PETITIONER:
M/S. WATERFALL ESTATES LTD.MADRAS

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME-TAX, TAMIL NADU I, MADRAS

DATE OF JUDGMENT: 10/04/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
AHMAD SAGHIR S. (J)

CITATION:
JT 1996 (4) 185 1996 SCALE (3)476

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY,J.

This batch of appeals-preferred against the Judgment of the Madras High Court raises a common question. The assessee is the same in all the appeals; only the assessment years are different. The following three questions were referred for the opinion of the High Court under Section 256(1) of the Income Tax Act.

"(1) Whether on the facts and in the circumstances of the case the conclusion of the Appellate Tribunal that the entire managing agency commission claimed anc shown in the accounts was not allowable as a deduction for the assessment year 1965-66 as per the ratio of the decision in 82 I.T.R. 452 (SC) is valid in law?

(2) Whether on the facts and in the circumstances of the case the decision of the Appellate Tribunal that for the assessment year 1965-66 the various lines of activity like tea estate, coffee estate, coffee curing, plantation etc , did not constitute one single and integrated activity or business but independent units of business, is correct inference on the facts found and valid in law?

(3) Whether on the facts and in the circumstances of the case the Appellate Tribunal was Justified in its conclusion that the Managing agency commission has to be allocated in accordance with the

directions given by the Appellate Tribunal in para 39 of its order, by allocating the same to the various sources of income vis., tea, coffee, coffee curing works and so on?"

The assessment years concerned are 1964-65 to 1969-70.

The appellant is a Public Limited Company. Its income is derived from tea and coffee estate and coffee during work. Its tea and coffee estates are located at different places. It owns extensive forest lands and one of the estates contains cardamom and orange plantations. It acquired other estates during the accounting year relevant to assessment year 1967-68. The assessee-company was managed by the Managing Agents M/s. Kothari Mehta and Company Limited. They were appointed for a period of twenty years with effect from 1.1.1955 under an agreement dated March 23, 1950. there was a further agreement on March 17, 1960 and another on October 6, 1965 - practically in same terms. Until the assessment year 1963-64, the appellant used to work out the net income from taxable and non taxable sources separately without taking into account head office expenses and then apportion the head office expresses including Managing Agency Commission between the three categories of income viz., wholly taxable income, partially taxable income (from the tea estates) and wholly exempted income (from the coffee estates) in the proportion of the expenditure incurred on respective activities. With effect from Assessment Year 1964-65, however, the assessee changed its method of arriving at net income. It worked out its taxable income from tea business by deducting 10% of the total profits from Tea business on account of managing agency commission. The method of accounting adopted by it has been set out in detail in the statement of the High Court which we do not think it necessary to reproduce here. For the next three assessment years also, the assessee followed the same method of arriving at its net income. For the Assessment Year 1968-69, it adopted a different method again which too as been set out in detail in the judgment of the High Court. Suffice it to say that the assessee sought to treat its various activities as one single activity and deduct various expenses on that footing. All this was done, it appears, drawing inspiration from the decision of the Bombay High Court in Commissioner of Income Tax v. Maharashtra Sugar Mills Limited [(1968) 68 I.T.R. 512. The Income Tax Officer rejected the said change. On appeal, the Appellate Assistant Commissioner upheld the assessee's claim which indeed had the effect of granting it relief more than asked for by it. The Revenue appealed to the Tribunal. The Tribunal held after an exhaustive consideration of the relevant facts and contentions that the method of accounting adopted by the assessee until the Assessment Year 1964-65 was the proper one and that proper allocation of the managing agency Commission was called for in proportion to the expenditure incurred on those activities. The matter was remitted to Income Tax Officer to work out the details. Thereupon the assessee applied for and obtained the reference under Section 256(1).

The issue arising from questions No. 1 and 2 in short depends upon the answer to the question whether the various activities being carried on by the appellant-assessee constitute one single integrate activity or do they represent distinct business. The question of this nature, it is evident, is essential a question of fact. The statement of the case drawn up by the Tribunal summarises

its findings in the following manner:

"(a) the various estates and the coffees curing works exist at different place and in so far as the assessee was concerned they were acquired at different times. They are independent and closure of one would not affect the continuance of another;

(b) each estate has its own subsdiary accounts and is managed locally although overall the head office controls all the estates and maintains a single profit and loss account;

(c) there are separate staff for the various estates and even for tea and coffee estates in Waterfall Estates separately;

(d) the various estates are far flung and not in one place; the characters of the business ventures in the various estates are different;

(e) apart from the existence of a centralised management and head office where a single set of final accounts is maintained there is no evidence relating to inter-lacing, inter-connection and inter-dependence of the various estates in the day-to-day affairs or of their functioning being dovetailed into one another.

It is on the basis of the above findings that the Tribunal held that the several activities carried on by the appellant-assessee constitute separate and distinct activities. On reference, the High Court has agreed with the Tribunal and answered the said questions in favour of the Revenue and against the assessee. We are of the opinion that on the findings recorded by the Tribunal, the High Court was justified in rejecting the assessee's contention.

Sri Ramachandran learned counsel for the appellant, however, contended that the some of the tests applied by the Tribunal are erroneous, which has vitiated its finding. In particular, the learned counsel submitted that the circumstance that closure of one unit would not affect the activities of the other units is not at all a separately relevant consideration. Similarly, the fact that the several units were acquired at different points of time is said to be equally irrelevant. He strongly relied upon certain decisions including the decision of this Court in Commissioner of Income Tax Bombay City I v. Maharashtra Sugar Mills Limited [(1971) 82 I.T.R. 452] in support of his contention.

So far as Maharashtra Sugar Mills is concerned the factual findings therein are entirely distinct and different. In that case it was found by the Tribunal "that the cultivation of the sugarcane as well as the manufacture of the sugar constitute one business" and that finding was not challenged by the Revenue before this Court. It was contended all the same that the assessee's business consisted of two distinct parts. It was this contention which was rejected. The said decision is therefore clearly distinguishable in the light of the facts found in the

present case. Mr. Ramachandran then relied upon the decision in Commissioner of Income-Tax Madras v. Prithvi Insurance Co.Ltd. (1967) 63 I.T.R. 632], Produce Exchange Corporation Ltd. v. Commissioner of Income-Tax (Central), Calcutta [(1970) 77 I.T.R. 739], Standard Refinery and Distillery Ltd. v Commissioner of Income-Tax (Central) Calcutta (1971) 79 I.T.R. 589] and B.R. Ltd. v. V.P.Gupta, Commissioner of Income-Tax, Bombay [(1978) 113 I.T.R. 647]. All the decisions were rendered with reference to Section 24(2) of the Indian Income Tax Act, 1922. The question in all these cases was whether the business continued by the assessee in the relevant assessment years is the very same business wherein loss was originally sustained within the meanings of Section 24(2). The question considered in these decisions is not the same as concerned herein. The object of enquiry on both the cases is not identical. We do not think it necessary to deal with the facts of each of the decisions for the aforesaid reason and also because the said question is essentially a question of fact. No single test can be devised as universal and conclusive. The question has to be decided on a consideration of all the relevant facts and circumstances. Some facts may tend one way and some others the other way. An overall view has to be taken and a conclusion arrived at. Even if it is found that one or two circumstances among the several circumstances relied upon are not relevant, the finding of fact recorded by the Tribunal cannot be interfered with if there are other relevant circumstances which sustain the finding, as held by this Court in Meenakshi Mills v. Commissioner of Income Tax [91 I .T.R. 88]. In the present case, there are number of other factors - apart from what are pointed out as irrelevant (assuming for the sake of argument that they are irrelevant) - to support the finding of the Tribunal.

Mr. Ramachandran also relied upon the decision in Commissioner of Income-Tax, Madras v. Indian Bank Limited [(1965) 56 I.T.R. 77]. The appellant therein was a banking company, which invested, in the course of its business, a large sum in securities including securities the interest from which was exempt from tax. While computing the business income of the assessee, securities were duly taken into account. The contention of the Revenue was that where a part of the profits of a business is not taxable, the expenditure incurred for earning those profits cannot be allowed as deduction. It was accordingly submitted that interest on monies borrowed from various depositers should be proportionately disallowed keeping in view the amounts invested in non-taxable securities. This argument was rejected with reference to and on the basis of Section 10(2)(xv) of the 1922 Act (corresponding to Section 37 of the present Act). We are unable to see how this decision helps the assessee on the question at issue.

Once we answer the questions 1 and 2 against the assessee it is agreed, the third question does not really present any differently. It too has to be answered against the assessee.

For all the above reasons the appeals fail and are dismissed. No costs.