Daga Containers (P.) Ltd. Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-22-2005

Reported in : (2006)6SOT666(Mum.)

Appellant : Daga Containers (P.) Ltd.

Respondent : ito

Judgement :

This appeal by the assessee is directed against the order of the Commissioner (Appeals) on a solitary ground that the loss incurred on breeding of horse not to be treated as loss incurred on running and maintenance of horse as per provisions of section 74A of the Income Tax Act, 1961.

During the course of hearing it was noticed that this appeal is time barred by 4 days. The assessee has moved an application for condonation of delay explaining the reasons for the delay in filing of the appeals.

Being convinced with the explanation for the delay in filing of the appeal, I condone the delay and admit the appeal for hearing.

The facts with regard to this issue on merit are that on going through the details filed by the assessee, the assessing officer noticed that the assessee has shown in its computation two P&L Accounts from two activities, ie., business of horse breeding and horse racing and shown loss in horse racing activity at Rs. 57,289 which is claimed to be carried forward under section 74A of Income Tax Act and shown net business loss from horse breeding and trading in electric goods at Rs. 5,58,701. On further scrutiny of the details it was noticed by the assessing officer that the assessee has claimed expenses of Rs. 11,35,930 relating to horse breeding and maintenance as separate business and loss related to such activity according to the assessee is a normal business loss and is not covered by section 74A of the Income Tax Act. The assessing officer rejected this claim of the assessee and held that horse breeding activity is directly connected with the horse racing activities and accordingly recomputed horse racing loss at Rs. 8,48,404 and allowed to carry forward under section 74A of the Act and also recomputed business income from electrical goods of Rs. 2,79,690.

Asscssee carried the matter before the Commissioner (Appeals) with the contentions that there are two activities, one is breeding of horses and another of racing horses. In the category of breeding horses, breeding activities take place at various stud farms. The type of horses kept at stud farms are basically new baby horses. These horses are too young to take part in racing. Whether a particular horse after grown up will take part in racing or not will depend on the person who will buy these horses. Stud farm activities is mainly restricted to maintenance of such babies and production of new babies. Other type of horses kept at stud farms are Broodmares and Stallions. These horses are those whose racing life is over. They cannot be regarded as racing horses. The nature of expenses incurred at stud farms are maintenance of these horses and revenue is by way of sale of horses.

The racing horses defined in section 74A of the Income Tax Act, are those horses which are used for running in horse races. The racing horses are kept under the supervision and control of registered trainers at race course. These trainers are responsible for training of these horses so that they can take part in racing. Generally these horses are not kept at stud farm as these horses required specialized training which is not possible at stud farms. The nature of expenses incurred on these horses are mainly maintenance expenses paid to trainers, entry fees at various racing centres, etc. The nature of income earned from these horses are price money received from the racing Centre, known as stake money. The assessee, therefore, contended before the Commissioner (Appeals) that both the activities are different activities and loss suffered in one activity cannot be mixed up with loss of or profit of another activity.

The Commissioner (Appeals) re-examined the issue in the light of judgment of the Calcutta High Court on this issue in the case of CIT v.Mrs. Sunita Kumar (1994) 208 ITR 807 (Cal) and confirmed the order of the assessing officer. The relevant observation of the Commissioner (Appeals) are extracted hereunder : "23 I have carefully considered the submissions of the appellant, order of the assessing officer and other material on record.

Appellant's horse breeding activity carried out at stud farms is essentially to give training to new baby horses for race purpose. The appellant sells some of such trained race horses and some horses are used in horse racing activity. Appellant is preparing only one profit & loss account, obviously because the horse breeding and horse racing activities are intrinsically connected and cannot be separated the appellant itself has used some horses which are trained and used in horse racing and earned stake money, ie., price money received from racing centre. Thus in my opinion assessing officer is justified in treating activity of horse breeding and horse racing as one activity connected with horse racing and rightly recomputed horse racing business loss of Rs. 8,48,404 which is allowed to be carried forward under section 74A of the Income Tax Act. Reliance is also placed on the decision CIT v. Mrs. Sunita Kumar (1994) 208 ITR 807 (Cal.). As a result, I decline to interfere in assessing officer's finding in this regard." Now the assessee has preferred an appeal before the Tribunal and reiterated its contentions. The learned departmental representative, on the other hand, has submitted that since there is sole judgment on the issue of the Calcutta High Court, the Tribunal is supposed to follow the same.

I have carefully examined the order of lower authorities and the judgment of the Calcutta High Court in the case of Mrs. Sunita Kumar (supra) in the light of rival submissions and find that the facts involved in the case of Mrs. Sunita Kumar (supra) are that the assessee was an individual drawing income from salary, dividend, interest on debentures, bank interest, insurance commission and horse racing.

During the year under consideration assessee earned profit of Rs. 99,328 on sale of race horses. The assessee was engaged in owning and maintenance as well as breeding race horses. The assessee earned some income from winning at races. The winnings were set off by the assessing officer himself against the loss in horse racing brought forward from earlier years. However, the assessing officer declined to set off the profit of Rs. 99,328 earned by the assessee on sale of race horses against the loss from activities relating to horse racing as determined in the earlier years. The assessing officer has held that the profit earned on the sale of race horses could be set off only against the losses suffered on the sale of horses. According to the assessing officer winning from races otherwise constituted a distinctly separate source of income other than the income earned on the sale of race horses and section 74A(3) did not permit such set off against the losses of earlier years. The assessing officer disallowed the claim of the assessee to set off the current years profit of Rs. 99,328 earned on the sale of race horses against the determined loss of earlier years from the horses. The matter travelled up to the Hon'ble High Court of Calcutta and their Lordships have categorically examined that the provisions of section 74A in the light of legislative intent and the Board's circular and also other provisions of law and finally arrived at a conclusion that section 74A(3) makes special provision for an assessee being the owner of horses meaning thereby race horses if the net result of computation in respect of source specified in clause (c) of sub-section (2), i.e., races including horse races is a loss, then so much of the amount of such loss as does not exceed the amount of loss incurred by the assessee in the activity of owning and maintaining race horses shall be carried forward to the following assessment year and it shall be set off against the income, if any, from the source specified in clause (c) of sub-section (2) assessable for that assessment year, provided that the activity of owning and maintaining race horses is carried on by him in the previous year relevant to that assessment year. The relevant observations of their Lordships are extracted hereunder, for the sake of reference : "6. The Finance Act, 1972, in the first instance, inserted a new item of the enumeration of income in section 2(24) by inserting clause (ix) therein. It has made any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature what soever includible as income.

So, from the assessment year 1972-73, it cannot be said that the winnings from lotteries, etc., are income of a casual and non-recurring nature exempt from tax.

While bringing such income to tax, a provision for the carry forward and set off of losses from such sources has also been made by the Finance Act, 1972, by inserting a new section 74A with effect from 1-4-1972. Section 74A, as it stood at the material time, is set out below : '74A. Losses from certain specified sources falling under the head "Income from other sources".

(1) Where the net result of the computation made for any assessment year in respect of any source falling under the head 'Income from other sources and being a source specified in sub-section (2), is a loss, such loss shall not be set off against income, if any, from any other source under that head or against income under any other head..

(f) gambling or betting of any form or nature whatsoever not falling under any of the foregoing clauses.

(3) In the case of an assessee, being the owner of horses maintained by him for running in horse races (such horses being hereafter in this sub-section referred to as race horses), the amount of loss incurred by the assessee in the activity of owning and maintaining race horses in any assessment year shall not be set off against income, if any, from any source other than the activity of owning and maintaining race horses in that year and shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and (a) it shall be set off against the income, if any, from the activity of owning and maintaining race horses, assessable for that assessment year: that the activity of owning and maintaining race horses is carried on by him in the previous year relevant for that assessment year; and (b) If the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on; so, however, that no portion of the loss shall be carried forward for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.' The Central Board of Direct Taxes in Circular No. 138, dated 17-6-1974, explained the scope of the said section in the following terms : '34. Carry forward and set off of losses from horse races - Under section 74A,

losses from lotteries, crossword puzzles', races, card games, etc., are allowed to be set off only against income from the same source. Losses relating to these sources incurred in on year are also not allowed to be carried forward to be set off against income of a subsequent year. For this purpose, each of the following is regarded as a separate and distinct source: (f) gambling or betting of any form or nature not falling under any of the foregoing items.

In view of this provision, loss incurred by an owner of race horses in the activity of owning and maintaining such horses is not allowed to be set off in the year in which it is incurred against any source of income except his winnings from races nor is it allowed to be carried forward to be set off against income from any source in any subsequent year.

The Finance Act, 1974, has amended section 74A so as to provide that the losses incurred by owners of race horses in the activity of owning and maintaining such horses, to the extent these cannot be set off against other income from the source 'races, including horse races', will be carried forward and set off against income from the aforesaid source in subsequent years up to a period four assessment years following the assessment year for which the loss is first computed. In a case where the taxpayer has no income by way of stake money in the relevant year, the whole of the revenue expenditure laid out or expended by him wholly and exclusively for the purposes of maintaining race horses will be regarded as the loss incurred by him in the activity of owning and maintaining such horses. Where the assessee has income by way of stake money in the relevant year, the amount of loss incurred by him the activity of owning and maintaining race horses will be the amount by which the stake money falls short of the revenue expenditure laid out or expended by him wholly and exclusively for the purposes of maintaining such horses. The loss incurred by the taxpayer in the activity of owning and maintaining race horses will be set off against his winnings, if any, from races, in the same previous year and the balance if any, will be carried forward to be set off against income from the same source in subsequent years. It should be noted that no deduction will be made in respect of the actual cost of the race horses norwill any depreciation be allowed in respect of such horses, Further, the loss computed for any previous year will be allowed to be set off in a subsequent year not only against the stake money received in the relevant subsequent year but also against other winnings, if any, from races. The set off will, however, be allowed only if the taxpayer carried on the activity of owning and maintaining race horses in the previous year relevant to the subsequent assessment year.

For the purpose of section 74A(3), a race horse would mean horse maintained for running in races upon which wagering or betting may be lawfully made and income by way of stake money would mean the gross amount of prize money received on a race horse or race horses by the owner on account of the horse or horses or any one or more of the horses winning or being placed second or in a lower position in a horse race.' Owning and maintaining horse races as such is not included in the enumeration of the sources, namely, clauses (a) to (f) of sub-section (1). But sub-section (3) provides that the losses incurred by the owners of race horses in the activity of owning and maintaining such horses to the extent this cannot be set off against other income from the source, 'races, including horse races' appearing in clause (c) of section 74A will be carried forward and set off against income from the aforesaid source in the subsequent years. But such carry forward shall not go beyond four years following the assessment years for which the loss is first computed. Now, the owner of the race horses may as well have income by way of stake money where he has income by way of stake income and at the same time if he suffers loss from the activity of owning and maintaining race horses, the loss will be allowed to be set off against income by way of stake money and the balance not so absorbed will be carried forward and can be set off against similar income from the activity of owning and maintaining race horses as well as income by way of stake money on horse races mentioned in clause (c) of section 74A(2).

This reading of the provisions of section 74A(2)(c) read with section 74A(3) is the correct reading of the law.

Section 56(2)(ib) provides that all winnings covered by section 2(24) shall be assessed as 'Income from other sources'. Therefore, in nocase can such winnings be assessed under section 28 even where the gambling activity amounts to a business. If instead of winnings there is a loss in such activities, section 74A prohibits the set off of such loss against income from any other source.

Accordingly, income from races including horse races is chargeable under the head 'Income from other sources'. The income arising from winnings by or stake money or from maintenance of race horses both fall under the head 'Income from other sources'.

We hold that section 74A(3) makes special provision for an assessee, being the owner of horses, meaning thereby race horses. If the net result of the computation in respect of the source specified in clause (c) of subsection (2), i.e., races including horse races is a loss, then, so much of the amount of such loss as does not exceed the amount of loss incurred by the assessee in the activity of owning and maintaining race horses shall be carried forward to the following assessment year and it shall be set off against the income, if any, from the source specified in clause (c) of subsection (2) assessable for that assessment year, provided that the activity of owning and maintaining race horses is carried on by him in the previous year relevant to that assessment year." During the course of hearing these facts were confronted to the learned counsel for the assessee that the impugned issue is squarely covered by the aforesaid judgment of the Hon'ble Calcutta High Court against the assessee. But the learned counsel for the assessee could not produce any contrary judgment of any other High Court. I, therefore, following the judgment of the Calcutta High Court cited supra decide the issue against the assessee and confirm the order of the Commissioner (Appeals).