

SMT. PADMAVATI JAIKRISHNA
v.
ADDL. COMMISSIONER OF INCOME TAX,
GUJARAT AHMEDABAD

APRIL 22, 1987

[R.S. PATHAK, C.J. RANGANATH MISRA AND
K.N. SINGH, JJ.]

*Income Tax Act, 1961—Section 57(iii)—Deduction—Claim for—
Expenditure incurred should be wholly and exclusively for purpose of
earning income—Assessee to satisfy Income Tax Officer.*

The assessee, assessed as an individual, derived income from “other sources” in the shape of interest, dividends etc. In the assessment year 1966-67 she claimed deduction of Rs.26,986 being interest paid on loans taken by her, under s. 57(iii) of the Income Tax Act, 1961. The Income Tax Officer found that out of the loans real investment was Rs.1,250 only. He disallowed the claim of Rs.10,275 on proportionate basis. The Appellate Assistant Commissioner relying upon the ratio of the decision in *Bai Bhuriben Lallubhai v. Commissioner of Income-tax, Bombay North Cutch and Saurashtra*, [1956 ITR (XXIX) 543] dismissed the appeal of the assessee.

Before the Tribunal the assessee contended: (1) that expenditure under the head of payment of income tax and wealth tax and annuity deposits should have been taken as revenue expenditure and the claim of interest in respect of such loans should have been admitted and (2) that the assessee instead of liquidating the investments which was return-oriented, found it commercially expedient and viable to raise a loan instead of disturbing the investments and, therefore, the claim became admissible. The Tribunal rejecting the contentions and dismissing the appeal observed that the loans were taken for meeting her personal obligation like payment of taxes and deposit of annuity and these had nothing to do with the business.

On reference, the High Court held that at the relevant time it was obligatory for the assessee to make the annuity deposit and the earning of interest through such deposit was merely incidental and that the portion of the loan was not intended to meet expenditure wholly and exclusively for the purpose of earning the income and, therefore, did not come under s. 57(iii) of the Act.

A Dismissing the appeal of the assessee the Court,

HELD:1. Unless the claim comes within the purview of s. 57(iii) of the Income Tax Act, 1961 it would not be admissible as a deduction. [1170C]

B 2. The test to apply is that the expenditure should be wholly and exclusively for the purpose of earning the income. [1172C]

Eastern Investments Ltd. v. Commissioner of Income-tax, West Bengal, [1951] ITR 201 and *Commissioner of Income-tax, West Bengal v. Rajendra Prasad Moody*, [1978] 115 ITR 519, followed.

C 3. In order that the claim for deduction could be sustained, it was for the assessee to satisfy the Income Tax Officer that the loan, interest in respect of which is claimed as deduction, was laid out or expended wholly and exclusively for earning the income from out of which the deduction was claimed. [1170F-G]

D 4. The Income Tax Authorities as also the High Court have clearly recorded a factual finding of facts that the expenditure in this case was to meet the personal liability of payment of income-tax and wealth-tax and annuity and that no part of the expenditure came within the purview of s. 57(iii) of the Act. [1171H-1172A, D]

E 5. This Court is inclined to agree with the High Court that so far as meeting the liability of income-tax and wealth-tax is concerned, it was indeed a personal one and payment thereof cannot at all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income. So far as annuity deposit is concerned, the **F** Tribunal and the High Court have come to the right conclusion that the dominant purpose was not to earn income by way of interest but to meet the statutory liability of making the deposit. [1172B-C]

G 6. Unless the loan is incurred for meeting the liability connected with the sources itself it would ordinarily be difficult to entertain the claims for deduction. [1172F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 65 of 1975.

H From the Judgment and Order dated 3.12.1973 of the Gujarat High Court in I.T.R. No. 35 of 1972.

T.A. Ramachandran, Mrs. J. Ramachandran and S.C. Ratelh
for the Appellant. A

V.S. Desai and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by certificate is directed
against the judgment of the High Court of Gujarat. B

Assessee is assessed as an individual and she derived income from
“other sources” being in the shape of interest, dividends etc. The
relevant year of assessment is 1966-67. During this year assessee
claimed deduction of Rs.26986 being interest paid to Barivallabndas
Kalidas Estate on loans taken by her. The Income-tax Officer found
that out of the loans real investment was of a sum of Rs.1250 only. He
disallowed the claim to the extent of Rs.10,275 on proportionate basis.
According to him this claim could not be admitted under section 57(iii)
of the Income-tax Act of 1961. C D

Assessee's first appeal to the Appellate Assistant Commissioner
was rejected. The Appellate Authority relied upon the ratio of the
decision of the Bombay High Court in *Bai Bhuriben Ballubhai v.*
Commissioner of Income-tax, Bombay North Cutch and Saurashtra,
[1956] ITR (XXIX) 543 and dismissed the appeal. E

In further appeal before the Tribunal the claim of the assessee
was reiterated by contending that expenditure under the head of pay-
ment of income-tax and wealth-tax and annuity deposits should have
been taken as revenue expenditure and the claim of interest in respect
of such loans should have been admitted. It was further contended that
the assessee instead of liquidating the investments which were return-
oriented, found it commercially expedient and viable to raise a loan
instead of disturbing the investments and, therefore, the claim became
admissible in law. The Tribunal did not accept this contention and
observed that the loans were taken for meeting her personal obligation
like payment of taxes and deposit of annuity and these had nothing to
do with the business. The Tribunal also relied upon the ratio of
Bombay High Court decision referred to above. As the Tribunal dis-
missed the appeal assessee asked for the case to be stated to the High
Court and the following question was referred for its opinion: F G

“Whether on the facts and in the circumstances of the case, H

- A** payment of interest to the extent of Rs.10,27 was not an admissible deduction under section 57(iii) of the Income-tax Act?"

The High Court referred to various authorities and decided against the assessee by concluding that at the relevant time it was obligatory for the assessee to make the annuity deposit and the earning of interest through such deposit was merely incidental. The High Court further found that the portion of the loan was not intended to meet expenditure wholly and exclusively for the purpose of earning the income and therefore did not come under section 57(iii) of the Act.

- C** It is not disputed by Mr. Ramchandran for the assessee that unless the claim comes within the purview of section 57(iii) of the Act it would not be admissible as a deduction. That section as far as relevant provides:

- D** "The income chargeable under the head 'income from other sources' shall be computed after making the following deductions, namely:-

(i) ...

(ii) ...

- E** (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended *wholly and exclusively* for the purpose of making or earning such income;-

Provided

Explanation:

- F** In order that the claim for the deduction could be sustained, it was for the assessee to satisfy the Income-tax Officer that the loan interest in respect of which is claimed as deduction was laid out or expended wholly and exclusively for earning the income from out of which the deduction was claimed. There is no dispute that the provision of section 57 of the Act corresponds to section 12(2) of the Act of 1922. Dealing with a claim under section 12(2) of the 1922 Act this Court in *Eastern Investments Ltd. v. Commissioner of Income-tax, West Bengal*, [1951] ITR 20 1 summarised the position of law thus:-
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- H** "On a full review of the facts it is clear that this transaction was voluntarily entered into in order indirectly to facilitate

the carrying on of the business of the company and was made on the ground of commercial expediency. It therefore falls within the purview of Section 12(2) of the Income-tax Act, 1922, before its amendment

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“This being an investment company, if it borrowed money and utilised the same for its investments on which it earned income, the interest paid by it on the loans will clearly be a permissible deduction under section 12(2) of the Income-tax Act.”

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In *Commissioner of Income-tax, West Bengal v. Rajendra Prasad Moody*, [1978] ITR 115, 519 this Court observed:

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“The determination of the question before us turns on the true interpretation of section 57(iii) and it would, therefore, be convenient to refer to that section, but before we do so, we may point out that section 57(iii) occurs in a fasciculus of sections under the heading “F—Income from other sources”. Section 56, which is the first in this group of sections, enacts in sub-section (1) that specified in section 14, Items A to B, shall be chargeable to tax under the head “Income from other sources” and sub-section (2) includes in such income various items, one of which is “dividends”. Dividend on shares is thus income chargeable under the head “Income from other sources”. Section 57 provides for certain deductions to be made in computing the income chargeable under the head “Income from other sources” and one of such deductions is that set out in clause (iii), which reads as follows:

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“The expenditure to be deductible under section 57(iii) must be laid out or expended wholly and exclusively for the purpose of making or earning such income

In the said decision this Court clearly indicated that:

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“It is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income.”

The taxing authorities as also the High Court have clearly recorded a

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- A factual finding facts that the expenditure in this case was to meet the personal liability of payment of income-tax and wealth-tax and annuity. From the order of the Tribunal as also the judgment of the High Court it appears that the assessee had taken the stand that even if the claim relating to income-tax and wealth-tax was not admissible, that part of the claim relatable to annuity deposit should have been admitted as it fetched interest. We are inclined to agree with the High Court that so far as meeting the liability of income-tax and wealth-tax is concerned it was indeed a personal one and payment thereof cannot at all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income. So far as annuity deposit is concerned the Tribunal and the High Court have come to the right conclusion that the dominant purpose was not to earn income by way of interest but to meet the statutory liability of making the deposit. The test to apply is that the expenditure should be wholly and exclusively for the purpose of earning the income. The fact finding authorities have come to the conclusion that no part of the expenditure came within the purview of section 57(iii) of the Act.

Mr. Ramchandran then maintained that even if there was an indirect link between the expenditure and the income earned, the claim would be admissible and relied upon the observations of Bose, J. in *Eastern Investments Case*. No attempt has been made by the assessee to point out before the taxing authorities or even before the High Court by placing the necessary facts to justify such a claim. On mere assumptions such a point cannot be allowed to be raised here for consideration. In fact unless the loan is incurred for meeting the liability connected with the sources itself it would ordinarily be difficult to entertain the claims for deduction.

This appeal has to fail and the order of the High Court has to be affirmed. We accordingly dismiss the appeal but leave the parties to bear their respective costs.

A.P.J.

Appeal dismissed.