JUDGMENT

AJIT K. SENGUPTA J. - In this reference under section 256(1) of the Income-tax Act, 1961, the following question of law has been referred to this court for the assessment year 1983-84 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the appellant was not an investment company in terms of section 109(ii) of the Income-tax Act, 1961 ?"

The relevant facts as found by the Tribunal are as under :

The assessee is a limited company and derives income from share dealings and dividend. The assessee during the year under reference disclosed share loss of Rs. 12,90,145 for which delivery was taken by it. The speculation loss in shares was shown at Rs. 7,95,447. The Income-tax Officer discussed the nature of the business of the assessee and indicated that it was a dealer in shares and it was not an investor. He, accordingly, came to the conclusion that the business loss shown by the assessee at Rs. 12,90,145 could be taken as speculative loss in view of the Explanation to section 73 of the Income-tax Act, 1961.

The assessee went in appeal before the Commissioner of Income-tax (Appeals) and contended that it was an "investment company" within the meaning of section 109(ii) of the Act and indicated that its dividend income was greater than the business income. Therefore, it was an "investment company" and, consequently, the business loss in shares could not be taken as speculative loss in view of the Explanation to section 73 of the Act. The argument of the assessee was accepted by the Commissioner of Income-tax (Appeals), who directed the Income-tax Officer to treat the loss from share dealings as an ordinary business loss and not as a speculative loss.

On further appeal by the Revenue, the Tribunal held that the loss from share dealings was more than the income from other sources. Therefore, the assessee was not an investment company. The Tribunal also held that the business loss in establishing dealing for the purpose of section 73 of the Act cannot be treated as speculative loss in view of the Explanation appended to the said section.

At the hearing of this reference, Dr. Pal, appearing for the assessee, contended that the dividend income in the present case was Rs. 3,87,603 which is assessable under the head "Income from other sources". The assessee suffered a loss of Rs. 12,90,145 in the share dealing business and another loss of Rs. 7,97,447 in the speculative business. According to Dr. Pal, income by way of dividend being a positive figure of Rs. 3,87,603 was undoubtedly higher than the business loss which was a minus figure. He, therefore, contended that the gross total income of the assessee in this case mainly consisted of income chargeable under the head "Income from other sources" and, accordingly, the assessee should be treated as an "investment company" within the meaning of section 109(ii) of the Income-tax Act, 1961.

The expression "investment company" has been defined in section 109(ii) of the said Act under :

"investment company means a company whose gross total income consists mainly of income which is chargeable under the heads Interest on securities, Income from house property, Capital gains and Income from other sources."

Further, the Explanation to section 73 reads as under :

"Explanation. - Where any part of the business of company (other than a company whose gross total income consists mainly of income which is chargeable under the heads Interest on securities, Income from house property, Capital gains and Income from other sources or a company the principal business of which is the business of banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares."

The real question in dispute in this case is whether the assessee-company for the year under reference can be said to be an investment company whose gross total income consists mainly of income chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources". The expression "gross total income" is defined in section 80B(5) to mean the total income computed in accordance with the provisions of this Act, before making any deduction under Chapter VI-A. From the assessment order passed in the case of the assessee-company it is clear that the assessee had shown a net loss of Rs. 28,50,358 in its profit and loss account for the previous year under reference. This included speculative loss in share transactions amounting to Rs. 7,95,447, loss in regular share dealing business amounting to Rs. 12,90,145 and loss of interest attributable to the share dealing business amounting to Rs. 8,21,400. As against the above, the only income of the assessee-company for the year under reference was by way of dividend amounting to Rs. 3,87,603. If the total income of this assessee-company is computed in accordance with the provisions of the Income-tax Act, 1961, without first giving effect to the Explanation to section 73, it would be found that as against the income by way of dividend amounting to Rs. 3,87,603 assessable under the head "Income from other sources", it had a net business loss in its share dealing transactions aggregating Rs. 21,11,545. In addition thereto, it had a speculative loss in share transaction amounting to Rs. 7,95,447 which, in any event, is to be carried forward in view of the provisions of section 73 of the said Act. In other words, the business loss of Rs. 21,11,545 is clearly more than the income by way of dividend amounting to Rs. 3,87,603.

It is by now well-settled that the words "income" or "profits and gains" should be understood as including losses also so that in one sense "profits and gains" represent "positive income" whereas "losses" represent "negative income". In other words, "loss" is "negative profit". Both positive and negative profits are revenue character. Both must enter into computation, wherever it becomes material, in the same mode of the taxable income of the assessee. Reference, in this context, may be made to the decision of the Supreme Court in CIT v. Harprasad and Co. P. Ltd. [1975] 99 ITR 118. The Supreme Court in the case of CIT v. J. H. Gotla [1985] 156 ITR 323, in construing the word "income" in section 16(3) of the Indian Income-tax Act, 1922, held that the word "income" would include loss.

In this view of the matter, it must be held that the assessee for the year under reference cannot be said to be a "company whose gross total income consists mainly of income which is chargeable under the heads Interest on securities, Income from house property, Capital gains and Income from other sources," since business loss exceeds income computed under the head "Income from other sources". As such, the Explanation to section 73 is clearly applicable and loss suffered by the assessee-company in its share trading transactions inclusive of interest paid on borrowed monies attributable to that business was rightly treated by the Tribunal as a loss in speculative business.

For the foregoing reasons, we answer the question in this reference in the affirmative and in favour of the Revenue.

There will be no order as to costs.

SHYAMAL KUMAR SEN J. - I agree.

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