

Commissioner of Income-Tax, Delhi and Rajasthan

Vs

Anant Rao B. Kamat

Civil Appeals Nos. 687 and 688 of 1963

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

08.05.1964

JUDGMENT

SIKRI J. -

These are appeals by the Commissioner of Income-tax on certificates granted by the Rajasthan High Court under section 66A(2) of the Indian Income-tax Act, 1922 (11 of 1922), hereinafter referred to as the Act, against the judgment of the High Court in a consolidated reference under section 66(1) of the Act. The High Court answered the question, reproduced below, in the affirmative. The reference was made by the Income-tax Appellate Tribunal in the following circumstances.

The respondent, Anant Rao B. Kamat, hereinafter referred to as the assessee, had received in the previous years (1950-51 and 1951-1952) dividends from two companies, Associated Stone Industries (Kotah) Ltd. and Rajputana Mining Agencies Ltd. For the assessment years 1951-52, and 1952-53, the assessee claimed before the Income-tax Officer that the dividends received by him should be "grossed up" under section 16(2) of the Act, without taking into consideration the rebate allowed to the said companies under the Part B States (Taxation Concessions) Order, 1950, hereinafter called the Concession Order. According to the assessee, on a true construction of section 16(2) of the Act, the rate applicable to the total income of the said companies was the rate prescribed by the relevant Indian Finance Act. The Income-tax Officer disallowed the grossing up at the Indian rate but allowed at the State rate, defined by paragraph 3(v) of the Concession Order. The Appellate Assistant Commissioner upheld the order of the Inco

"Whether the appropriate portion of the dividend received by the assessee from either of the said two companies in the financial year 1950-51/1951-52 is to be increased at the rate applicable to the total income of the respective companies for the financial year 1950- 51/1951-52 and without regard to any benefit conferred by the Taxation Concessions Order, 1950, that the companies would get in the matter of payment of tax by them on their profits accruing of arising to them in a Part B State and assessable for the assessment year 1950-51/1951-52 ?"

The High Court, after asking for a supplementary statement of the case, answered, as we have already said, in favour of the assessee.

The learned counsel for the appellant has contended before us that the rate applicable to the total income of the said companies was the rate as finally applied after taking into consideration the effect of the Concession Order. He has further urged that the word "rebate" occurring in section 16(2) does not include the relief given to the said companies under the Concession Order for the

Concession Order is not concerned with granting rebate but is concerned with the determination of the tax payable. In this connection, he relied on section 60A of the Act under which the Concession Order was made, and said that this section enabled the Central Government to make an exemption, reduction in rate or other modification in respect of income-tax but not to grant a rebate. The learned counsel for the respondents controverted these arguments and supported the judgment of the High Court.

Before addressing ourselves to the contentions at the Bar, it is necessary to reproduce the relevant statutory provisions. These read thus :

"16. (2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amounts as would, if income-tax (but not super-tax) at the rate applicable to the total income of the company (without taking into account any rebate allowed or additional income-tax charged) for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend :

Paragraph 3(iii) of the Concession Order :

"The expression 'Indian rate of tax' means the rate determined by dividing the amount of Income-tax and super-tax payable in the taxable territories on the total income for the year in question in accordance with the rates prescribed by the relevant Finance Act of the Central Government, by the amount of such total income."

Paragraph 3(v) of the Concessions Order :

"The expression 'State rate of tax' means the rate determined by dividing the amount of income-tax and super-tax payable on the total income according to the rates of tax in force in the State immediately before the appointed day, or for the year in question, as the case may be by the amount of such total income and where under any State law, the rates of tax in force in the State are prescribed with reference to the total income including agricultural income, the State rate of tax shall be the rate determined by dividing the amount of income-tax and super-tax on the total income including the agricultural income without taking into account any reduction of tax allowed on the agricultural income by the State law by the amount of such total income.

Explanation. - Where there was no State law relating to charge of income-tax and super-tax, the rates of income-tax and super-tax in force in that State immediately before the appointed day shall, for the purpose of this clause, be deemed to be the rates specified in the Schedule."

Paragraph 6 of the Concessions Order :

"Income of a previous year which does not fail under paragraph 5. - The income,

profits and gains of any provision year ending after the 31st day of March 1949, which does not fall within paragraph 5 of this order shall be assessed under the Act for the year ending on the 31st day of March, 1951, or on the 31st day of March, 1952, as the case may be, and the tax payable thereon shall be determined as hereunder :

In respect of so much of the income, profits and gains included in the total income as accrue or arise in any State other than the States of Patiala and East Punjab States Union and Travancore-Cochin -

(i) the tax shall be computed (a) at the Indian rate of tax and (b) at the State rate of tax in force immediately before the appointed day :

(ii) where the amount of tax computed under sub-clause (a) of clause (i) is less than or is equal to the amount of tax computed under sub-clause (b) of clause (i), the amount of the first-mentioned tax shall be the tax payable;

(iii) where the amount of tax computed under sub-clause (a) of clause (i) exceeds the tax computed under sub-clause (b) of clause (i), the excess shall be allowed as a rebate from the first mentioned tax and the amount of the first mentioned tax as so reduced shall be the tax payable."

Paragraph 6A of the Concessions Order :

"Income, profits and gains chargeable to tax in the assessment years 1952-53, 1953-54 and 1954-55. - The income, profits and gains of any previous year which is a previous year for the assessment for the year ending on the 31st day of March, 1953, 1954 and 1955, shall be charged to tax at the Indian rates of tax : provided that from the tax so computed, there shall be allowed in each year, rebate at the percentage thereof specified hereunder :

In respect of so much of the income, profits and gains as accrue or arise -

(a) In the States of Saurashtra, Madhya Bharat Rajasthan, to any assessee, at the rate of 40 per cent., 20 per cent. and 10 percent. respectively, for the assessment for the year ending on the 31st day of March, 1953, 1954 and 1955. . . ."

The scheme underlying section 16(2) and section 18(5) seems to be this. Under section 16(2) the dividends are grossed up and under section 18(5) any sum by which a dividend is increased under section 16(2) is treated as payment of income-tax on behalf of the shareholder. In this setting, let us examine what is the true construction section 16(2) of the Act. It is common ground that "grossing up" has to be effected in this case. The real point of controversy between the parties is regarding the rate at which it is to be done. The learned counsel for the appellants relying on the decision of this court in *Rajputana Agencies Ltd. v. Commissioner of Income-tax* urged that the same meaning should be attributed to the expression "rate applicable to the total income of the company" in section 16(2) as was attributed by this court to the same expression occurring in sub-clause (b) of clause (ii) to the second explanation to proviso to paragraph B of Part I of the First Schedule to the Indian Finance Act, 1951. We are un

This takes us next to the point that benefit given by the Concession Order is not a rebate at all. We

cannot accept this contention. The Concession Order itself uses the word "rebate" in paragraphs 5, 6 and 6A. Indeed, though it may be possible to urge something while dealing with paragraph 6, no argument is possible regarding paragraph 6A, for it expressly says that "there shall be allowed in each year rebate at the percentage thereof specified hereunder". The learned counsel for the appellant laid great stress on the language of paragraph 6 of the Concession Order. He said that clause (i) directed the computation of tax and clause (iii) was equally directing computation of tax, and that in this context the word "rebate" has been loosely used. We are unable to say that the word "rebate" has been loosely used. In paragraph 6A the meaning is clear and the word "rebate" must have the same meaning in both paragraphs. Further, but for the provision of the Concession Order, the said companies would have been tax

That a rebate as such can be directed to be allowed under section 60A of the Act seems clear to us. The word "exemption or other modification" are wide enough to enable the Central Government to give rebate such as has been allowed under the Concession Order.

During the course of the hearing of the connected civil appeal in *Maganlal Sankalchand v. Commissioner of Income-tax* the learned counsel for the Commissioner of Income-tax raised two additional arguments. First, he urged that the word "rebate" in section 16(2) only related to rebate granted under the Indian Finance Act and not any rebate granted under the Concession Order. He further referred us to rule 14 of the Indian Income-tax Rules, which prescribes the certificate to be furnished by the principal officer of a company under section 20 of the Act. The relevant portion of the certificate is as follows :

"1. We certify -

(A) (1) that the company estimates that out of the said period :

(a). . . . . per cent. is chargeable at full Indian rate;

(b). . . . . per cent. is chargeable at the reduced rate of. . . . . (Name of Part B State);  
. . . . ."

Regarding his first contention, we are unable to limit the meaning of the word "rebate" to rebate granted under the Indian Finance Act. The word "rebate" is not qualified and is wide enough to include any rebate which may be granted by other statutory orders. The form of the certificate referred to us which mentions reduction of rate cannot charge the meaning of the word "rebate".

In the result, we agree with the High Court that the answer to the question referred should be in the affirmative. The appeals accordingly fail and are dismissed with costs. One set of hearing fees.

Appeals dismissed.

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