

IN THE HIGH COURT OF MADRAS

Commissioner of Income-tax

v.

B. Nagi Reddy

V. BALASUBRAHMANYAN AND V. RATNAM, JJ.

OCTOBER 5, 1982

J. Jayaraman and **Mrs. Nalini Chidambaram** for the Applicant.

M. Uthama Reddy for the Respondent.

Judgment

Balasubrahmanyam, J. - The assessee in this income-tax reference is one Nagi Reddy. He was, at the material time, the owner of two cinematograph film studios in Madras by name, Vijaya Studios and Vahini Studios. He leased them out on rent to a company called Vijaya Productions (P.) Ltd. The rental income was assessable as part of the assessee's total income. The question, however, was under which head of income the lease amounts were to be assessed for purposes of computation. The assessee claimed that they were to be assessed as business income. The ITO and the AAC rejected the assessee's claim. But the Tribunal accepted the assessee's contention and directed the assessment of the rental income as business income with all that it involved, including allowance of depreciation on buildings and machinery. The Tribunal, in their order, have set out the grounds of their determination. The department's contention in these references is that the Tribunal's decision is erroneous on the point of law.

2. As earlier indicated, the dispute in the present case is not about the taxability in the assessee's hands of the rents from the two film studios, but under which particular statutory head of income they fall to be computed. Sarkar, C.J., indicated the general approach to questions of this kind in *Nalinikant Ambalal Mody v. S.A.L. Narayan Row*, CIT [1966] 61 ITR 428 (SC). He pointed out that the question whether an income falls under one head or another has to be decided according to the common notions of practical men, for the Income-tax Act, 1961 does not provide any guidance in the matter. More particularly, on the question whether a particular letting of buildings is business and the rental income derived therefrom is to be assessed under the statutory head 'Business', the same learned Judge said, in another decision, that each case has to be looked at from a businessman's point of view - *Sultan Bros. (P.) Ltd. v. CIT* [1964] 51 ITR 353 (SC). The learned Judge further pointed out that the reported cases on the subject did not lay down any test for deciding when a letting amounts to business. Another learned Judge of the Supreme Court, Ramaswami, J., in a later decision went even farther and observed that no general principle can at all be laid down which would be applicable to all cases - *New Savan Sugar & Gur Refining Co. Ltd. v. CIT* [1969] 74 ITR 7 (SC).

3. The moral to be learned from all these decisions is clear enough. Whether, a particular letting is business has to be decided in the circumstances of each case, and each case must be decided in the setting and background of its own facts. We cannot, however, on this account take the line of least resistance and dismiss questions of this nature as pure questions of fact. Mistaking the nature of the questions, the Tribunal at an earlier stage had dismissed the department's reference applications in this very case. But this Court administered the necessary corrective by calling upon the Tribunal to state a case referring the questions of law propounded by the department for consideration by this Court. There can be no doubt that questions of this kind are really mixed questions of law and fact. The reason is stated that in given findings on primary facts, it is in every case a matter of legal inference or judicial determination, as to what the appropriate statutory head of income is to which those facts unmistakably point.

4. To the facts, then we must turn our attention. Facts which the Tribunal have relied upon for coming to

their conclusion. The assessee, as we earlier mentioned, owned two film studios, the Vijaya Studios and the Vahini Studios. The one was purchased in the year 1960, and the other was purchased in 1961. Right from 1949 onwards, however, the assessee had been in the film line. He was alt in all as managing director of the film-making company called Vijaya Productions (P.) Ltd. Between 1950 and 1971, he produced as many as 33 motion pictures. In 1958 he became a partner in two film distribution concerns. He constructed and ran on his own, for a period of five years or so, an independent exhibition theatre in the studio complex for pre-view exhibition of rushes and completed the film reels. He was, for a term, President of the South India Film Chamber of Commerce and of the Film Federation of India. As for the two studios he owned, which he had leased out, the record shows that even before he had acquired them by purchase, he had obtained leasehold right therein and made use of the studios for producing his own films. After purchase, he made improvements and put up fresh constructions in the studios. He reconstruced a sound recording unit in one, and a new colour production studio in the other. He laid out the vacant land in one of the studios as a horticultured garden fit for shooting outdoor sequences in films. Apart from leasing out the studios to the private company in which he was managing director, he utilized one of them for a time to shoot a film of his own by name 'Engal Vettu Pillai'.

5. The Tribunal took note of all these facts and, on an analytical consideration thereof, came to the conclusion that the lease by the assessee of the studios was in the course of his film business, and not as a mere owner letting out immovable property.

6. In the course of their order, the Tribunal set down certain observations of a somewhat more general kind. They said that a film studio is not a mere building but is a complex subject. They referred to the electrical equipments, the lighting arrangements, the sound-recording equipment, the projection theatre and other aspects of the studios. They referred to the prevailing practice of studio owners not only to use the studios for shooting their own films, but to lease them out to other filmmakers on a daily or monthly basis. The Tribunal expressed the view that letting out the film studios is as much a recognised way of carrying on film studio business, as shooting by the studio owners of their own films.

7. Mr. Jayaraman adverted to these general observations of the Tribunal and said that they evidence a clear misdirection on the part of the Tribunal. The error of the Tribunal, according to him, lay in thinking that cinematograph film studios were commercial assets *par excellence* find (*sic*) any income derived therefrom must be *per se* business income.

8. We accept Mr. Jayaraman's thesis that there is no such thing as a natural born commercial asset. As Sarkar, J., observed in the case of *Sultan Bros*, (*supra*), nothing can by its very nature be a commercial asset, and an asset becomes a commercial asset only because it is used in a business and not because of any inherent quality. And, as the learned Judge further observed, business may be carried on with practically all things. While these are self-evident truths both of commerce and of taxation, we do not think the Tribunal in this case can be charged with having laboured under the particular misconception attributed to them by Mr. Jayaraman. Their order, as we have earlier indicated, has taken note of several facts, which on the Tribunal's own analysis fall under two broad heads: those which have to do with the nature and methods of carrying on film studio business as such and those which have to do with the assessee's own antecedents in the various lines of film trade. The Tribunal had not made the mistake of supposing that film studios *per se*, are business assets in themselves. What they expressed, in the course of their general observation, was that there is more than one recognised way of running film studios as business propositions on commercial lines, one being to shoot one's own pictures in the studios and the other being to let it out to other film-makers. The Tribunal pointed out that the assessee in this case had been utilizing these two studios as lessee on earlier occasions and even after purchase he had made a film of his own in one of them. These facts are considered by the Tribunal in association with the assessee's own many-sided career in the film business as a producer, as a distributor, as an exhibitor, as a studio-owner and the like. It is on an overall consideration of all these facts, that the Tribunal had arrived at their determination as to the precise tax treatment to be accorded to the rental income from the

two studios. We do not suggest that all the factual considerations which the Tribunal had taken note of are absolutely relevant and equally important. Mr. Jayaraman made criticism and even found (*sic*) of the Tribunal's reference to the assessee's office-bearing in the film chambers as a relevant factor. We, however, think that this distinction of the assessee was presumably mentioned only as yet another indication of the assessee's omni-competence in the film line. We do not think that the presidency of a film chamber was advanced as a decisive indicator or as an acid test of the trading character of the Tribunal.

9. Judging the determination of the Tribunal as a place of legal reasoning from facts which are so scarcely in dispute, we do not think that it is based on any unreasonable or legally illegitimate inference. We, accordingly, uphold their decision. By way of giving a formal disposal to the case stated, we set out below the questions of law referred to us:

Assessment years 1963-64 to 1968-69 - "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the income received by the assessee from Vahini Studios and Vijaya Studios should be assessed in the hands of the assessee as 'business income'?"

Assessment year 1969-70 - "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the income derived by the assessee during year of account relevant to the assessment year 1969-70 by letting out Vijaya studios depreciation on the studios should be allowed?"

10. For the reasons stated earlier, our answers to the two questions are in the affirmative and in favour of the assessee. The department will pay the costs of the assessee. Counsel's fee Rs. 500 (one set).

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