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DEHRA DUN TEA CO. LTD. & ANR.

v.

COMMISSIONER OF INCOME TAX, U.P., LUCKNOW

December 12, 1972

[K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]

B

Income-tax Act 1922 s. 10(2)(xv)—Deductible expenditure—Tax paid by tea growers under U.P. Large Land Holdings Act XXXI of 1957 whether deductible.

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The assessee companies were growers of tea. Their income was taxed under s. 10 of the Income-tax Act 1922 but under Rule 24 of the Rules framed under the Act only 40% of their income was brought to tax. The expenditure was also allowed to the extent of 40%. The companies claimed that the tax paid by them under the U.P. Large Land Holdings Tax Act 1957 was deductible under s. 10(2)(xv) of the Income-tax Act. The claim was disallowed by the income-tax authorities. In a reference under s. 66(1) the High Court, relying upon the decision of this Court in *Travancore Titanium Product Ltd. v. C.I.T. Kerala* (60 I.T.R. 277) answered the question in favour of the Revenue. In these appeals the companies relied on the decision of this Court in *Indian Aluminium Co. Ltd. v. Commissioner of Income Tax, West Bengal* (84 I.T.R. 735). It was contended on behalf of the respondent that the decision in *Indian Aluminium* was inapplicable to the case since the tax under the U.P. Act was laid on the companies as owners.

Allowing the appeal,

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HELD : (i) Applying the ratio of the decision in the *Indian Aluminium* case to the facts of the present case it was clear that the lands owned by the assessee companies were their business assets and the tax paid thereon under the U.P. Act XXXI of 1957 was an item of expenditure laid out by the assessee companies as traders and as incidental to their business. Consequently the same must be treated as an item of expenditure under Section 10(2)(xv) of the Act. [84-H]

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The contention on behalf of the Revenue that the decision in *Indian Aluminium* was inapplicable could not be accepted. A tea-grower is considered under the Act read with Rules as an owner-cum-trader. Therefore any item of expenditure incurred by him must be considered as an item of expenditure incurred by a trader in connection with his business activity. It is true that only 40 per cent of the net income of the tea-growers is brought to tax under the Act; but at the same time the tea growers will also be entitled only to 40 per cent of the expenditure incurred by them. [85CD]

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Travancore Titanium Product Ltd. v. C.I.T. Kerala, 60 I.T.R. 277 referred to.

Indian Aluminium Co. Ltd. v. Commissioner of Income Tax, West Bengal, 84 I.T.R. 735 applied.

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(ii) Section 40 of the Income Tax Act 1961 as amended in 1972 had no bearing on the point arising for decision in this case. [86A]

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 56 to 61 of 1970.

Appeals by special leave from the judgment and order dated January 1, 1969 of the Allahabad High Court in I.T.R. No. 198 and 199 of 1965. A

M. C. Chagla, A. K. Verma, J. B. Dadachanji, O. C. Mathur and R. Narain, for the respondents.

N. C. Kharkhanis, J. Ramamurthi and R. N. Sachthey for the respondents. B

The Judgment of the Court was delivered by

HEGDE, J. These are appeals by special leave. They are directed against the decision of the High Court of Allahabad in a reference under Section 66(1) of the Indian Income Tax Act 1922 (to be hereinafter referred to as the Act). The common question of law referred in these appeals was : C

“Whether the tax paid by the assessee company on the tea-garden lands under the U.P. Large Land Holdings Tax Act, 1957 (U.P. Act XXXI of 1957) is liable to be deducted under Section 10(2)(xv) ?” D

The High Court answered this question in favour of the Revenue. It did so following the decision of this Court in *Travancore Titanium Product Ltd. v. C.I.T. Kerala*⁽¹⁾.

It may be noted that the assessee companies (there are two companies) are taxed under Section 10 of the Act. Their income is considered as business income. The assessee companies are tea-growers and the activity they carry on is a business activity. Therefore, the question is whether the tax paid by them under the U.P. Act XXXI of 1957 is an item of expenditure coming within the scope of Section 10(2)(xv) of the Act. In *Indian Aluminium Co. Ltd. v. Commissioner of Income Tax, West Bengal*⁽²⁾, a Five-Judge Bench of this Court modified the decision of this Court in *Travancore Titanium Products case* (supra) holding that if the expenditure laid out by the assessee is as an owner-cum-trader and the expenditure is really incidental to the carrying on of his business it must be treated to have been laid out by him as a trader and as incidental to his business. On the basis of that rule it came to the conclusion that the wealth tax paid by a trader on his business assets is liable to be deducted under Section 10(2)(xv) of the Act. Applying the ratio of that decision to the facts of the present case it is clear that the lands owned by the assessee companies are its business assets and the tax paid thereon under the U.P. Act XXXI of 1957 is an item of expenditure laid out by the assessee companies as traders and as incidental to their business. Consequently the same must be E
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(1) 60 I.T.R. 277.

(2) 84 I.T.R. 735.

A treated as an item of expenditure under Section 10(2)(xv) of the Act.

B Mr. Karkhanis appearing for the Revenue contended that so far as tea-growers are concerned they are both the owners of lands as well as traders. It is for that reason they are assessed only on 40 percent of their net income, applying Rule 24 of the Rules framed under the Act. According to him the tax paid under the U.P. Act XXXI of 1957 is a tax levied on the owners and not on the traders. Consequently the ratio of the decision of this Court in *Indian Aluminium Company's* case (supra) is inapplicable. We are unable to accept this contention as correct. A tea-grower is considered under the Act, read with Rules as an owner-cum-trader. Therefore, any item of expenditure incurred by him must be considered as an item of expenditure incurred by a trader in connection with his business activity. It is true that only 40 per cent of the net income of the tea-growers are brought to tax under the Act; but, at the same time, the tea-growers will also be entitled only to 40 per cent of the expenditure incurred by them. Under Rule 24, only 40 per cent of the net income is brought to tax. Hence we are unable to accept the contention of Mr. Karkhanis that the ratio of the decision of this Court in the *Indian Aluminium Company's* case (supra) is inapplicable to the facts of this case. Lastly, Mr. Karkhanis contended that in view of the Income-tax (Amendment) Act 1972, an assessee company is not entitled to claim any deduction in respect of the tax paid by them. In this connection he relies on Section 2 of the Amendment Act of 1972. That section reads :

F "2. Amendment of Section 40. In Section 40 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the principal Act), after sub-clause (ii) of clause (a), the following sub-clause shall be, and shall be deemed always to have been, inserted, namely :—

"(ia) any sum paid on account of wealth-tax."

G Explanation :—For the purposes of this sub-clause, "wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession, carried on by the assessee, whether or not the debts of the business or profession are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;".

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We are unable to accept the connection of Mr. Karkhanis is that this Section has any bearing on the point arising for decision in this case. Herein we are not dealing with Wealth-tax, *i.e.* a tax on net assets nor with any of the taxes referred in the explanation. A

In the result these appeals are allowed and the answer given by the High Court is revoked and the question referred to the High Court is answered in favour of the assessee. In other words, the answer to the question is that on the facts and in the circumstances of the case the tax paid under the U.P. Large Land Holdings Tax Act, 1957, is an admissible deduction from the taxable income of the assessee companies. The appellants are entitled to the costs of these appeals in this Court as well as in the High Court but there will be only one hearing fee. B
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G.C.

Appeals allowed.