Commissioner Of Income-Tax, West Bengal

Vs

Indian Molasses (Private) Ltd.

Civil Appeal No. 2555 of 1966

(B. P. Sinha, J. L. Kapur, M. Hidayatullah JJ)

05.05.1959

JUDGMENT

SHAH, J. -

1. The respondent Company appointed one Harvey its Managing Director. Under the terms of agreement, Harvey was to retire on attaining the age of 55 years. The Company arranged to provide a pension to Harvey on retirement, and executed a deed of trust on September 16, 1948, appointing three trustees to carry out that object. The respondent Company set apart in 1948 Rs. 1,09,643/- and in each of the six subsequent years Rs. 4,364/-, and delivered the various amounts to the trustees who were authorised to take out a deferred annuity policy to secure an annuity of pounds 720 per annum payable to Harvey for life from the date he attained the age of 55 years, and in the event of his death before that date an annuity of pound 611.12 annually to his widow.

2. In its return for the assessment year 1949-50 the Company claimed that in the computation of its taxable income Rs. 1,09,643/- paid in 1948 to the trustees under the deed of trust were allowable as an amount wholly and exclusively expended for the purpose of its business. In the subsequent years of assessment the Company claimed allowance of the annual payment of Rs. 4,364/-. The Income-tax Officer disallowed the claim. The Company disputed the decision and carried it to the Income-tax Appellate Tribunal. The Tribunal submitted a statement of case to the High Court of Calcutta on the question whether the payments constituted "expenditure within the meaning of that word in Section 10(2)(xv) of the Indian Income-tax Act, 1922, in respect of which a claim for deduction can be made subject to the other conditions mentioned in that clause being satisfied". The High Court answered the question in the negative. The view taken by the High Court was confirmed by this Court in appeal : Indian Molasses Co. (P) Ltd. v. Commissioner of Income-tax, West Bengal. (27 ITR 66 : (1959) Supp 2 SCR 964 : AIR 1959 SC 1049) This Court held that the expenditure deductible for income-tax purposes is one towards a liability actually existing at the time, but a sum of money set apart which may be deemed appropriated to a purpose for which it was intended on the happening of a future event was not expended within the meaning of Section 10(2) (xv) of the Act, until the event occurs, and since the Company had dominion through the trustees over the funds and there was a possibility of a trust resulting in its favour, by setting apart the funds no"expenditure" within the meaning of Section 10(2)(xv) of the Indian Income-tax Act, 1922, may be deemed incurred.

3. During the pendency of these proceedings the Company arranged to give an "enhanced pension" to Harvey and executed a supplementary deed of trust on October 29, 1954, and set apart an additional sum of Rs. 47,607/- to enable the trustees to take out an annuity policy in the names of the trustees in favour of Harvey and his wife to cover the "enhanced pension". The terms of the

original trust deed were made applicable to the supplementary deed.

4. Harvey died in May 1955 (before he was due to retire) and in the return of its taxable income for the assessment year 1956-57 the Company claimed that Rs. 1,83,434/- being the total amount paid by the Company to the trustees in terms of the original trust deed, dated September 16, 1948, and the supplementary deed, dated October 29, 1954, be allowed as a permissible expenditure in the computation of the Company's business profits in the previous year ending December 31, 1955. The Income-tax Officer disallowed the claim without assigning any reasons. In appeal the Appellate Assistant Commissioner confirmed the order observing that the amount paid long before the commencement of the previous year were not admissible under Section 10(2)(xv) of the Income-tax Act, 1922. The Income-tax Appellate Tribunal in appeal reversed the order and allowed the claim of the Company holding that the amount of Rs. 1,83,434/- was "effectively disbursed during the accounting year" and was on that account an admissible allowance in the computation of the Company's business profits.

5. At the instance of the Commissioner of Income-tax, the Tribunal submitted a statement of the case to the High Court of Calcutta on the following two questions :

> "(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 1,83,434/- was an expenditure effectively laid out or expended during the accounting year 1955 within the meaning of Section 10(2)(xv) of the Income-tax Act ?
>
> (2) If the answer to question No. (1) is in the affirmative, then whether the said expenditure of Rs. 1,83,434/- represented a revenue expenditure ?

The High Court of Calcutta recorded answers in the affirmative on both the questions. With certificate granted by the High Court under Section 66-A(2) of the Indian Income-tax Act, 1922, this appeal is preferred by the Commissioner of Income-tax.

6. Answer recorded by the High Court on the first question was, in our judgment, correct. This Court had in the earlier decision Indian Molasses Co. (Private) Ltd. v. The Commissioner of Income-tax (supra) held that the Company had not parted with control over the amounts set apart between the years 1948 and 1954 for securing the pension benefit to Harvey, and on that account no amount was appropriated to make it expenditure within the meaning of Section 10(2)(xv) of the Act. At the date when different sums of money were set apart there was no existing liability and the sums of money set apart to meet an obligations which may or may not arise on the happening of a future event, the Company did not lay out or expend the sums within the meaning of Section 10(2)(xv). The amounts set apart became subject to the obligation to pay the pension arranged to be given only when Harvey died and must be deemed expended then within the meaning of Section 10(2)(xv) of the Indian Income-tax Act, 1922.

7. But on the materials before us we are unable to answer the second question, for the Tribunal has found no facts on which the admissibility of the allowance may be determined, and the High Court has declined to allow the argument to be raised by the Commissioner that in the circumstances of the case the amounts expended were not admissible under Section 10(2)(xv) of the Act.

8. Sections 10(1) and 10(2)(xv) of the Act, in so far as they are relevant, provide :

> "Section 10(1). - "The tax shall be payable by an assessee under the head 'profits and gains of business, profession or vocation' in respect of the profit or gains of any

business, profession or vocation carried on by him."

"Section 10(2). - Such profits or gains shall be computed after making the following allowances, namely -

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(xv) any expenditure (not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

Sub-section (4-A) of Section 10 which was added by the Finance Act of 1956 with effect from April 1, 1956, may also be read :

"Nothing in sub-section (2) shall, in the computation of the profits and gains of a Company be deemed to authorise the making of -

(a) any allowance in respect of any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or a person who has a substantial interest in the company within the meaning of sub-clause (iii) of clause (6-C) of Section 2, or

(b) any allowance in respect of any assets of the company used by any person referred to in clause (a) either wholly or partly for his own purposes or benefit,

if in the opinion of the Income-tax Officer any such allowance is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing to it therefrom.

Explanation. - The provisions of this sub-section shall apply notwithstanding that any amount disallowed under this sub-section is included in the total income of any person referred to in clause (a)."

9. An amount proved to be expended by a tax-payer carrying on business is (subject to sub-section (4-A) of Section 10) a permissible allowance in the computation of taxable income of the business, if it be established that the allowance claimed is (a) expenditure which is not of the nature described in clause (i) to (xiv) of Section 10(2) : (b) that it is not of the nature of capital expenditure or personal expenses of the assessee and (c) that the expenditure was laid out or expended wholly and exclusively for the purpose of such business, profession or vocation. The expenditure incurred by the Company is not allowance of the nature described in any of the clauses (i) to (xiv) inclusive of Section 10(2), nor is it of the nature of capital expenditure or personal expenses of the assessee. In our judgment, the argument advanced before the High Court that the expenditure resulting from the setting apart of the money for securing an annuity to provide pensionary benefit to Harvey and his wife was of a capital expenditure was rightly negatived by the High Court.

10. To attract the exemption under Section 10(2)(xv) it had still to be established that the amount set apart was laid out or expended wholly and exclusively for the purpose of the business of the Company. On this part of the case there is no discussion in the orders of the taxing authorities and the Tribunal. To recall, the Income-tax Officer recorded no reasons for disallowing the expenditure.

The Appellate Assistant Commissioner disallowed it on the ground that it was not debited in the profit and loss account of the Company in the previous year. The Tribunal assumed, and in our judgment erroneously, that this Court had in the earlier judgment pronounced upon the applicability of all the conditions of Section 10(2)(xv) of the Act to the amount set apart when it became expenditure. This Court did not express any opinion on that question. The language in which the question was framed in the earlier case clearly indicated that the enquiry contemplated was only whether the amounts set apart were expended and no other. The judgment of this Court also does not imply that in the view of the Court if the setting apart of the amounts was expenditure, the other conditions for the expenditure to be a permissible allowance under Section 10(2)(xv) were satisfied. It cannot be assumed that because on the death of Harvey the amounts previously set apart were deemed expended, the outgoing was admissible as expenditure under Section 10(2)(xv) read with Section 10(4-A). The Tribunal considered two questions only : (1) whether the setting apart of the amounts amounted to expenditure within the meaning of Section 10(2)(xv); and (2) if it was expenditure, whether it could be regarded as capital expenditure and not revenue expenditure. On both the contentions the Tribunal decided in favour of the Company. But before Section 10(2)(xv) could be called in aid to support the claim of the Company it had to be established that it represent expenditure laid out or expended wholly and exclusively for the purpose of the business, and that it was authorised under Section 10(4-A).

11. The High Court was of the view that because before the Tribunal the question was not expressly raised that "the other conditions inviting the application of Section 10(2)(xv) were not satisfied, the allowance was not admissible", the Commissioner was incompetent to urge that plea before the High Court. In support of that view they relied upon the judgment of this Court in Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd. (42 ITR 589 : (1962) 1 scr 788 : AIR 1961 SC 1633) The High Court observed that before the Tribunal the plea that the expenditure was not laid out or expended wholly and exclusively for the purpose of the business of the Company was not argued, and since the question raised and referred "was not wide enough to include that submission", the Commissioner could not urge it before them. We are unable to hold that the decision in Scindia Steam Navigation Company's case (supra) supports the opinion of the High Court. The plea that the amount claimed to have been expended was not admissible as an allowance was raised by the Department. The Appellate Assistant Commissioner had decided in favour of the Department and the order was sought to be supported before the Tribunal by the Departmental representative. Granting that an aspect of the question was not argued before the Tribunal, the question was on that account not one which did not arise out of the order of the Tribunal. In our judgment, the expression "question of law arising out of such order" in Section 66(1) is not restricted to take in only those questions which have been expressly argued and decided by the Tribunal. If a questions of law is raised before the Tribunal, even if an aspect of that question is not raised, in our judgment, that aspect may be urged before the High Court. The judgment of this Court in Scindia Steam Navigation Company's case (supra) does not only not lend any assistance to the view taken by the High Court, but negatives that view. In that case certain steamships belonging to the assessee Company were lost during the World War II by enemy action. The Government of India paid to the Company compensation which exceeded the written down value of the steamships. The Department sought to charge the excess amount to tax under the fourth proviso of Section 10(2)(vii) of the Income-tax Act, 1922, inserted by the Income-tax (Amendment) Act, 1946, which came into force in the year of assessment. The Income-tax Officer held that the material date for the purpose of the fourth proviso to Section 10(2)(vii) was the date when the compensation was in fact received and therefore the amount was assessable in the assessment year 1946-47. At the instance of the Company the Tribunal referred the question whether the difference between the written down value

and compensation was properly included in the total income for the assessment year 1946-47. Before the High Court the Company for the first time raised the contention that the fourth proviso to Section 10(2)(vii) did not apply to the assessment as it was not in force on April 1, 1946, and the liability of the Company had to be determined as on April 1, 1946, when the Finance Act, 1946, was brought into force. The Commissioner of Income-tax contended that the question did not arise out of the order of the Tribunal within the meaning of Section 66 as it was not raised before nor dealt with by the Tribunal, and it was not referred to the Court. The High Court overruled the objection. This Court held that the High Court had jurisdiction to entertain the Company's contention raised for the first time before it, that the fourth proviso to Section 10(2)(vii) did not apply to the assessment as the contention was within the scope of the question as framed by the Appellate Tribunal and was really implicit therein. The Court in that case held that the question as framed was comprehensive enough to cover the question of the applicability of the fourth proviso to Section 10(2)(vii) of the Income-tax Act. Venkatarama Aiyar, J., observed at p. 612 :

> "Section 66(1) speaks of a question of law that arises out of the order of the Tribunal. Now a question of law might be a simple one, having its impact at one point, or it may be a complex one, trenching over an area with approaches leading to different points therein. Such a question might involve more than one aspect, requiring to be tackled from different standpoints. All that Section 66(1) requires is that the question of law which is referred to the Court for decision and which the Court is to decide must be the question which was in issue before the Tribunal. Where the question itself was under issue, there is no further limitation imposed by the Section that the reference should be limited to those aspects of the question which had been argued before the Tribunal. It will be an over-refinement of the position to hold that each aspect of a question is itself a distinct question for the purpose of Section 66(1) of the Act."

12. The second question raised in the present case, in our judgment, permits an enquiry whether the amount claimed is an admissible allowance under Section 10(2)(xv). We are unable to hold that it is restricted to an enquiry whether the expenditure is of a capital nature. The Tribunal did not consider whether the amount was laid out or expended wholly and exclusively for the purpose of the business of the Company. Expenditure is admissible as an allowance under Section 10(2)(xv) if all the conditions prescribed thereby are satisfied and is authorised by Section 10(4-A). We are unable to hold that the question framed and referred excluded an enquiry whether the expenditure was wholly and exclusively laid out or expended for the purpose of the business of the Company. Nor are we able to hold that because before the Tribunal stress was not pointedly laid upon the ingredients which enable an expenditure to be claimed and allowed, the question does not arise out of the order of the Tribunal. The matter in dispute before the Tribunal was whether the Company was entitled to the allowance under Section 10(2)(xv) of the Indian Income-tax Act, 1922. The Tribunal considered whether the amount claimed to have been laid out or expended became expenditure within the meaning of Section 10(2)(xv) on the death of Harvey, and whether it was capital expenditure. They did not consider whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the Company. Since the Tribunal gave no finding on this part of the case, we are unable to answer the question on the materials placed before us.

13. The High Court was, in our judgment, in error in refusing to allow the argument to be raised that the requirements of Section 10(2)(xv) were not satisfied, and the expenditure on that account was inadmissible.

14. Two courses are now open to us : to call for a supplementary statement of the case from the Tribunal; or to decline to answer the question raised by the Tribunal and to leave the Tribunal to take appropriate steps to adjust its decision under Section 66(5) in the light of the answer of this Court. If we direct the Tribunal to submit a supplementary statement of the case, the Tribunal will, according to the decisions of this Court, (New Jahangir Vakil Mills Ltd. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra; (37 ITR 11 : (1960) 1 SCR 249 : AIR 1959 SC 1177) Potled Turkey Red Dye Works Co. Ltd. v. Commissioner of Income-tax; (48 ITR 92 (SC) : (1963) Supp 1 SCR 871 : AIR 1963 SC 1448) and Keshav Mills Co. Ltd. v. Commissioner of Income-tax, Bombay North, Ahmedabad (56 ITR 365 : (1965) 2 SCR 908 : AIR 1965 SC 1636) be restricted to the evidence on the record any may not be entitled to take additional evidence. That may result in injustice. In the circumstances we think it appropriate to decline to answer the question on the ground that the Tribunal has failed to consider and decide the question whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the Company and has not considered all appropriate provisions of the statute applicable thereto. It will be open to the Tribunal to dispose of the appeal under Section 66(5) of the Income-tax Act, 1922, in the light of the observations made by this Court after determining the questions which ought to have been decided.

15. There will be no order as to costs in this appeal.

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