The Neptune Assurance Co. Ltd.

Vs

The Life Insurance Corporation of India and Another

Civil Appeal No. 386 of 1961

(A. K. Sarkar, S. K. Das, J. L. Kapur JJ)

16.11.1962

JUDGMENT

SARKAR, J. –

The appellant used to carry on both life and other kinds of insurance business. It was what is called in the Life Insurance Corporation Act, 1956, a "composite insurer".

The respondent Corporation was created by this Act on September 1, 1956, and under s. 7 of the Act the terms of which we will have to set out later, all rights appertaining to the life insurance business of an insurer, which in the Act is called the "controlled business", because vested in the respondent Corporation on the appointed day, that is, September 1, 1956. Under the orders of assessment to income-tax for the years 1955-56 and 1956-57, the appellant became entitled to certain refunds under the provisions of the Income-tax Act, 1922. The respondent Corporation claimed a part of those refunds under s. 7 and this claim was resisted by the appellant. This dispute was taken to the Life Insurance Tribunal for decision under the Act of 1956 and this Tribunal decided it in favour of the respondent Corporation. The present appeal is against the judgment of the Tribunal.

The provisions of the Income-tax Act under which the right to refund arose have to be briefly referred to before we proceed to consider the questions that arise in this appeal. Section 16(2) states that for the purpose of inclusion in the total income of an assessee, dividend paid to him shall be increased to such amount as would, if income-tax at the rate applicable to the total income of the company were deducted therefrom, be equal to the amount of the dividend. Sub-section (3) of s. 18 requires that out of the income chargeable as interest on securities income-tax has to be deducted at the source at the maximum rate. Sub-section (4) of this section provides that all sums so deducted shall be deemed to be income received by the assessee in computing his income, and under sub-s. (6) these deductions have to be paid to the credit of the Central Government. Sub-section (5) states that any deduction made in accordance with the provisions of this section and any sum by which a dividend has been increased under sub-s. (2) of s. 16 shall be treated as a payment of income-tax or super tax on behalf of the person from whose income the deduction was made or of the shareholder, as the case may be. Section 49B provides that where any dividend has been paid or deemed to have been paid to an assessee who is a shareholder of a company which is assessed to income-tax such assessee shall if the dividend is included in his total income be deemed to have paid himself in respect of such dividend income-tax of an amount by which the dividend has been increased under s. 16(2). Section 48 is in these terms : "If any.. company... satisfies the Income tax Officer... that the amount of tax paid by him... or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable... he shall be entitled to a refund of any such excess." Shortly put,

the result of these provisions is that an assessee becomes entitled to a refund where the tax deducted from the income of his securities or the amount by which the dividend paid to him on his shares has to be increased under s. 16(2) for computation of his income, or both taken together, exceed the amount of tax payable by him.

Now a reference has to be made to s. 10 of the Insurance Act, 1938. Under sub-s. (2) of this section an insurer carrying on business of life insurance had to carry to a separate fund, called the life insurance fund, all receipts due in respect of that business and the assets of this fund have to be kept distinct and separate from all his other assets. Sub-section (3) provides that the life insurance fund shall not be applied directly or indirectly for any purposes other than those of the life insurance business of the insurer. There is no reason to doubt that the appellant carried out the provisions of s. 10(2) and created the life insurance fund and it is not in dispute that various shares and securities appertained to the life insurance fund of the appellant's business. Various other securities, and perhaps also shares, appertained to the general business of the appellant.

We now come to the details of the dispute that arose between the parties. The previous years of the appellant for the assessment years 1955-56 and 1956-57 were respectively the calendar years 1954 and 1955. In each of these years various sums became due to the appellant as interest on securities and as dividends on shares held by it. The assessment orders in respect of the aforesaid assessment years earlier mentioned, showed that in the first assessment year credit had been given to the appellant in the sum of Rs. 48,271.56 on account of taxes earlier paid in respect of its life department and in the sum of Rs. 3,245.25 on the same account in respect of its general department. The figures of taxes earlier paid for which credit had been given in its assessment for the second assessment year were Rs. 48,271.56 in respect of the life department and Rs. 3,196.25 in respect of its general department. The appellant's income for the assessment year 1955-56 was assessed on September 29, 1956, and later revised on May 21, 1957, and for the year 1956-57, on January 31, 1957. The assessment order for the year 1955-56 showed a profit of Rs. 1,50,191/- in the life department and a loss of Rs. 23,667/- in the general department and it was thereupon assessed on a total income of Rs. 12,6,524/-. The tax due on this income being less than the tax for which credit had been given as tax previously paid, a sum of Rs. 12,867.58 was found refundable to the appellant. In respect of the assessment year 1956-57, the position was that the life department had made a profit of Rs. 1,51,835/- and the general department had incurred a loss of Rs. 2,06,083/- with the result that in that year the appellant had on the whole incurred a loss and did not have to pay any tax. The entire amount of tax credited as earlier paid in respect of this year's assessment, therefore, became refundable. These assessment orders were however made after the appointed day, namely, September 1, 1956. It has been the common case of the parties that the amounts of tax credited as previously paid as earlier mentioned were the deductions under s. 18(3) of the Income-tax Act and the amount added to the dividend under s. 16(2) of that Act.

The respondent Corporation claimed to be entitled to a refund of Rs. 9,622.43 out of the amount found refundable for 1955-56 and Rs. 48,271.56 out of the amount refundable for 1956-57 under the provisions of s. 7 of the Act of 1956. As we have earlier stated the Tribunal allowed this claim of the Corporation. Now, s. 7 is in these terms :

> S. 7. (1) On the appointed day there shall be transferred to and vested in the Corporation all the assets and liabilities appertaining to the controlled business of all insurers.
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> (2) The assets appertaining to the controlled business of an insurer shall be deemed to

> include all rights and powers, and all property, whether movable or immovable, appertaining to his controlled business, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in or arising out of such property as may be in the possession of the insurer and all books of account or documents relating to the controlled business of the insurer; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing and appertaining to the controlled business of the insurer.
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The question is whether the right to refund was a right existing on September 1, 1956 and whether it appertained to the life insurance business of the appellant within the meaning of s. 7. When s. 7 mentions a right "appertaining to his controlled business" it obviously contemplates a right existing in relation to that business, for the business not being a legal person, could not own any right. The right had to be owned by the insurer to whom the business belonged but it had to be a right which he owned in relation to his controlled business.

Now as to the first part of this question it seems to us plain that the right to the refund existed on September 1, 1956. It is no doubt true that the amounts of the refund had not been ascertained till the orders of assessment had been made and these had been made later than September 1, 1956. But that does not affect the question. It is well established that under the income-tax law the liability to be charged to tax, if any, exists all along. The amount of the liability depends on the Finance Act of the year concerned. That is the effect of s. 3 of the Income-tax Act which says that the tax at the rates mentioned in the Finance Act shall be charged for the year specified in that Act. So it was said in Messrs Chatturam Horilram Ltd. v. Commissioner of Income-tax, Bihar and Orissa [[1955] 2 S.C.R. 290, 297].

> "The Income-tax Act is a standing piece of legislation which provides the entire machinery for the levy of income-tax. The Finance Act of each year imposes the obligation for the payment of a determinate sum for each such year calculated with reference to that machinery".

Now the Finance Acts for the years 1955 and 1956, like all other such Acts, provided the rates at which income-tax was payable for the assessment years commencing from 1st April of the year in which the Acts were respectively passed. It would follow that on the 1st of April in 1955 and in 1956 the amounts of the tax payable by the appellant became determinable for the income was then capable of computation and the rate was also known. So on these dates the appellant became entitled to a refund of the amount of tax deducted at the source or treated as paid on its behalf under the provisions of the Income-tax Act earlier mentioned which was in excess of the tax payable by it for each of these years. The assessment only particularised the amounts; it did not create the right, for the right came into existence as soon as according to the relative Finance Act it became ascertainable that the tax deducted at source or treated as paid on its behalf had exceeded the tax payable. That right, therefore, was an asset contemplated in s. 7 of the Act of 1956. This disposes of the first part of the question that arises in this case.

We turn now to the other part of the question, namely whether the right to the refund was one appertaining to the life insurance business. That question has to be decided by reference to the Insurance Act because it is that Act which treated the different kinds of insurance businesses separately. Some of the sections of that Act have now to be referred. It is not in dispute that the

appellant in an insurer within the meaning of the Act. Sub-section (1) of s. 10 of the Act requires an insurer like the appellant to keep a separate account of all receipts and payments in respect of each separate class of insurance business carried on by him. We have earlier referred to the provisions of sub-s. (2) and sub-s. (3) of this section. Section 11 provides that an insurer like the appellant shall keep (a) a balance sheet in accordance withe the third Schedule to the Act and (b) a revenue account in accordance with the third Schedule in respect of each class of insurance business carried on by him. Now Regulation (2) in the first Schedule provides that the balance sheet of the life insurance business shall be prepared as a separate document. A specimen form of a balance-sheet is set out in this Schedule. That form shows that shares and securities held by an insurer in connection with its life insurance business have to be set out separately. Again, the form of the revenue account which, as we have earlier stated, has to be drawn up separately for each kind of insurance business carried on by the insurer requires the interest and dividends coming to the account of the life insurance business to be shown separately after deducting the income-tax payable thereon. A note to the form states that in making these deductions on account of income-tax rebates allowed on income-tax must be taken out of the tax. Section 13 of the Act requires every insurer carrying on life insurance business to make an actuarial valuation every three years and to submit a report in accordance with the fourth Schedule. The regulations in this Schedule require a consolidated revenue account in form G contained in it to be annexed to the actuarial report. That form again requires that interest and dividends, which must necessarily be interest and dividends appertaining to the life insurance business because the report concerns the life insurance business only, to be set out. All these provisions to our mind indicate what is contemplated by the Insurance Act to be an asset appertaining to the life insurance business. These are assets of the life insurance fund mentioned in sub-s. (2) of s. 10 of the Act. It is because the Act treats particular assets as appertaining to the life insurance business that it made detailed provisions for these assets to be shown separately in the accounts. If an asset appertained to the life insurance business, it is obvious that its fruit, namely, the income from it, would also appertain to that business. Therefore, the income from shares and securities appertaining to the life insurance business must itself be treated as appertaining to that business. That is why the forms of accounts set out in the Schedules requires this income to be shown separately in the several accounts that have to be kept for the life insurance business.

Indeed it has not been disputed by learned counsel for the appellant - as it could not be in view of the provisions of the Insurance Act earlier referred to - that many of the shares and securities held by the appellant appertained to its life insurance business. Neither did we understand learned counsel to dispute that the income from these shares and securities itself appertained to the life insurance business. It is in respect of this income that, as earlier mentioned, in each of the years 1954 and 1955 a sum of Rs. 48,271.56 had been credited in the appropriate assessment order as tax previously paid. Learned counsel however said that though the income appertained to the life insurance business, the right to the refund did not appertain to any business. According to him, it is a right created by s. 48 of the Income-tax Act and under that section it is a right belonging to the assessee who in this case is the appellant. It seems to us that this approach is misconceived and cannot decide the question as to whether the right to the refund appertained to any particular business within the meaning of s. 7 of the Act of 1956. We have earlier stated that life insurance business not being a legal person cannot be the owner of any right. All rights appertaining to the business including a right to refund of taxes paid before assessment must necessarily belong to the owner of the business. Such rights may however be treated by the owner if he so chooses, as appertaining severally to the different businesses carried on by him. Or again, a statute may require these rights to be treated as appertaining severally to different businesses carried on by him. The latter is the case here. The Income-tax Act was not concerned with the various kinds of business

carried on by an insurer. As we have earlier shown, the Insurance Act treated the various kinds of insurance businesses carried on by an insurer separately. Likewise the Act of 1956 treated the life insurance business as some-thing separate from other kinds of business carried on by an insurer. We think that it would be misconception to refer to the Income-tax Act in interpreting the Act of 1956 for deciding whether a right to a refund belonging to an insurer appertains to his life insurance business or to another kind of insurance business carried on by him.

The right to the refund no doubt existed in the appellant on September 1, 1956, but it so existed in it as the proprietor of both the life insurance business and the general insurance business. The right, therefore, may have appertained partly to one business and partly to the other. The income of the assets of the life insurance business or what is treated as such under s. 16(2) of the Income-tax Act of such assets was utilised for paying the tax along with the income of other assets. When it was realised that more income-tax had been paid by such utilisation than the law justified, then the excess had to be refunded. It was the income so utilised in excess that had to come back. Upon its return it could not change its previous nature; it would still remain the income of the life insurance business. A right to the return of this income would therefore also be a right appertaining to the life insurance business. The right though appertaining to the life insurance business no doubt originally belonged to the appellant but as it appertained to its life insurance business, s. 7 of the Act of 1956 operated to transfer this right from it to the respondent Corporation on September 1, 1956.

It was said that the amount deducted from the income of the shares and securities belonging to the life insurance business upon such deduction ceased to be the asset of that business and a right to its refund, therefore, also could not appertain to that business. We think that this contention is erroneous. The deduction amounted to payment of tax before assessment and was, therefore, really in the nature of a provisional payment. It was provisional in the sense that to the extent it was on final assessment later, found to be in excess of the tax due, it would cease to be payment of tax and become refundable. Therefore, in a case where the deduction was returnable, the amount returnable had never really ceased to the part of the assets. We may here observe that the question whether the amounts added to the dividends under s. 16(2) of the Income-tax Act are deductions from income is one on which different opinions are possible. We do not feel called upon to answer that question on this occasion. If these amounts are not deductions from income, the contention now under discussion would not arise in connection with them. If they are, then what we have said in dealing with that contention would apply to any deductions from dividends also.

Then it was said that if any right to the refund is held to appertain to the life insurance business in this case, then that business would really be given the advantage of the loss made by the general insurance business for it was because of that loss that the right to the refund came into existence. It seems to us that this consideration is irrelevant for deciding whether a right appertains to the life insurance business. That right did not arise because there was a loss in the general insurance business. It would be a misconception to consider it as so arising, for the right arose because the appellant's business as a whole suffered a loss or made a smaller income as the case was. No question of one department of the appellant's business taking advantage over another at all arises. A right to the refund appertains to the life insurance business because it was a right to the refund of moneys belonging to that business which had been applied in excess of the amount of tax for which the law made the appellant liable as the owner of the entire business.

It remains now to discuss in what proportion the refund is to be distributed. On this question no difficulty arises in respect of the year 1956-57. In that year the entire amount deducted at source or treated as paid as tax on behalf of the appellant came back. Each department will, therefore, take

whatever was deducted from or treated as paid in respect of the income of its own assets. The result is that the refund of Rs. 51,468.81 for the year 1956-57 has to be distributed as follows : The appellant will get Rs. 3,196.56 and the respondent Corporation Rs. 48,271.25. In the year 1955-56 however the refund amounted to Rs. 12,867.68 while the amount of tax deducted from the income of the life insurance department or treated as paid from that income was Rs. 48,271.56 and that deducted or treated as paid from the income of the general department was Rs. 3,245.25. in this year the general department incurred a loss. Therefore, considered as a separate business no tax would have been payable out of its assets and so, as between the two departments, no part of its income was liable to be applied in payment of the tax. The entire amount of Rs. 3,245.25 should be refunded to it. The balance which must represent the deduction out of the income of the life insurance business or an amount treated as paid in respect of that business and, therefore, appertaining to it, should be made over to the respondent Corporation. This is the view taken by the Tribunal and with it we agree. This would put the tax liability for the year 1955-56 entirely on the life department and that would be the correct thing to do for that liability must appertain to the department which alone made the profit.

We may add that in certain proceedings, to the details of which it is not necessary to refer, the amount of the refund has already been paid by the Government and out of that sum, the appellant has been paid what we have held it to be entitled to. We declare that the respondent Corporation is entitled to the balance which has already been paid to it on October 15, 1959, by respondent No. 2 in compliance with the order of this Court dated September 21, 1959.

The appeal is dismissed with costs.

Appeal dismissed.

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