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IN THE HIGH COURT OF DELHI  
ITA No. 521/2004

Judgment reserved on : April 28, 2005  
Date of Pronouncement : May 12, 2005

Commissioner of Income Tax, Delhi-IV ...Appellant  
through: Mr.R.D.Jolly with  
Mr.Ajay Jha,  
Advocates.

Versus

M/s.Excellent Commercial Enterprises  
& Investments Ltd. ...Respondent  
through : Mr.R.M. Mehta,  
Advocate.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR  
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not? *Yes*
3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

Before the Income-tax appellate Tribunal, Income-tax Officer Ward-II, New Delhi while preferring an appeal



against the order of the Commissioner Income-tax, (Appeals) dated 1.12.1999 relating to the Assessing year 1996-97, raised the following issue :-

"On the facts and circumstances of the case, the learned CIT (A) was not justified in directing the A.O. to set off the unabsorbed b/f losses against dividend income which is chargeable to tax u/s 56(2)(i) of the Income Tax Act, 1961 as income from other sources and not income from business or profession."

2. The appeal of the Revenue was dismissed by the Income-tax Appellate Tribunal answering the issue in favour of the assessee and against the Revenue.

3. The necessary facts are that assessee filed return of income declaring 'Nil income' on 26<sup>th</sup> November, 1996. The case was processed under section 143(1A) and was taken up for scrutiny after issuance of notice to the assessee under section 132(2). During the relevant year, the assessee has not done any business of sale and purchase of shares and had declared the income from the interest and dividends only. Besides, certain other queries, which were raised by the Assessing Officer, during the assessment proceedings, the assessee had set off unabsorbed brought forward losses



of Rs,5,05,674/- against the dividend income. The case of the assessee was that in the current year no business was carried and the company had only dividend income. The Company had brought forward the losses and claim the set off against the dividend income of the current year. This claim of the assessee was disallowed by the Assessing Officer and an addition thereto was made. The assessee went up in appeal, before the Commissioner Income-tax, who vide his order dated 1<sup>st</sup> December, 1999 partly allowed the appeal and held as under :-

"Since this income arose from the stocks that were held as business commodity traded in, therefore, income whether directly arising out of such commodity on its sale or income i.e. arising incidental to holding shares as stock-in-trade would, in my view constitute business income although in normal circumstances such dividend income should be classified as income from 'other sources' and taxed accordingly. Taxing of dividend income in the hands of a normal investor would be taxed as income from 'other sources' but in the appellant's case, who is trading in such shares and is holding it as a stock-in-trade such income would assume a different flavour and character and would have to be treated as the 'business income' although usual



classification of such income would be dividend income taxable under the head 'Income from other sources.

10. The ratio of the decisions of the jurisdictional High Court and the Hon'ble Gujrat High Court do support the appellant's case as in those cases also receipts in question related to income arising as incidental to the stock-in-trade held by those assesseees which were to be treated as business income due to the special nature of business of the assessee. Accordingly, in line with the ratio of the decision of the cases cited above, the A.O. should have set off the brought forward unabsorbed business losses against such dividend income treating it as 'business income' in the appellant's specific case. In these facts and circumstances of the case, I direct the AO to get off the brought forward business loss against such dividend income considered as 'business income' of the year. This ground of appeal is, therefore, allowed."

4. The view taken by the First Appellate Authority was affirmed by the Income-tax Appellate Tribunal in an appeal preferred by the Revenue particularly while relying upon the judgment of the Supreme Court in the case of Commissioner of Income-tax, Andhra Pradesh Vs. Cocanada Radhaswami Bank Ltd. (1965) 57 ITR 306. The appeal of the revenue



thus was dismissed giving rise to the present appeal by the Revenue under section 260A of the Income-tax Act. The contention raised on behalf of the appellant is that the Income-tax Appellate Tribunal erred in law in allowing setting off brought forward business losses with dividend income. The said income was not income from business, but was income from other sources and in any case no set off would be permissible as the assessee has not carried on its business in the relevant year. On the other hand, learned counsel appearing for the respondent-assessee while relying upon the judgment of this Court in the case of Commissioner of Income-tax Vs. R.Dalmia [1974] 96 ITR 463 and the judgment of the Madras High Court in the case of Commissioner of Income-tax Vs. Ramnath Goenka (2003) 259 ITR 26 contended that the dividend income from shares and otherwise can be set off against the business loss of the earlier years in dealing with the shares brought forward.

5. In both these cases, the Court had specifically dealt with the cases of income from dividends and carry forward of losses which were permitted to be set off against the



relevant years. The contention of the Revenue that in ordinary course set off of unabsorbed brought forward loss will not be allowed against income from other sources of the current year has rightly been rejected both by the First Appellate Authority as well as the Income-tax Appellate Tribunal. This is a very well settled position of law that income from dividend would be relatable to the business activity of the assessee of the present kind and would not be an income from other sources. In the case of Snam Progetti S.P.A. Vs. Addl. Commissioner of Income-tax, New Delhi-II & Ors. [1981] 132 ITR 70, the question whether "the interest income would be treated as business income" was answered in favour of the assessee and the Bench held as under :-

"To repeat what was said earlier, the company has not come from Italy to make bank deposits in India but has come to carry on business. If at any time it has spare funds it prefers not to keep the same idle but makes deposits in banks which give some income. This also is, therefore, business income, and for the purpose of set-off has not to be treated as separate from business income."



6. A Special Leave Petition preferred by the revenue against this judgment of the High Court was dismissed by the Supreme Court vide order dated 18<sup>th</sup> April, 1991 passed in Special Leave Petition No.6527/84 titled as Commissioner of Income-tax Vs. Snam Progetti S.P.A. Therefore, it clearly stood settled that carry forward of loss and set off claim of the assessee against income-tax security in which it had invested, was permissible.

7. Even in the case of Western States Trading Co.P.Ltd. Vs. Commissioner of Income-tax (Central), Calcutta (1971) 80 ITR 21, the Supreme Court was concerned with the question whether the appellant, which owned a colliery and entered into an agreement to sell the colliery to another company w.e.f. September, 1954 pending completion of sale, the business was being carried on on behalf of the purchaser company since the price fixed less than the book value of the assets, the appellant claimed a balancing allowance under section 10(2)(vi) of the Act for the assessment year 1956-57. For part of the year, apparently, the assessee had carried on business, while for



the remaining part, it has not carried on business. The High Court had denied the admissibility of the allowance to the assessee. While reversing the judgment of the High Court, the Supreme Court answered both the formulated questions whether dividend income was to be taken as income, profit and gains of the business of the Company as well as set off against losses brought forward for the earlier years in favour of the assessee.

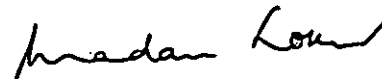
8. Applying the above settled principles, the Income-tax Appellate Tribunal had affirmed a finding of the Income-tax Commissioner (Appeals) that the Company in the interest of its business and to earn additional profits arising from such stock-in-trade had invested its money which was earning dividends on shares held in stock-in-trade. This was thus and rightly so treated as income from business and not income from other sources. No distinctive features have been placed before us which could persuade the Court to take a view different than the one which has been taken in the above orders. Even otherwise, it would be a finding of fact based and referable to the records which were



produced before the Income-tax Tribunal.

9. Once it is held that the shares held by the assessee as a stock in trade and the income whether directly or incidentally for holding of such shares as stock-in-trade, would be business income then it cannot be said that the dividend income would fall as an income from other sources as contemplated under section 56 of the Act and that set off of under section 72 of the Act in subsequent year would not be permissible. In our view, the question has been squarely answered in the afore-referred judgment which has taken a consistent view for such a long period. Consequently, we must hold that no question much less a substantial question of law arises for consideration in this case. The appeal is, therefore, dismissed.

  
(SWATANTER KUMAR)  
JUDGE

  
(MADAN B. LOKUR)  
JUDGE

May / 21<sup>st</sup> 2005  
rds ~