

PETITIONER:
VIJAYA LAXMI SUGAR MILLS LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, KANPUR

DATE OF JUDGMENT 06/08/1991

BENCH:
RAMASWAMI, V. (J) II
BENCH:
RAMASWAMI, V. (J) II
SHETTY, K.J. (J)
YOGESHWAR DAYAL (J)

CITATION:
1991 AIR 2042 1991 SCR (3) 383
1991 SCC Supl. (2) 331 JT 1991 (3) 333
1991 SCALE (2) 239

ACT:

Companies Act, 1956: Company in liquidation--Liquidator-Realisation of assets--Whether carrying on a business of the Company.

Income Tax Act, 1961: Ss. 28, 56, 57(iii)--Company in liquidation--Sale of assets--Investment of sale proceeds in fixed deposits--Whether a business of the company: interest income--Whether to be assessed under s. 28: expenditures incurred by liquidator--Deduction of--Whether admissible under s. 57(iii): interest accrues sui generis.

HEADNOTE:

The appellant-company was ordered to be wound up in 1949. In the course of its winding up the liquidator sold certain assets of the company and invested the sale proceeds thereof in fixed deposits with certain banks. The liquidator incurred certain expenditures on salaries, legal fees, travelling expenses, postage and stationery. The assessee-company claimed a deduction of the said expenses from the interest income. The I.T.O. did not allow it, and assessed the entire interest income as taxable u/s 56 of the Income Tax Act, 1961 under the head "Income from other sources". The assessment orders were confirmed by the Appellate Assistant Commissioner and by the Income Tax Appellate Tribunal in appeal.

On a reference by the Tribunal the High Court held that the income from fixed deposit was income from other sources; and it disallowed deduction of the expenditure u/s. 57(iii) on the ground that the expenses claimed were not related to the earning of the interest income. Aggrieved the assessee-company preferred appeal by special leave to this Court.

On the questions whether: (1) in effecting the sale and realisation of the assets of the Company in liquidation and investing the same in fixed deposits the liquidator was engaged in the business of the company and the interest income was a business income taxable u/s 28 of the Act and not under s. 56 under the head "Income from other sources", and (2) the expenses incurred by the liquidator were incurred solely for the

purpose of earning the interest income so as to claim deduction u/s. 57(iii).

Dismissing the appeal, this Court,

HELD: 1. The Liquidator in merely realising the assets of the Company could not be considered as carrying on any business of the Company. [387G]

2. In the instant case, the company before its liquidation was engaged in the manufacture of sugar. The records did not disclose that the liquidator was carrying on the business of manufacture of sugar or any trading activity for the purpose of facilitating the winding up. The only accepted fact was that the interest income was derived from fixed deposits purchased out of the proceeds of sale of assets during winding up. The assessee, could not be said to have carried on any business to bring the interest income within the meaning of s. 28 of the Act and, therefore, the interest income was liable to be assessed only under the head "Income from other sources". The Tribunal was, therefore, right in holding that the interest income in the instant case was not governed by s. 28 but fell to be considered under s. 56. [387F; 388B-C; 389A-B]

Vijay Laxmi Sugar Mills Ltd. v. Commissioner of Income Tax, Delhi Central, [1972] 86 I.T.R. 402 All., affirmed.

Morvi Mercantile Bank Ltd. v. Commissioner of Income Tax, Gujarat., [1976] 104 I.T.R. 568 Guj., approved.

3.1 In computing the income chargeable under the head "Income from other sources", requirement under s. 57(iii) of the Act is that the expenditure should have been incurred "for the purpose of making or earning such income" and the deduction is to be made in respect of expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. [389C-D & G]

3.2 It is true that the connection between the expenditure and the earning of income need not be direct and it may be indirect. But since the expenditure must have been incurred for purpose of earning that income, there should be some nexus between the expenditure and the earning of the income. [389D-E]

3.3 The interest accrues sui generis. The interest is payable by the bank whether it is claimed or not and whether there is any establishment or not. [389E-F]

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3.4 In the instant case there could be no doubt that the expenditure incurred by the liquidator can by no stretch be said to have been incurred with the object or for the purpose of earning the interest income. It could not be said that the expenditure incurred was to preserve or acquire the asset. Nor could it be said that the expenses were incurred, for the purpose of maintenance of the source. The Tribunal was, therefore, right in holding that the expenses claimed were not related to the interest income and was not a deductible expenditure under s. 57. [390A-B; 389G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1103 & 1104 of 1979.

From the Judgment and Order dated 20.3. 1978 of the Allahabad High Court in I .T.R. Nos. 428/72 and 542 of 1973.

Ashok Grover for the Appellant.

J. Ram Murthy, S. Rajappa and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. The appellant is a private limited

company in Liquidation. The winding up order was made by the High Court on 8th November, 1949 and the Liquidator was directed to submit reports every three months respecting the progress of the winding up proceedings and realisation of the assets. In the course of winding up the Liquidator sold certain assets and deposited the money in fixed deposits with certain banks. During the previous year relevant to the assessment year 1966-67 the appellant earned by way of interest from fixed deposits a sum of Rs.32,237.60. The Liquidator had in the relevant previous year incurred the following expenditure totalling Rs. 12,379.45:

Salaries	Rs. 1,2 15.00
Legal fees	Rs. 9,725.00
Liquidation expenses	Rs. 538.85
T.A. & D.A.	Rs. 751.51
Postage	Rs. 95.34
Stationery	Rs. 53.75

Total:-- Rs. 12,379.45

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The assessee-company claimed a deduction of the above said sum of Rs. 12,379.45 from the interest income of Rs.32,237.60. The Income Tax Officer did not allow any part of the expenditure claimed by the assessee company and assessed the entire amount of Rs.32,237.60 as taxable under section 56 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), under the head 'INCOME FROM OTHER SOURCES'. This assessment order was confirmed by the Appellate Assistant Commissioner and the Tribunal on an appeal.

In the assessment year 1967-68 also the assessee earned certain amounts of money by way of interest from fixed deposits and the Liquidator incurred identical expenditures as in the assessment year 1966-67 except for the difference in the amount. The Income Tax Officer refused to allow any deduction of any part of the expenditure claimed by the assessee. Even in this assessment year the entire interest income was taxed under section 56 of the Act under the head "Income From Other Sources". The appeals filed in respect of this assessment year also were unsuccessful.

In respect of both these assessment years the following identical question was directed to be referred by the High Court under section 56(2) of the Act on the refusal of the Tribunal to refer the same under section 256(1):

"Whether on the facts and in the circumstances of the case, the assessee is entitled to the deduction of the whole or any part of the expenses incurred by the Liquidator in the computation of the assessee's total income".

It may be mentioned that in respect of the assessment year 1962-63 the assessee had claimed deduction of similar expenditure from the interest income earned from fixed deposit. At the instance of the assessee the Tribunal referred the following question:

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 13,023 is an admissible charge against the income of the previous year".

In the decision reported in *Vijay Laxmi Sugar Mills Ltd. v. Commissioner of Income-Tax, Delhi Central*, [1972] 86 I.T.R. 402 All. the High Court answered that reference holding that the income from the fixed deposit has to be considered as income from other sources and only that expenditure can be deducted which under section 57(iii) of

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the Act can be considered as incurred for earning that income and that the expenses claimed are not related to the

earning of that income. Accordingly the High Court answered the question in the negative and in favour of the Revenue. It may also be mentioned that the assessing officers and the Tribunal followed this decision which was assessee's own case for the earlier assessment year, in the assessments now in question.

The learned counsel for the appellant canvassed the correctness of the view propounded in *Vijay Laxmi Sugar Mills Ltd. v. Commissioner of Income-Tax, Delhi Central*, (supra). The learned counsel contended that among the objects mentioned in the memorandum of association of the company provision is made for advancing and lending money, investment of the company's money and dealing in debentures, shares, stocks and other securities and carrying on various other businesses such as the company considered desirable in lieu of any other business which it was authorised to carry on. Therefore, in effecting sale and realising of the assets of the company in Liquidation and investing in fixed deposits the Liquidation was engaged in the businesses of making investment in fixed deposits. The interest income earned therefrom is a business income taxable under section 28 of the Act and not under section 56 of the Act under the head "Income From Other Sources". If this contention of his is right the expenditure incurred by the Liquidator shall also be considered as for the purpose of earning the above mentioned income or at least could be said as wholly and exclusively laid out or expended for the purposes of that business and deductible from the total income earned by the company during the relevant previous year. We are wholly at a loss to understand how this argument is possible on the facts and circumstances of this case. As already stated the company had been directed to be wound up and a Liquidator was appointed by the High Court as early as in 1950. The company before its Liquidation was engaged in the manufacture of sugar. The records do not disclose that the Liquidator was carrying on the business of manufacture of sugar or any trading activity for the purpose of facilitating the winding up. The statement of facts on record show that the Liquidator realised certain amount by way of sale of the assets of the company in Liquidation and it is those sale proceeds that was invested in fixed deposit which earned the interest. The Liquidator in merely realising the assets of the company could not be considered as carry on any business of the company. The activity of realising the assets and banking them in fixed deposit was in the course of winding up and it was not in furtherance of any business activity

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carried on by the company before its winding up.

There may be cases where the Liquidator may be said to carry on the company's business in so far as is necessary for the winding up or facilitate the winding up or realise the assets of the company in such a way as to involve the carrying on trade. But in this case there is no evidence in this regard. In fact the winding up order was made as early as in 1950 and nothing of the winding up activity is in evidence. The only accepted fact is that the interest income was derived from fixed deposits purchased out of the proceeds of sale of assets during winding up. The assessee, therefore, could not be said to have carried on any business to bring the interest income within the meaning of section 28 of the Act and that therefore the interest income was liable to be assessed only under the head "Income From Other Sources".

Very near to the facts of this case is the decision reported in *Morvi Mercantile Bank Ltd. (In Liquidation) v.*

Commissioner of Income Tax, Gujarat, [1976] 104 I.T.R. 568 Guj. In that case the assessee a banking company was compulsorily wound up and its licence was suspended by the Reserve Bank. The Official Liquidator realised the assets and invested the money in short term deposit pending distribution. It was contended on behalf of the company in Liquidation that the income realised by the Liquidator was business income and that the Income Tax Officer was not right in treating it as "Income From Other Sources". Rejecting this contention the Gujarat High Court held:

"That the assets of which the liquidator was seized and which he tried to realise for purposes of winding up were of capital nature and they cannot be said to be business assets; nor can it be said that merely because he was investing the realisations, assuming that that was permissible either under the memorandum or under the statute, the activities which he was carrying on as a liquidator were those of a businessman. In the circumstances, therefore, we cannot uphold the contention of Mr. Patel that the liquidator was making for mercantile necessity the investment of realisations as a business for beneficial winding up of the company. The Tribunal has found as a fact that the main business of the assessee-company having gone as a result of the winding-up order, there did not remain any other activity 389

which can be legitimately said to be a business activity and whatever the liquidator did was merely as a liquidator for purposes of liquidation of the company".

This is indeed the view to be taken even in this case also. The Tribunal was, therefore, right in holding that the interest income in the instant case is not governed by section 28 but fails to be considered under section 56.

The next submission of the learned counsel for the assessee was that in the course of effecting the winding up of the assessee company the Liquidator has been incurring expenses such as salaries, legal fees, travelling expenses and other liquidation expenses and that these expenses are allowable deduction from income earned by way of interest from fixed deposits in the relevant year. In computing the income chargeable under the head "Income From Other Sources", section 57(iii) provides that deduction is to be made in respect of expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The question for consideration, therefore, is whether the expenses of the type incurred by the Liquidator in this case can be said to have been incurred solely for the purpose of earning the interest income. It is true that the connection between the expenditure and the earning of income need not be direct and it may be indirect. But since the expenditure must have been incurred for the purpose of earning that income there should be some nexus between the expenditure and the earning of the income. There is not even some sort of an evidence to show that the expenses incurred by the Liquidator was to facilitate the earning or at least for protecting of the income. The interest accrues SUI GENERIS. The interest is payable by the bank whether it is claimed or not and whether there is any establishment or not. Normally there was no necessity for spending anything separately for earning the interest. However we may hasten to add that if any expenditure was incurred like commission

for collection or such similar expenditures which may be considered as spent solely for the purpose of earning that income, the position may be different. But that was not so in this case. It could not also be said that the expenditure incurred was to preserve or acquire the asset. Nor could it be said that the expenses were incurred for the purpose of maintenance of the source. The requirement under section 57(iii) that the expenditure should have been incurred "for the purpose of making or earning such income" show that the object of spending or the end or aim or the intention of such spending was for earning the interest

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income. There could be no doubt that the expenditure incurred by the Liquidator in this case can by no stretch be said to have been incurred with the object or for the purpose of earning the interest income. The Tribunal was, therefore, right in holding that the expenses claimed are not related to the interest income and was not a deductible expenditure under section 57.

We are, therefore, of the view that the High Court correctly answered the reference in the negative and in favour of the Revenue. The appeals are accordingly dismissed with costs.

R.P.

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Appeals dismissed.