

Commissioner of Income-Tax, Madras

Vs

Express Newspapers Ltd.

Civil Appeal No. 596 of 1963

(K. Subha, J. C. Shah, M. Hidayatullah, S. K. Sikri JJ)

07.05.1964

JUDGMENT

SUBBA RAO J. -

This appeal by special leave is preferred against the order of the Madras High Court in a reference made to it by the Income-tax Appellate Tribunal under section 66(1) of the Income-tax Act, 1922, hereinafter called the Act.

The facts leading up to the reference and relevant to the present enquiry are as follows : The Free Press of India (Madras) Ltd., hereinafter called the Free Press Company, was a private limited company carrying on business as printers and publishers of certain newspapers, namely, "Indian Express", "Dhinamani" and "Andhra Prabha" at Madras, "Eastern Express" and "Bharat" at Calcutta and "Sunday Standard" and "Morning Standard" at Bombay. On August 31, 1946, the Free Press Company passed a resolution transferring to the Express Newspapers Limited, a new company formed on or about April 22, 1946, hereinafter called the assessee company, the right to print and publish the said newspapers from September 1, 1946, letting out its machinery and assets and authorising the assessee company to collect the book debts and pay off the liabilities of the Free Press Company. The assessee company accordingly started publishing newspapers from September 1, 1946. On October 31, 1946, the Free Press Company resolved at a gener

"4. Whether the Free Press Company made a business profit of Rs. 2,14,090 under the proviso to section 10(2)(vii) of the Act ?

6. Whether the capital gain made by the Free Press Company is liable to be assessed in the hands of the Express Company, under section 26(2) of the Act ?"

The reference was heard by a Division Bench of the High Court, consisting of Rajagopalan and Ramachandra Iyer JJ. who by their judgment answered the two questions in the negative and against the department. The present appeal is preferred against the said judgment of the High Court.

The argument in the appeal proceeded on the basis of the following facts. During the accounting year 1946-47 the Free Press Company did not do the business of printing and publishing newspapers from September 1, 1946, and thereafter the assessee company alone was carrying on the said business. The Free Press Company went into voluntary liquidation on October 31, 1946, and liquidator, on November 1, 1946, confirmed the transfer of the assets made by the Free Press Company to the assessee company. Therefore, on November 1, 1946, the aforesaid machinery was sold yielding a profit of Rs. 6,08,666 to the Free Press Company, being the difference between the

written down value and the sale price of the machinery. Broadly stated, the machinery was sold by the Free Press Company during the accounting year after it closed down its business and after it went into voluntary liquidation. On those facts learned counsel for the revenue raised before us the following two contentions : (1) the first item of Rs. 2,14,090 repr

Learned counsel for the respondent contended that neither the condition laid down in section 10(2)(vii) of the Act nor those laid down in section 26(2) thereof attracted the said two items of income and, therefore, they were not assessable in the hands of the assessee company.

The first question turns upon the relevant provisions of section 10 of the Act. To have a clear view of the scope of the relevant provision it will be convenient to read them at one place.

"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 profits and gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :

(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation the amount of any premium paid;

(v) in respect of current repairs to such buildings, machinery, plant or furniture, the amount paid on account thereof;

(vii) in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, as the case may be, is actually sold or its scrap value :

Provided further that where the amount for which any such building, machinery or plant is sold, whether during the continuance of the business or after the cessation thereof, exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the sale took place :"

We are concerned with the second proviso to section 10(2)(vii) of the Act. The substantive clause grants a balancing allowance in respect of building, machinery or plant which has been sold or discarded or demolished or destroyed. The allowance represents the excess of the written down value over the sale price. Under the proviso, if the sale price exceeds the written down value, but does not exceed the original cost price, the difference between the original cost and the written down value shall be deemed to be profits of the year previous to that in which the sale takes place; that is to say, the difference between the price fetched at the sale and the written down value is deemed to be the escaped profits for which the assessee is made liable to tax. As the sale price is higher than the written down value, the difference represents the excess depreciation mistakenly granted to the assessee. To illustrate : assume that the original cost of a machinery or plant is Rs. 100 and depreciation allowed is Rs. 25;

This point directly arose for consideration in *Liquidators of Pursa Ltd. v. Commissioner of Income-*

tax. There, the assessee company carried on the business of growing sugarcane and manufacturing and selling sugar. In the year 1943 it negotiated for the sale of the factory and other assets with the object of winding up the company. It received a firm offer on August 9, 1943, and concluded the agreement of sale on December 7, 1943. Between August 9, 1943, and December 7, 1943, it never used the machinery and plant for the purpose of manufacturing sugar or any other purpose except that of keeping them in trim and running order. In the assessment of the company to income-tax for accounting period from October 1, 1943, to September 30, 1944, the income-tax authorities treated the surplus made by the company on the sale of the buildings, plant and machinery as profits under proviso (2) to section 10(2)(vii) of the Act. This court held that the said amount was not taxable. This court rejected the contention of the

"But it is to be noticed that no such amendment was made in clause (vii) to exclude loss over buildings, machinery or plant after the closure of the business. It is thus clear that the principles which govern the proviso cannot be used to govern the main clause, because profit and loss arise in different ways in business. The two rulings do not, therefore, apply to the facts here."

It is contended that the principle accepted by this decision is in conflict with that laid down in the case of the Liquidators of Pursa Ltd. It is said that the condition that the sale of the machinery at a loss should have been before the closing of the business is impliedly laid down by section 10(1) of the Act which applies equally to clause (vii) as well as to the second proviso thereto, and that if the condition need not be fulfilled in the case falling under the substantive part of clause (vii) of section 10(2) of the Act, it will be incongruous to apply it to a case falling under the second proviso before it was amended. So stated there is some plausibility in the argument. But this court in express terms made a distinction between the scope of the substantive part of clause (vii) and that of the second proviso thereto and expressly distinguished those rulings on the ground that they would not apply to the construction of the substantive part of clause (vii). When this court expressly confined the sco

"The question, therefore, is whether there can be said to be a sale in the carrying on of the business in respect of the chemicals and other raw materials."

After referring to the passages in Halsbury's Laws of England, 3rd edition, volume 20, pages 115-117, wherein it was stated that "mere realisation of assets is not trading" and that there was distinction between sales forming part of the trading activities and those where the realisation was not an act of trading, the learned judge observed that the said distinction was a sound one. The learned judge, on a consideration of other decisions, also accepted as correct the distinction made between a sale of the entire stock as part of trading and the sale of a part of the stock as a winding up sale. Then the learned judge applied the principles to the facts of the case and held that it was impossible to infer that the chemicals and raw materials were sold in the ordinary way of business or that the assessee company was carrying on a trading business. This decision again accepts the distinction between a sale held in the ordinary way of business and that held for the purpose of winding up the business and that in

The second item relates to capital gains. That represents the excess of the price obtained on the sale of the machinery over it does not represent profits and gains of business, but it falls under the heading "capital gains". But it is argued that, as the Free Press Company was wound up and, therefore, could not be found, the assessee, who had succeeded to it, would be liable to be assessed for the said capital gains under the proviso to section 26(2) of the Act. To appreciate the contention some of the relevant provisions of the Act may be read :

"6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely :-

(iv) Profits and gains of business, profession or vocation. . . .

(vi) Capital gains.

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 profits and gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :-

12B. (1) The tax shall be payable by an assessee under the head 'Capital gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place.

24. (2A) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head 'Capital gains' such loss shall not be set off except against any profits and gains falling under that head.

(2B) Where an assessee sustains a loss such as is referred to in sub-section (2A) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be carried forward for more than eight years :

Provided that where the loss sustained by an assessee, not being a company, in any previous year does not exceed five thousand rupees, it shall not be carried forward.

26. (2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year :

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid."

A conspectus of the said sections discloses a clear-cut scheme. Though income-tax is only one tax levied on the total income, section 6 enumerates six heads whereunder the income of an assessee falls to be charged. This court in *United Commercial Bank Ltd. v. Commissioner of Income-tax* laid down that sections 7 to 12 are mutually exclusive and where an item of income falls specifically under one head it is to be charged under that head and no other. The expression "income, profits and gains" in section 6 is a composite concept which takes in all the six heads of income mentioned therein. The fourth head is "profits and gains of business, profession or vocation" and the sixth head is "capital gains". Section 10 taxes the profits and gains of a business, profession or vocation carried on by an assessee; it also enumerates the different kinds of allowances that can be made in computing the profits. Under section 10(1), as we have already pointed out, the necessary condition for the application of the section is

If that be the scheme of the Act, the contention of the learned counsel for the revenue can easily be answered. He asks that if section 26(2) deals with only profits and gains of the business, why should the legislature use the word "income" therein? As we have indicated, the expression "income, profits and gains" is a compendious term to connote the income from the various sources mentioned in section 6; therefore, the use of such an expression does not efface the distinction between the different heads, but only describe the income from the business. The expression "profits" in the proviso makes it clear that the income, profits and gains in sub-section (2) of section 26 only refer to the profits under the fourth head in section 6. On the other hand, if the interpretation sought to be put upon the expression "income" in sub-section (2) of section 26 by the revenue is accepted, then the absence of that word in the proviso destroys the argument. But the more reasonable view is that both the sub-section and

In this view no other question arises for our consideration.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

</html