

Commissioner of Income-Tax

Vs

Patiala Cement Co. Ltd.

Civil Appeal No. 118 of 1955

(S. K. Das, N. H. Bhagwati, J. L. Kapur JJ)

17.05.1957

JUDGMENT

KAPUR, J. -

This is an appeal under certificate of the Pepsu High Court and the question for decision relates to the applicability of the Indian Income-tax Act, 1922, to the erstwhile Pepsu area in the years of assessment 1948-49 and 1949-50.

The assessee company, (the respondent before us), was incorporated in the Patiala State and had its registered office at Surajpur in Pepsu. For the year of assessment 1948-49 the company failed to deduct from out of the remuneration paid to its managing agents, who were non-residents, the income-tax and the super-tax, which it, under the law, was required to do. It also paid to its auditors auditing fees and from out of this sum also it did not deduct the income-tax and super-tax under the provisions of the Patiala Income-tax Act. The two sums in dispute were Rs. 59,787-1-0 and Rs. 581-4-0 respectively. For the assessment year 1949-50 also the assessee company failed to make the deduction from the remuneration paid to its managing agents and the income-tax deductible was Rs. 52,484-14-0 and super-tax Rs. 21,611-6-0. The Income-tax Officer took action against the assessee company under sections 18(3a) and 18(7) of the Patiala Income-tax Act and consequently issued two demand notices for the amount above mentioned. Against this order of the Income-tax Officer the assessee company took an appeal to the Appellate Assistant Commissioner who reduced the amount demanded but did not decide the question whether the assessee company was bound to make the deductions or not. The assessee company then appealed to the Income-tax Appellate Tribunal and it held that under section 18(7) of the Patiala Income-tax Act no order was required to be passed by the Income-tax Officer and that no appeal lay to the Appellate Assistant Commissioner against the order under section 18(3a) as there was no provision for it under the Patiala Income-tax Act. Before the Tribunal it was contended that at the time when the appeals were decided by the Appellate Assistant Commissioner, the Patiala Income-tax Act had ceased to be in force and therefore the appeals were sustainable under the provisions of the Indian Income-tax Act which had been extended to all Part B States by section 13 of the Indian Finance Act of 1950 (XXV of 1950) but this contention was repelled and the Tribunal held that the only remedy for the assessee company was to take a revision under section 33 of the Patiala Income-tax Act to the Commissioner. The Tribunal at the request of the assessee company referred the following three questions for the opinion of the High Court :

"(1) Whether the appeals before the Appellate Assistant Commissioner fell to be

decided in accordance with the provisions of the Patiala Income-tax Act or the Indian Income-tax Act ?

(2) Whether the appeals before the Appellate Tribunal fell to be decided in accordance with the provisions of the Patiala Income-tax Act or the Indian Income-tax Act ?

(3) Whether, on the assumption that the assessee company was not bound to deduct tax, its appeals before the Appellate Assistant Commissioner were competent in law ?"

The High Court decided that in regard to the assessment year 1948-49, the law applicable was the Patiala Income-tax Act and therefore no appeal lay to the Appellate Assistant Commissioner but in regard to the assessment year 1949-50 the Indian law became applicable and therefore the order of the Income-tax Officer was appealable. The Revenue have come up in appeal under a certificate of the High Court and the submission is that to the assessment year 1949-50 also the Patiala Income-tax Act applied and not the Indian Income-tax Act and therefore the order of the Income-tax Officer was not appealable.

In order to resolve the controversy, reference may be made to certain provisions of the Indian Income-tax Act, 1922, and the Finance Act of 1950. Section 13 of the Finance Act provide :

"If immediately before the 1st day of April, 1950, there is in force in any part B State other than Jammu and Kashmir or Manipur, Tripura or Vindhya Pradesh or in the merged territory Of Cooch-Bihar any law relating to income-tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922 (XI of 1922) for the year ending on 31st day of March, 1951, or for any subsequent year, or, as the case may be, the levy, assessment and collection of the tax on profits of business for any chargeable accounting period ending on or before the 31st day of March, 1949."

Section 13 of the Finance Act of 1950 shows that the Indian Income-tax Act became applicable to the assessee's residing in any Part B state as from the assessment year 1950-51 or the accounting year 1949-50.

The provisions of section 2(14A) of the Indian Income-tax Act, 1922, show that the Act became applicable to Part B States as from the 1st April, 1950. The relevant provisions of this section are :

"Section 2(14A). 'Taxable territories' means -

(d) as respects any period after the 31st day of March, 1950, and before the 13th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union :

Provided that the 'taxable territories' shall be deemed to include -

(b) the whole of the territory of India excluding the State of Jammu and Kashmir -

(ii) as respects any period after the 31st day of March, 1950, for any of the purposes

of this Act, and

(iii) as respect any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year."

It will be noticed that the language used in section 2(14A) proviso (b)(iii), is the same as the language under section 13 of the Finance Act of 1950. The effect of the Finance Act of 1950 is that as regards assessment for the year ending 31st March, 1951, the Indian Income-tax Act would be applicable - accounting year being the year ending 31st March, 1950, and for any assessment year previous to that the Patiala Income-tax Act would be applicable. The effect of section 2(14A) proviso (b)(ii) and (iii) is the taxable territories would comprise the whole of India excluding the State of Jammu and Kashmir as respect any period included in the previous year for the purposes of making an assessment for the year ending 31st March, 1951, i.e., for the assessment year 1950-51 or the accounting year 1949-50.

The application of the Indian Income-tax Act as a result of section 13 of the Finance Act of 1950 was decided in *Union of India v. Madan Gopal Kabra* which was a case from Rajasthan where there was no income-tax in the previous year but the assessee was sought to be assessed for the year 1950-51 under the Indian Income-tax Act. It was held that under sub-clause (i) of clause (b) of the proviso to section 2(14A) the whole of the territory of India including Rajasthan would be deemed "taxable territory" for the purpose of section 4A of the Indian Income-tax Act "as respect any period" meaning any period before or after 31st March, 1950, and the assessee was therefore liable to income-tax. Patanjali Sastri, C.J., who delivered the judgment of the Court said :

"A close reading of that provision will show that it saves the operations of the State law only in respect of 1948-49 or any earlier period which is the period not included in the previous year (1949-50) for the purpose of assessment for the year 1950-51. In other words, there remained no State law Income-tax in operations, in any Part B State in the year 1949-50."

This passage from the judgment supports the contention of the appellant that as regards income of the accounting year 1949-50 or the year of assessment 1950-51 no State law of income-tax was operative in any Part B State. It appears that the error which has crept into the judgment of the High court has been due to misreading the year 1949-50 as being assessment year and not accounting year. In another case *Madhavakrishnaiah v. Income-tax Officer* section 13 of the Finance Act of 1950 was similarly interpreted. Therefore, both for the assessment years 1948-49 and 1949-50 the law applicable would be the Patiala income-tax law and not the Indian Income-tax Act and consequently no appeal against to the questions would be as follow :

Questions Nos. 1 & : The Patiala Income-tax Act was in operation and no appeals lay.

Question No. : In the negative.

The appeal is, therefore, allowed but as the respondent company has not appeared and contested the appeal, there will be no order as to costs in this Court.

Appeal allowed.

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