

Commissioner of Income-Tax, Hyderabad

Vs

Dewan Bahadur Ramgopal Mills Ltd.

Civil Appeal No. 5 of 1959

(J. C. Shah, M. Hidayatullah, N. Rajagopala Ayyangar, K. C. Das Gupta, S. K. Das JJ)

08.11.1960

JUDGMENT

S. K. DAS, J. -

This is an appeal on a certificate of fitness granted by the High Court of Judicature at Hyderabad under section 66A (2) of the Indian Income-tax Act, 1922. The Commissioner of Income-tax, Hyderabad, is the appellant before us. The respondent is Dewan Bahadur Ramgopal Mills Ltd., a public limited company incorporated in the erstwhile State of Hyderabad.

The respondent company was assessed under the Hyderabad Income-tax Act in respect of the assessment years 1357F, 1358F and 1359F. In the assessment for the those years depreciation allowance was given to it on the basis of the written down value of its assets, such as buildings, machinery, plant etc., in accordance with the provisions of clause (c) of section 12 (5) of the Hyderabad Income-tax Act. That clause provided that in the case of assets acquired before the previous year and before the commencement of the Act, the written down value would be the actual cost to the assessee less (i) depreciation at the rates applicable to the assets calculated on the actual cost for the first year since acquisition and for the next year on the actual cost diminished by the depreciation allowance for one year and so on, for each year up to the commencement of the Act, and (ii) depreciation actually allowed to the assessee on such assets for each financial year after the commencement of the Act. The erstwhile State of H

"Computation of aggregate depreciation allowance and written down value. - In making any assessment under the Indian Income-tax Act, 1922, all depreciation actually allowed under any laws or rules of a Part B State relating to income-tax and super-tax, or any law relating to tax on profits of business, shall be taken into account in computing the aggregate depreciation allowance referred to in sub- clause (c) of the proviso to clause (vi) sub-section (2) and the written-down value under clause (b) of sub-section (5) of section 10 of the said Act."

For the assessment year 1951-52 which was in respect of the account year ending June 30, 1950, the respondent was assessed for the first time under the Indian Income-tax Act, 1922, read with paragraph 5 of the Part B States (Taxation Concessions) Order, 1950. Basing its claim on paragraph 2 of the Removal of Difficulties Order, 1950, the respondent asked for depreciation allowance in respect of its assets such as buildings, machinery, plant etc., to the tune of Rs. 8,12,244. It worked out the value of the assets at their inception and deducted therefrom such depreciation as was allowed for the three assessment years in which the respondent was assessed under the Hyderabad Income- tax Act and calculating the written down value in that manner, it claimed depreciation

according to the prescribed rates. By his order dated November 30, 1951, the Income-tax Officer disallowed this claim. He held that the claim of the respondent was against the principle inherent in granting depreciation allowance which must against

"Explanation. - For the purpose of this paragraph, the expression 'all depreciation actually allowed under any laws or rules of a Part B State' means and shall be deemed to have always meant the aggregate allowance for depreciation taken into account in computing the written down value under any laws or rules of a Part B State or carried forward under the said laws or rules."

The Explanation in terms gave effect to the contention urged on behalf of the Department and said that what has to be allowed is the aggregate allowance for depreciation taken into account in computing the written down value under any law or rules of a Part B State. In support of the application for a reference, the appellant relied on the aforesaid Explanation and contended that in view of the Explanation the respondent could not claim depreciation allowance on the basis of actual cost minus the depreciation allowances actually allowed under the Hyderabad Income-tax Act. On this application, the Tribunal expressed the view that if the Explanation applied to the case on hand, then the contention of the Department was correct and must be upheld. It said, however, that it had no power to review its own order and, therefore, considered it unnecessary to express any opinion whether the Explanation was valid and affected the case before it. It said finally that the following question of law did arise out of its o

"Whether in making the assessment for the year 1951-52 under the Indian Income-tax Act is the assessee company entitled to claim depreciation allowance on the basis of the written down value computed at the time of the assessment for the year 1359F, or is to be computed on the basis of the actual cost minus the depreciation allowances granted under the Hyderabad Income-tax Act."

The reference was then heard by the High Court of Judicature at Hyderabad which by its order date February 16, 1954, held that the Explanation added to paragraph 2 of the Removal of Difficulties Order, 1950, by the notification dated March 9, 1953, was void on certain grounds one of which was that the Explanation was ultra vires the powers of the Central Government under section 60A of the Indian Income-tax Act. Therefore, it answered the question in favour of the respondent. The appellant then obtained the necessary certificate of fitness and preferred the present appeal.

In the meantime, there was a further change of law. On May 8, 1956, the Central Government made a notification (No. S. R. O. 1139) in exercise of the powers conferred on it by section 12 of the Finance Act, 1950, whereby an Explanation in identical terms as the earlier Explanation made under section 60A of the Indian Income-tax Act was added to paragraph 2 of the Removal of Difficulties Order, 1950. The arguments before us have proceeded on the basis of the Explanation added by the notification aforesaid and it is not disputed that if the Explanation is valid and applies to the present case, then the appeal must be allowed and the question of law answered in favour of the appellant. If, on the contrary, the Explanation is not valid or it does not apply to the present case, then the appeal must be dismissed.

We proceed now to a consideration in detail of the different contentions urged before us on behalf of the appellant and the respondent. We may first read section 12 of the Finance Act, 1950, under which notification No. S.R.O. 1139 dated, May 8, 1956, was made. Section 12 reads :

"If any difficulty arises in giving effect to the provisions of any of the Acts, rules or orders extended by section 3 or section 11 to any State or merged territory, the Central Government may, by order, make such provision, or give such direction, as appears to it to be necessary for removing the difficulty."

On behalf of the appellant, it has been argued that the notification was validly made in exercise of the powers conferred on the Central Government under section 12 aforesaid; that it does not suffer from any of the defects pointed out by the High Court in regard to the earlier notification of 1953 made under section 60A of the Income-tax Act; and that it adds an Explanation which in terms gives effect to the contention of the appellant and this court must consider the change in law made thereby and give effect to it in answering the question of law arising out of the Tribunal's order. On the other hand, the validity of the notification has been very strenuously contested before grounds : (1) that it is ultra vires the powers conferred on the Central Government by section 12; (2) that it can have no retrospective effect; and (3) that it contravenes article 14 of the Constitution.

We shall consider these arguments in the order in which we have stated them. The first question is whether the notification is validly made under section 12 or is it ultra vires the powers conferred on the Central Government by that section ? On behalf of the respondent it is urged that a condition for the exercise of the power under section 12 is contained in the opening clause, which says : "If any difficulty arises in giving effect to the provisions of any of the Acts, rules or orders extended by section 3 or section 11 to any State etc." The contention is that no difficulty arose in giving effect to the provisions of any of the Acts, rules or orders referred to in the opening clause, to any State etc. and, therefore, the condition for the exercise of the power is not fulfilled and on that ground the notification is invalid. We are unable to accept this argument as correct. Section 10 of the Income-tax Act says, in its first sub-section, that the tax shall be payable by an assessee in respect of the profit

"(b) in the case of assets acquired before the previous year the actual cost of the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886 (11 of 1886), was in force."

It is obvious that in applying clause (b) to an assessee in a Part B State there would be an initial difficulty, inasmuch as prior to 1950 when the Indian Income-tax Act came into force in a Part B State no depreciation could have been actually allowed to such an assessee under the Income-tax Act or under any Act repealed thereby; for example, the Hyderabad Income-tax Act was repealed by the Finance Act, 1950, and not by the Income-tax Act, and would not therefore be covered by clause (b). Such and other difficulties led to the Removal of Difficulties Order, 1950, which has not been seriously challenged before us. Indeed, the High Court said that it was not open to the respondent to challenge the validity of the Removal of Difficulties Order, 1950, because such a point was not taken before the Tribunal. Learned counsel for the respondent has then submitted that whatever initial difficulty there might have been in giving effect to the Indian Income-tax Act in Part B States, that difficulty was solved by parag

Furthermore, the true scope and effect of section 12 seems to be that it is for the Central Government to determine if any difficulty of the nature indicated in the section has arisen and then to make such order, or give such direction, as appears to it to be necessary to remove the difficulty. Parliament has left the matter to the executive; but that does not make the notification of 1956 bad. In *Pandit Banarsi Das Bhanot v. State of Madhya Pradesh* we said at page 435 : "Now, the

authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like." We are, therefore, of the view that the notification of 1956, was validly made under section 12 and is not ultra vires the powers conferred on the Central Government by that section.

The second question is - does the notification apply to the assessment in the present case, which is an assessment for the year 1951-52 ? The notification was made in 1956 and it added an Explanation to paragraph 2 of the Removal of Difficulties Order, 1950. It says that a particular expression occurring in that paragraph means and shall be deemed always to have meant the aggregate allowance for depreciation taken into account in computing the written down value etc., under any law of Part B State. The argument on behalf of the respondent is that the law which governs an assessment for the assessment year 1951-52 is the law in force at the time when the Finance Act, 1951, came into force; accordingly, so the argument proceeds, paragraph 2 of the Removal of Difficulties Order, 1950, as it stood on April 28, 1951, when the Finance Act, 1951, came into force, will apply in the present case. We consider this argument to be unsound. The Explanation, though added in 1956, explains the meaning of paragraph 2 of the

The last challenge to the validity of the notification of 1956 is that it contravenes article 14 of the Constitution, because it discriminates between different classes of taxpayers. Learned counsel for the respondent has asked us to consider the cases of assesseees in three different areas which subsequently come in a Part B State: in one area there was no law relating to income-tax; in the second, there was a law relating to income-tax under which written down value was computed on the basis of depreciation actually allowed year after year, while in the third, the written down value was computed in the manner provided under the Hyderabad Income-tax Act; it is pointed out that on the extension of the Indian Income-tax Act (read with paragraph 2 of the Removal of Difficulties Order, 1950, and the Explanation) to those areas, the assessee in the first area will get depreciation allowance on the actual cost; in the second area he will get such allowance on the basis of actual cost less depreciation actually all

It has not been disputed before us that a change in law validly made and application to a case pending in appeal must be considered and given effect to by the appellate court. The conclusion we have reached is that the notification of 1956 was validly made and applies to the present case. In view of this conclusion we have considered it unnecessary to examine the notification of 1953 or the reasons for which the High Court held that notification to be bad.

For the reasons given above, we allow this appeal and set aside the judgment and order of the High Court dated February 16, 1954. The question referred to the High Court is answered in favour of the appellant. The appellant has succeeded by reason of the notification of 1956 and taking that circumstance into consideration, we direct that there will be no order for costs for the hearing in this court.

Appeal allowed.

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