



IN THE HIGH COURT OF DELHI

ITR No.197/81

Date of Decision: 8th January, 2001

Commissioner of Income-tax
Delhi (Central)

.....Petitioner

through: Mr.R.D.Jolly with
Mr.Ajay Jha, Advs.

Versus

M/s.C.Lyall & Co. (Lucknow Airfield)
New Delhi

.....Respondent

through: None

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?

ARIJIT PASAYAT,C.J. (Oral)

At the instance of Revenue following question has been referred by Income-tax Appellate Tribunal Delhi Bench-D (in short 'Tribunal') under Section 256(1) of the Income-tax Act, 1961 (in short 'the Act') for opinion of this Court:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in annulling the assessment framed by the IAC(Assessment) ?"

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::2::

[ITR197/61]

Dispute relates to assessment year 1973-74.

2. Background facts sans unnecessary details are as follows:

Assessee had filed return of income disclosing nil income for the assessment year in question. In Part-III of the return, a sum of Rs.7,12,460/- was claimed as exempt under Section 176(4) of the Act. It was stated that partnership had been dissolved on 24th January, 1968. The amount in question had been received by Charanjit Lal, proprietor of the concern M/s.C.Lyall & Co. It was assessee's stand that the amount was in lieu of claim filed by the sub-partnership which had been brought into existence by Charanjit Lal to execute the contract allotted to him for construction of the air field at Lucknow in the name of his concern M/s.C.Lyall & Co. during 1964-65. The deed of sub-partnership is dated 24th December, 1962. The sub-partnership which had executed the contract had filed claims and the amount was received as a result of the award of arbitrator who decided the claim of the sub-partnership. It was, therefore, claimed that the receipt was of capital nature and not taxable. The Inspecting Assistant Commissioner ('IAC' in short) referred to Clause I of the deed of dissolution and noticed that one of the partners was authorised to pursue the claim for which expenses were to be paid by the partners and

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::3::

[ITR197/81]

expenses were to be settled inter se. It was, therefore, observed that distribution of the assets is a part of the transaction of dissolution of partnership and it constitutes a business transaction. It was observed that what applies to dissolution also applies to discontinuance of business. He was of the view that in either case final account must show the actual or the book value of the distributed assets as agreed upon by the partners. Accordingly, he held that what was furnished was a non-existent dissolution and sham arrangement. The receipts were relatable to the business done by the firm and were revenue in nature. As there was no business activity during the year, IAC held that the amount in question was to be assessed in the hands of an association of persons. Assessee preferred appeal before the Commissioner of Income-tax (Appeals)[in short 'CIT(A)']. Stand of assessee before the CIT(A)^{proo 2} that the firm had already been dissolved on 13th April, 1964 and on that date the balance sheet had been drawn up. The agreement to dissolve the firm was oral and later on it was considered expedient to reduce the terms to writing and a written deed of dissolution was drawn up on 24th August, 1968. Preamble of the said deed of dissolution indicated that the work for which the partnership had been brought into existence was completed and, therefore, the partnership has to be

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[ITR197/81]

dissolved on 13th April, 1964. CIT(A) noticed that indication regarding dissolution of the firm had already been sent to the Department on 13th September, 1966. Assessee had not filed any return for the assessment years 1968-69 to 1970-71. On the basis of intimation of discontinuance of the business, assessment proceedings for these three years in question had been dropped. Referring to various Clauses of Indian Partnership Act, 1932 CIT(A) observed that the amount in question could not be brought to tax though notice of dissolution was not given to the Department within 15 days of the dissolution as required under Section 176(3) of the Act. The same was not of much consequence when the firm had been already dissolved. Whatever happened after 13th April, 1964 was merely realisation of assets and settlement of accounts thereto. That being the position, the assessee's stand was accepted. Matter was carried further in appeal before the Tribunal. On consideration of rival submissions Tribunal came to the conclusion that assessee had informed the Department about discontinuation of the firm on 30th September, 1966 and at least from that date Department knew that firm was no longer in existence. It was also observed that IAC had no material for coming to the conclusion that the dissolution was sham. The conclusion was not based on any material on record and facts clearly

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::5::

[ITR197/81]

indicated that there was in fact dissolution of the firm and partners felt that nothing can be gained by keeping in existence the firm which ceased to do any business except that it was to pursue arbitration which could be easily done by providing for the same in the dissolution deed. It was not necessary for the agency to continue the partnership. Tribunal recorded a finding that dissolution of the firm was normal and a bona fide act. It was also observed that provisions of Section 176(3) which had been brought into operation with effect from 1st April, 1976 would have no application to the facts of the case. Accordingly, assessee's stand was upheld and Revenue's appeal was dismissed. On being moved for reference, the question as set out above has been referred for opinion of this Court.

3. We have heard learned counsel ^{for the} Revenue. There is no appearance on behalf of assessee in spite of service of notice. Learned counsel for Revenue submitted that Tribunal was not correct in holding that there was no material to show that the arrangement was sham.

4. We find that the Tribunal on consideration of the relevant materials has come to the conclusion that the dissolution was a normal and a bona fide one and there was no material to show that any sham arrangement had been entered into. That being the factual finding

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::6::

[ITR197/81] ⁶

recorded by the Tribunal, we are of the view that no question of law arises. We, therefore, decline to answer the question referred.


CHIEF JUSTICE

8th January, 2001
"v"


D.K. JAIN, J.