Dhandhania Kedia & Co

Vs

Commissioner Of Income-Tax

Civil Appeal No. 433 of 1957

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

17.10.1958

JUDGMENT

VENKATARAMA AIYAR, J. -

This is an appeal against the judgment of the High Court of Rajasthan in a reference under section 66 (1) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act.

The facts, so far as they are material, are these : The appellant is a resident of what was once the independent State of Udaipur. There was in that State a company called the Mewar Industries Ltd., registered under the provisions of the law in force in that State, and the appellant held 266 shares in that company. On January 18, 1950, the company went into liquidation, and on April 22, 1950, the liquidator distributed a portion of the assets among the shareholders, and the appellant was paid a sum of Rs. 26,000 under this distribution. It is common ground that this sum represents the undistributed profits of the company which had accrued during the six accounting years preceding the liquidation. It should be mentioned that there was in the State of Udaipur no law imposing tax on income, and that it was only under the Indian Finance Act, 1950, that the residents of the State of Rajasthan, in which the State of Udaipur had merged, became liable for the first time to pay tax on their income. That Act came into force on April 1, 1950. We are concerned in these proceedings with the assessment of tax for the year 1951-52, and that, under section 3 of the Act, has to be on the income of the previous year, i.e., 1950-51. Now, the dispute in the present case relates to the sum of Rs. 26,000 paid by the liquidator to the appellant on April 22, 1950. By his order dated July 3, 1952, the Income-tax Officer held that this was dividend as defined in section 2 (6A) (c) of the Act, and included it in the taxable income of the appellant in the year of account. The appellant took this order in appeal the Appellant Assistance Commissioner who by his order dated January 12, 1953, confirmed the assessment. There was a further appeal by the appellant to the Appellant Tribunal, who also dismissed it on November 10, 1953. On the application of the appellant, the Appellate Tribunal referred the following question for the decision of the High Court :

> "Whether, on the facts and in the circumstances of this case, the aforesaid sum of Rs. 26,000 was liable to be taxed in the assessee's hands as dividend within the meaning of that term in section 2 (6A) (c) of the Indian Income-tax Act ?"

The reference was heard by Wanchoo, C.J., and Modi, J., who by their judgment dated August 24, 1956, answered it in the affirmative. It is against this judgment that the present appeal has been preferred on a certificate granted by the High Court under section 66A (2) of the Act.

The sole point for determination in this appeal is whether the sum of Rs. 26,000 received by the

appellant on April 22, 1950, is dividend as defined in section 2 (6A) (c) of the Act. That definition, as it stood on the relevant date and omitting what is not material, was in these terms :

> "(6A) 'dividend' includes -
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> (a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;
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> (c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :
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> Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included."

The definition of "previous year" as given in section 2 (11), omitting what is not material, is as follows :

> "'Previous year' means in respect of any separate source of income, profits and gains -
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> (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made..."

On these provisions, the contention of the appellant is that under the definition in section 2 (6A) (c) the assets of a company distributed after it has gone into liquidation will be dividend only if they represented the profits thereof accumulated during the six previous years preceding the date of the liquidation, and that, in the present case, though the amounts distributed came out of the accumulated profits of the company, those profits had not been accumulated within the six previous years of the liquidation of the company. It is not in dispute that the profits which were distributed had been accumulated during the years 1943-44 to 1948-49, i.e., during the six years preceding the liquidation. The point in controversy is whether those years can be said to be "previous years" within section 2 (6A) (c) of the Act. The appellant contends that "previous year" as defined in section 2 (11) of the Act means the year which is previous to the assessment year, that accordingly when there is no year of assessment, there can be no previous year, that construing the words "six previous years" in section 2 (6A) (c) in the light of the definition of "previous year" in section 2 (11) of the Act, the years 1943-44 to 1948-49 cannot be held to be previous years, because the Indian Income-tax Act came into force in the State of Rajasthan only on April 1, 1950, and prior to that date there was at no time any law imposing tax on income in the State of Udaipur, that there was, therefore, no year of assessment, and that, in consequence, the sum of Rs. 26,000 received by the appellant on April 22, 1950, is not a dividend as defined in section 2 (6A) (c). The contention of the respondent which has been accepted by the Income-tax authorities and by the learned Judges in the court below is that the expression "six previous years" is used in section 2 (6A) (c) not in the technical and restricted sense in which the words "previous year" are used in section 2 (11) of the Act, and that, in the context, it means six consecutive accounting years preceding the liquidation of the company. The question on which of these two interpretations is the right one to be put on the language of section 2 (6A) (c).

The argument of Mr. Sharma for the appellant is that section 2 (11) having defined the meaning

which the expression "previous year" has to bear in the Act, that meaning should, according to the well-settled rules of construction, be given to those words wherever they might occur in the statute, and that that is the meaning which must be given to the words "six previous years" in section 2 (6A) (c). It is to be noticed that the definitions given in section 2 of the Act are, as provided therein, to govern "unless there is anything repugnant in the subject or context". Now, the appellant contends that the words "unless there is anything repugnant" are much more emphatic than words such as "unless the subject or context otherwise requires", and that before the definition in the interpretation clause is rejected as repugnant to the subject or context, it must be clearly shown that if that is adopted, it will lead to absurd or anomalous results. And our attention was invited to authorities in which the above rules of construction have been laid down. It is necessary to refer to these decisions as the rules themselves are established beyond all controversy, and the point to be decided ultimately is whether the application of the definition in section 2 (11) is repelled in the context of section 2 (6A) (c).

Turning to the language of section 2 (11), we have this that according to the definition contained therein, "previous year" is the year which is previous to the year of assessment, and that means that there can be only one previous year to a given year of assessment. When section 2 (6A) (c) speaks of six previous years, it is obvious that it uses the expression "previous year" in a sense different from that which is given to it in section 2 (11), because it would be a contradiction in terms to speak of six previous years in relation to any specified assessment year. It was argued that under section 13 (2) of the General Clauses Act, 1897, words in the singular should be read as including the plural, and that, therefore, the definition of "previous year" in section 2 (11) could be read as meaning "previous years". But section 13 only enacts a rule of construction which is to apply "unless there is anything repugnant in the subject or context", and to read a "previous year" as "previous years" in section 2 (11) would be to nullify the very definition of a "previous year" enacted therein, and such a construction must therefore be rejected as repugnant to the context. It was then suggested that all the six previous year might be regarded as previous each to the next following year if that was itself a year of assessment, and that such a construction would, consistently with the contention of the appellant, give full effect to the definition in section 2 (11) of the Act. But this argument overlooks that while there may be several preceding years to a given year of assessment there can be only one previous year in relation to it, and that it would make no sense to speak of six previous years with reference to a year of assessment. We are satisfied that it would be repugnant to the definition of "dividend" in section 2 (6A) (c) to import into the words "six previous years" the definition of "previous year" in section 2 (11) of the Act.

An examination of the policy underlying section 2 (6A) (c) also leads to the same conclusion. When a company makes profits and instead of distributing them as dividend accumulates them from year to year and at a later date distributes them to the shareholders, the amounts so distributed would be dividend under section 2 (6A) (a), but when a company which has so accumulated the profits goes into liquidation before declaring a dividend and the liquidator distributes those profits to the shareholders, it was held in Commissioners of Inland Revenue v. Burrell that such distribution was not a dividend because when once liquidation intervenes, there was no question of distribution of dividends, and all the assets of the company remaining after the discharge of its obligations were surplus divisible among the shareholders as capital. It was to remove this anomaly that the Indian Legislature, following similar legislation by British Parliament in the year 1927, enacted section 2 (6A) (c) in 1939. The effect of this provision is to assimilate the distribution of accumulated profits by a liquidator to a similar distribution by a company which is wording; but subject to this limitation that while in the latter the profits distributed will be dividend whenever they might have been accumulated, in the former such profits would be dividend only in so far as they came out of

profits accumulated within six years prior to liquidation. Now, the reason of it requires that those years must be a cycle of six years preceding the liquidation, and that is what is meant by the words "previous years". It was argued for the appellant that if that was what was intended by the Legislature, that was sufficiently expressed by the words "preceding the liquidation", and that the words "previous years" would be redundant. But the words "preceding years" would have meant calendar years, whereas the accounting years of the company for ascertainment of profits and loss might be different from the calendar years, and the words "previous year" would be more appropriate to connote the financial year of a company. Now, it should be mentioned that when a company in liquidation distributes its current profits, that would also be not dividend as held in Burrell's case, and the law to that extent has been left untouched by section 2 (6A) (c). And it has accordingly been held by the High Courts that the current profits of a company in liquidation which are distributed to the shareholders are not dividend within section 2 (6A) (c), vide Appavu Chettiar v. Commissioner on Income-tax and Girdhardas & Co. Ltd. v. Commissioner of Income-tax. Therefore, accumulated profits which are sought to be caught in section 2 (6A) (c) would be the profits accumulated in the financial years preceding the year in which the liquidation takes place, and it is this that sought to be expressed by the words "previous years" in section 2 (6A) (c). In the present case, as the company went into liquidation on January 18, 1950, excluding the current year which commenced on April 1, 1949, the six previous years will be the years 1943-44 to 1948-49.

So far, we have considered the question on the language of section 2 (6A) (c) and the policy underlying it. On behalf of the respondent, certain authorities were cited as supporting his contention that the expression "previous years" in section 2 (6A) (c) is not to be interpreted in the sense in which the expression "previous year" is defined in section 2 (11) of the Act. It is sufficient to refer to one of them, and that is the decision of this court in Commissioner of Income-tax v. K. Srinivasan and K. Gopalan. There, the point for decision was as to the interpretation to be put on the words "end of the previous year" in section 25, sub-section (3) and (4), of the Act which dealt with discontinuance of or succession to a business, and it was held that the expression "previous year" in those provisions meant an accounting year expiring immediately preceding the date of discontinuance or succession. The decision is not itself relevant to the present discussion but certain observations therein are relied on as bearing on the point now under consideration. Mahajan, J., delivering the judgment of the court, observed :

> "The expression 'previous year' substantially means an accounting year comprised of a full period of twelve months and usually corresponding to a financial year preceding the financial year of assessment. It also means an accounting year comprised of a full period of twelve months adopted by the assessee for maintaining his accounts but different from the financial year and preceding a financial year. For purposes of the charging sections of the Act unless otherwise provided for it is co-related to a year of assessment immediately following it, but it is not necessarily wedded to an assessment year in all cases and it cannot be said that the expression 'previous year' has no meaning unless it is used in relation to a financial year. In a certain context it may well mean a completed accounting year immediately preceding the happening of a contingency."

The learned Judges in the court below have relied on these observations, and quite rightly, as supporting their conclusion that the expression "six previous years" in section 2 (6A) (c) means only the six accounting years of a company preceding the date of liquidation.

The appellant sought to raise one other contention, and that is that the Indian Companies Act came

into operation in the Udaipur territory on April 1, 1951, only be force of the Part B States Laws Act (III of 1951), that during the relevant period the Mewar Industries Ltd. was not a company as defined in section 2 (5A) of the Act, and that therefore the distribution of assets made by that company on April 22, 1950, could not be held to be a dividend as defined in section 2 (6A) (c). But that is not a question which was referred for the opinion of the High Court under section 66 (1) of the Act; nor is it even dealt with by the Tribunal and therefore cannot be said to arise out of its order. Moreover, whether the Mewar Industries Ltd. is a company as defined in the Indian Income-tax Act is itself a question over which the parties are in controversy. The definition of "company" under the Indian Income-tax Act has undergone several changes from time to time, and on the relevant date it stood as follows :

> "2. (6) 'company' means -
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> (i) any Indian company, or
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> (ii) any association, whether incorporated or not and whether Indian or non-Indian, which is or was assessable, or was assessed, as a company for the assessment for the year ending on the 31st day of March, 1948, or which is declared by general or special order of the Central Board of Revenue to be a company for the purposes of this Act."

It is contended for the respondent that the Mewar Industries Ltd. was an association which was assessable as a company for the year ending March 31, 1948, and that it was, in fact, assessed; but the appellant disputes this. As the point turns on disputed question of fact, it cannot be allowed to be raised at this stage.

In the result, we hold that the sum of Rs. 26,000 received by the appellant on April 22, 1950, was dividend as defined in section 2 (6A) (c) of the Act and is chargeable to tax.

The appeal fails, and is dismissed with costs.

Appeal dismissed.

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