Commissioner of Excess Profits Tax, West Bengal

Vs

Adair Dutt and Company Ltd.

Income-tax Reference No. 49 of 1950

(CJI M. C. Mahajan, T. L. Venkatarama Ayyar, Ghulam Hasan, S. R. Dass, N. H. Bhagwati JJ)

29.10.1954

JUDGMENT

BHAGWATI, J. -

The respondent, the assessee, is a limited company and has its head office in London. It has three branchesin India. The control and management of its businessduring the five chargeable accounting periods (commencing from the 1st September, 1939, and ending on the 31st March, 1944) were in London but as its Indian profits exceeded the London profits it was treated as a resident company under Section 4-A (c), sub-clause (b), of the Income-tax Act.

The assessee had chosen as its standard period the previous years for the assessment years 1936-37 and 1938-39 under Section 6(2) (b) of the Excess Profits Tax Act. Itsprofits for these years as determined in the respective income-tax assessments were as follows :-

Previous year for 1936-37 assessment year -

(a) Indian profits - Rs. 10,525 (b) London profits - Rs. 66,386 Previous year for 1938-39 assessment year -

(c) Indian profits - Rs. 79,611 (d) London profits - Rs. 20,813

The Excess Profits Tax Officer treated the assessee as non-resident in the assessment year 1936-37 as its foreign profits were more than the Indian profits and determined the standard profits for that year at Rs. 10,525 ignoring the foreign profits Rs. 66,386 altogether. The standard profits according to him were the aggregate of (a), (c) and (d) (Rs. 10,525, Rs. 79,611 and Rs. 20,813) and he made his order accordingly.

The Appellate Assistant Commissioner confirmed the orders of the Excess Profits Tax Officer and a further appeal was taken by the assesseeto the Income-tax Appellate Tribunal.The Tribunal held that the profits for the chargeable accounting period as well as the standard period had to be computed under Rule 1 of Schedule I to the Excess Profits Tax Act on the principles on which the profits of a business are computed for the purposes of income-tax under Section 10 of the Income-tax Act and that the business profits of the assessee had to be determined first and the question whether the assessee was a resident or a non-resident under Section 4A of the Act could only be considered at a later stage when assessable income was being determined. The appeal was accordingly allowed and the Excess Profits Tax Officer was directed to revise his calculations on the basis indicated in the order.

At theinstance of the appellant, the Commissioner of Excess Profits Tax, West Bengal, the Tribunal referred the following question to the High Court under Section 21 of the Excess Profits Tax act read with Section 66(1) of the Income-tax Act :-

> "Whether in computing the profits for the standard period under Schedule I of the Excess Profits Tax Act, the London profits(Rs. 66,386) for 1936-37 income-tax assessment were rightly included by the Tribunal."

The High Court answered the question in the affirmative and the appellant obtained from the High Court the necessary certificate under Section66A (2) of the Income-tax Act that this was a fit case for appeal to this Court.

The sole question for our determination in this appeal is whether the Excess Profits Tax Officer was justified in splitting up the standard period as he did in order to arrive at the standard profits of the assessee and further whether the business profits of the assessee had to be determined first under Section 10 of the Income-tax Act and the question whether the assessee was a resident or non-resident under Section 4A of the Act was to be considered after the determination of those profits.

Section 6 of the Excess Profits Tax Act prescribed how the standard profits of a business have to be computed. It provides, so far as is material for our purposes :-

> "(1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount baring to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period. * * *
>
> (2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be.....
>
> (b) The'previous year' as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939. .....
>
> Provided that in no case shall any period of less than nine months be taken as a standard period."

It is clear that whatever be the standard period chosen by the assessee it is a unit by itself and the profits of the business during the standard period must be computed as a whole.The total profits thus computed would then be divided by two, if the standard period was one of two years and the resultant profits would then be compared withthe profits of the chargeable accounting period. There is nothing in the section to warrant the splitting up of the standard period, determining the business profits of each year separately and considering whether the assessee was a resident or non-resident for the particular assessment year.

The profits of the assessee, Indian as well as foreign, were determined in the respective income-tax assessments as stated above and for the purposes of excess profits tax all the profits earned by the assessee during the standard period had to be added together. The Excess Profits Tax Officer should therefore have added together (a), (b), (c) and (d) above and not only (a), (c) and (d) as he did.

The Excess Profits Tax Office however considered the profits of assessment year 1936-37 separately

and on a consideration of the Indian and foreign profits comprised in that assessment he determined that the assessee was a non-residentin that year and therefore those foreign profits were not to be considered at all while arriving at the figure of standard profits.

We are of the opinion that the Excess Profits Tax Officer was in error when he excluded the foreign profits for the assessment year 1936-37 from computation. Rule 1 of Schedule I to the Excess Profits Tax Act provides that business profitsduring the standard period are to be computed on the principles on which business profits are computed for purposes of income-tax under Section 10 of the Income-tax Act. Business profits under Section 10 may comprise Indianas well as foreign profits. All these profitswould come within the computation of business profitsand they would be determined as such in the income-tax assessment for the particular assessment year. The question whether Indian or foreign profits are greater would become relevant for determining the status of the assessee, whether he is a resident or non-resident, and would be considered later when the assessable income came to be determined.

It is only after the business profits are determined under Section 10 that the question can be considered whether the assessee is a resident or non-resident and that question cancertainly not be determined unless and until the Indian and foreign profits of the assess have been in the first instance determinedunder Section 10. The determination of business profits under Section 10 would therefore be the first step to be taken before Section 4A could beapplied. The same procedure would have to be followed while determining the business profits for the purpose ofthe excess profits tax also and Section 4A could not be considered till after the business profits had been determined underSection 10 in the first instance. Both Indian and foreign profits would have to be determined for the purpose of this computation and they would be the business profits to be taken into account while computing standard profits without excluding any of them by applying Section 4A.

The decision of the Excess Profits Tax Officer was therefore wrong and the Tribunal and the High Court were right in the view they took. The appeal will accordingly stand dismissed with costs.

Appeal dismissed.

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