Supreme Court of India

Oberoi Hotel Pvt. Ltd vs Commissioner Of Income Tax on 10 March, 1999

Bench: S.P. Bharucha, M.B. Shah, N. Santosh Hegde

CASE NO.:

Appeal (civil) 7418 of 1994

PETITIONER:

OBEROI HOTEL PVT. LTD.

RESPONDENT:

COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT: 10/03/1999

BENCH:

S.P. BHARUCHA & M.B. SHAH & N. SANTOSH HEGDE

JUDGMENT:

JUDGMENT 1999 (1) SCR 955 The Judgment of the Court was delivered by SHAH, J. This appeal is filed against the judgment and order dated 8th September 1993 passed by the High Court of Calcutta in Income Tax Reference No. 91 of 1988. The Court allowed reference application and answered the following question referred to it in the negative and in favour of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in confirming the decision of the C.I.T. (Appeals) that the receipt of Rs. 29,47,500 by the assessee from the Receiver or the hotel in the course of assessee's hotel operation business, is a capital receipt."

The said question arose in the Income-tax assessment of the asses-see- company for the year ending on 30th June, 1978 corresponding to the Assessment Year 1979-80 in the background of the fact that the assessee- company was operating managing and administering many hotels belonging to others for a fee at several places e.g. Cairo, Colombo, Kathmandu, Singapore, etc. As per the Memorandum of Association of the Company, it was authorised to run hotels on its own account and also to operate, manage and administer hotels belonging to others for a fee. In terms of an Agreement dated 2nd November, 1970, the Company agreed to operate the hotel known as Hotel Oberoi Imperial, Singapore for which the asses-see-Company was to receive certain fee called Management Fee which was calculated on the basis of gross operating profits as provided under Article X of the Agreement; the Agreement was to run for an initial period of ten years; the assessee had option to ask for renewal of the said Agreement for two further periods of 10 years each by mutual agreement. Article XVIII of the said Agreement gave the assessee a right to exercise the option of purchasing the hotel in case his owners desire to transfer the same during the currency of the Agreement. Thereafter on 14th September, 1975 a Supplementary Agreement was executed between the appellant and the Receiver of the Undertaking and the property of Imperial Securities International Limited which, inter alia, provided that on 6th day of September 1975 Receiver was appointed of the Undertaking and property of IS1 pursuant to the terms of the Debenture dated 7th day of January, 1974 made between ISI on one part and Common Wealth Development Finance Company Limited on the other part. On basis of the said appointment of Receiver, the Receiver

executed the Supplemental Agreement in favour of the appellant which, inter alia provides that :

"g. The Operator hereby undertakes and agrees with the Receiver as follows :

(a) that Article XVIII of the Principal Agreement shall hence-forth cease to have any force and effect;

(b) that the Receiver shall, subject to the provisions of clause 8 hereof, be at liberty at any time hereafter to sell or otherwise dispose of the said property at such period and on such terms as he may deem fit and shall not be under any obligation of procuring or requiring the purchaser thereof to enter into any agreement with the Operator for the purpose of operating and managing the Hotel or otherwise;

(c) that should the Receiver succeed in selling or disposing of the said property to any party, the Principal Agreement and this Agreement shall, upon completion of such sale as may then be made by the Receiver, terminate and cease to have any force and effect;

(d) that the Operator shall do execute and deliver all such acts, deeds, documents and instruments as may be necessary or reasonably required by the Receiver for the purpose of giving effect to the provisions of this clause.

10. For the consideration aforesaid the Receiver hereby agrees to pay to the Operator.

(a) .....

(b) simultaneously termination of the Principle Agreement and this Agreement -

(i) a sum of $250,000 if the said property is sold for a sum of less than S$ 30,000,000 or

(ii) a sum of S$375,000 it the said property is sold for a sum of S$3,300,000 or more than hut less than S$33,500,000 or

(iii) a sum of S $750,000 if the said property is sold for a sum of S$33,500,000 or more."

The right of the assessee, which was given up for a consideration mentioned above, arising from Article XVIII of the Principal Agreement is as under :

"During the terms of this Agreement in the event where the owner desired to transfer the Hotel or lease all or part of the Hotel to any other person, firm or corporation, the same shall be first offered to Operator or any of its nominee or affiliates."

On the basis of the said agreement the assessee has received a sum of Rs. 29,47,500 from the Receiver after the sale of the hotel. The question which was considered by the Income Tax Authorities was whether the receipt of the said amount is capital receipt or revenue, receipt. The

Income-Tax Officer arrived at a conclusion that it was a revenue receipt, Commissioner of Income Tax (Appeals) held that it was a capital receipt, the Tribunal confirmed the said finding, on reference to the High Court, the High Court arrived at a conclusion that it was a revenue receipt assessable to income-tax as business income for the Assessment Year 1979-80. Hence, this appeal by special leave by the assessee.

The question whether the receipt is capital or revenue is to be determined by drawing the conclusion of law ultimately from the facts of the particular case and it is not possible to lay down any single test as infallible or any single criterion as decisive. This Court in the case of Karam Chand Thapar & Bros. P. Ltd. v. Commissioner of Income Tax (Central, Calcutta, 80 ITR f 67 discussed and held that in commissioner of Income Tax. v. Chari and Chan Ltd., 57 ITR 400, it was held that ordinarily compensation for loss of an office or agency is regarded as capital receipt, but this rule is subject to an exception that payment received even for termination of agency agreement would be revenue and not capital in the case where the agency was one of many which the assessee held and its termination did not impair the profit making structure of the assessee, but was within the framework of the business, it being a necessary incident of the business that existing agencies may be terminated and fresh agencies may be taken. Thereafter the Court held that it was difficult to lay down a preeise principle of universal application but various workable rules have been evolved for guidance.

Applying the aforesaid test laid down by this Court in the present case, in our view the Tribunal was right in arriving at a conclusion that it was a capital receipt. Reason is that as provided in Article XVIII of the First Agreement assessee was having an option or right or lien, if owner desired to transfer the hotel or lease or part of the hotel to any other person, the same was required to be offered first to the assessee (operator) or its nominee. This right to exercise its option was given up by a Sup-plementary Agreement which was executed in September, l975 between the Receiver and assessee. It was agreed that Receiver would be at liberty lo sell or otherwise dispose of the said property at such price and on such terms as he may deem fit and was not under any obligation requiring the purchaser thereof to enter into any agreement with the operator (assessee) for the purpose of operating and managing the hotel or otherwise and in its return, agreed consideration was as stated above in clause X. On the basis of the said agreement the assessee has received the amount in question. The amount was received because the assessee had given up its right to purchase and or to operate the property. Further it is loss of source of income to the assessee and that right is determined for consideration. Obviously therefore, it is a capital receipt and not a revenue receipt.

Learned counsel for the Revenue relied upon the decision in the case of Commissioner of Income Tax v. Rai Bahadur Jairam Valji and Others, 35 1TR 148 and submitted that assessee had the business of running the hotels in various countries and the amount which is received by him is for the termination of first contract which was executed in l970 and, therefore, it should be considered his revenue receipt. In that case the Court was dealing with a trading contract and held that compensation paid in respect of the rights arising under the trading contract would be a revenue receipt and must be referred to the profits which would be made in carrying out of contract. The Court has also observed :

"Whether a payment of compensation or termination of an agency is a capital or revenue receipt, it would have to be con-sidered whether the agency was in the nature of capital asset in the hands of the assessee, or whether it was only part of his stock-in-trade."

The aforesaid judgment was considered in the case of Kettlewell Bullen & Co. Ltd. v. Commissioner of Income Tux, Calcutta, (1964) 53 ITR 261, wherein the Court has held as under :

"Whether a particular receipt is capital or income from busi-ness, has frequently engaged the attention of the courts. It may be broadly stated that what is received for loss of capital is a capital receipt; what is received as profit in a trading transaction is taxable income. But the difficulty arises in ascertaining whether what is received in a given case is compensation for loss of a source of income, or profit in a trading transaction."

Alter considering various decisions it was further held as under :

"These cases illustrate the principle that compensation for injury to trading operations, arising from breach of contract or in consequence of exercise of sovereign rights, is revenue. These cases must, however, be distinguished from another class of cases where compensation is paid as a solatium for loss of office. Such com-pensation may be regarded as capital or revenue; it would be regarded as capital, if it is for loss of an asset of enduring value to the assessee, but not where payment is received in settlement of loss in a trading transaction."

After analysing number of cases, the Court observed that following satisfactory measure of consistency in the principle is disclosed :

"Where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancel-lation leave him free to carry on his trade (freed from the contract terminated) the receipt is revenue : Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt."

The aforesaid principle is relied upon in the case of Karam Chand Thapar and Bros's case (supra). Considering the aforesaid principles laid down as per Article XVIII of the Principal Agreement, the amount received by the assessee is for the consideration for giving up his right to purchase and or to operate the property or for getting it on lease before it is transferred or let out to other persons. It is not for settlement of rights under trading contract, but the injury is inflicted on the capital asset of the assessee and giving up the contractual right on the basis of Principal Agreement has resulted in loss of source of assessee's income.

In this view of the matter, the order passed by the High Court is set aside and the appeal is allowed. The question is answered in favour of the assessee and against the Revenue by holding that receipt

in the hands of the assessee was capital receipt.