Commissioner of Income-Tax, Delhi and Rajasthan

Vs

Mewar Textile Mills Ltd

Civil Appeal No. 969 of 1964

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

10.12.1965

JUDGMENT

SIKKRI J. –

This appeal by certificate granted under section 66A(2) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, read with section 261 of the Indian Income-tax Act, 1961, is directed against the judgment of the Rajasthan High Court in a consolidated reference made to it by the Income-tax Appellate Tribunal, Delhi Bench, under section 66(1) of the Act. This appeal relates to the assessment year 1943-44 and the relevant question with which we are concerned is as follows :

> "Whether the profit on the amounts received by the assessee's bankers in British India as price of goods sold by the assessee on railway receipts in the names of the consignees or as price of goods delivered exgodown Bhilwara was liable to tax under the Indian Income-tax Act ?"

This question was referred at the instance of the appellant and the item in dispute now before us is the item amounting to Rs. 2,73,488, which was held not liable to taxation by the Appellate Tribunal. The question which arises in this appeal is whether the Tribunal was right. The first submission, however, of Mr. A. V. Viswanatha Sastri, the learned counsel for the appellant, is that the High Court has not dealt with this question is so far as it relates to this sum. Mr. Desai, on the other hand, contends that the appellant has not appealed as far as this item is concerned : and, therefore, before we attempt to answer the question, we must first see whether the appellant's appeal covers this item.

Mr. Desai refers us to the petition for leave to appeal to the Supreme Court, filed in the High Court, and says that there is no express mention of the item of Rs. 2,73,488. He is right as far as this is concerned, but the appellant apparently felt it was not necessary to mention expressly this item. Mr. Sastri points to paragraph 12 and 13 of the petition which read as follows :

> "12. That on account of applying the principle of accrual basis and allowing apportionment of profit between the manufacturing and selling processes in the ratio of 75 per cent. : 25 per cent., the revenue that would be lost to the department would be approximately Rs. 36,000.
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> 13. That the point of law decided by this hon'ble court while returning the answer to question No. 2, namely, whether the liability to pay tax can be fastened on the assessee on receipt basis or accrual basis is a substantial question of law and is or

> great public and private importance and would from important precedent governing the numerous other cases. The tax effect is also of considerable value."

Further, Mr. Sastri points out that the first seven paragraphs of the petition which deal with the facts and the proceedings before the income-tax authorities are general and cover the said item of Rs. 2,73,488; also the grounds of appeal, Nos. 1 and 2, are very general and cover the item in dispute. It is true, as pointed out by Mr. Desai, that the High Court in granting leave to appeal to the Supreme Court did not expressly deal with this item at all, but then the High Court was dealing with the question of law as such and was not adverting to the facts in detail. Be that as it may, the appellant has filed an appeal in respect of the assessment year 1943-44 and the only possible question that can arise in this appeal is regarding the disputed item of Rs. 2,73,488, and we do not feel justified in accepting this technical objection and debarring the appellant from urging that item is taxable.

Now, coming to the merits of the submission of Mr. Sastri, we find that the Rajasthan High Court has omitted to consider the question of the taxability of this item. This item was exempted by the Appellate Tribunal. In this connection the Appellate Tribunal observed as follows :

> "but the assessee would not be liable to tax in respect of goods sold by the assessee to the purchasers on railway receipts in the names of consignees. In respect of these goods, the delivery of the goods was in Bhilwara, the goods were appropriated there and not in British India and the title in the goods had passed in the Indian State and not in British India. The assessee cannot, therefore, be assessed on the amounts received by the assessee from consignees on railway receipts in the names of the consignees. It is true that the consignees did pay the price of the goods to the assessee's bankers in British India but thereby the bankers in British India had become the agents of the consignees and not the agents of the assessee. In this view of the matter the inclusion of the receipts on railway receipts addressed to the consignees cannot be justified. In the assessment years 1944-45 and 1945-46 none of the railway receipts was in the names of the consignees. The sales were on railway receipts in the name of

The High Court noticed the exclusion of Rs. 2,73,488 in these words :

> "The Tribunal also found that it was only in the assessment years 1944-45 and 1945-46 that sales were effected by the assessee on railway receipts in the names of the consignees and that such sales amounted to Rs. 2,73,488. The Tribunal accordingly deleted from the aggregate amount sales of Rs. 12,73,488. and Rs. 2,73,488 obviously treating the amounts deleted as not liable to tax."

Apparently, the mention of 1944-45 and 1945-46 is a clerical mistake and we should read it as 1943-44. Apart from the above words, we do not find any reference to the figure of Rs. 2,73,488 in the rest of the judgment. Further, the main reasoning of the High Court concerns the item of Rs. 1,14,687 in the year 1945-46 and Rs. 3,55,289 during the year 1946-47. These amounts had been received by the assessee by discounting hundies with the Bharat Bank, Bhilwara, and the Rajasthan High Court held that the assessee was liable to tax in respect of these items not on receipt basis but on accrual basis. The item of Rs. 2,73,488 was not realised in Bhilwara by discounting of hundies but in other circumstances.

Two courses are open to us in this appeal; either we should on the material here on the record decide

whether Rs. 2,73,488 is taxable or not or remand the case to the High Court for decision. We have decided to take the latter course because the relevant facts in respect of this item of Rs. 2,73,488 are not clear and the counsel for the assessee and for the revenue have not been able to agree upon the facts on which we should decide this question. We regret having to adopt the latter course because this appeal concerns the assessment year 1943-44 and it is now 1965; but under the circumstances we have no choice except to send the case back to the High Court.

We may mention, however, that Mr. Desai contends before us that the facts are clear and he relies on six documents which are printed in the paper-book, namely :

(1) The Contract form - Annexure Ex. 'T';

(2) Copy of the postcard from Shiv Nath Radha Krishna Somani, Beawar, to M/s. Mewar Textile Mills, Bhilwara, dated March 7, 1942 - Annexure Ex. 'U';

(3) Copy of the advice from Umedmal Abheymal, Ajmer, to Mewar Textile Mills, dated March 7, 1942 - Annexure Ex. 'V';

(4) Copy of the dispatch instruction from Shiv Nath Radha Krishna, Beawar, to M/s. Mewar Textile Mills Ltd., Bhilwara, dated March 11, 1942 - Annexure Ex. 'W';

(5) Copy of letter to M/s Shiv Nath Radha Krishna, Beawar, dated March 12, 1942 - Annexure Ex. 'X';

(6) Copy of the journal entry in the books of the mills of Rs. 9,000- Annexure Ex. 'Y'.

He invites us to treat these documents as a sample of the manner in which the goods were sent from Bhilwara to the consignee in British India and the amount of Rs. 2,73,488 was received. But we notice that these very documents were filed an annexures to the assessee's application under section 66(1) of the Act in respect of questions other than question No. 2, which was referred by the Tribunal at the instance of the appellant and, therefore, we feel a doubt whether these documents could safely be treated as relating to the item of Rs. 2,73,488.

Before we conclude we must mention a matter of procedure. The Appellate Tribunal at the instance of the assessee attached a number of documents to the statement of the case, including the six documents mentioned above, but we find no mention of these documents either in the appellate order of the Appellate Tribunal or in the body of the statement of the case. We feel that it is not consistent with the advisory jurisdiction of a High Court under the Act that the Appellate Tribunal should attach to the statement of the case documents, other than the proceedings of the income-tax authorities, which are not mentioned and discussed either in its own appellate order or in the statement of the case. Suppose a dispute arises as to the interpretation of a document which is annexed in the manner above mentioned. If the High Court decides the dispute it would be deciding questions not decided by the Tribunal, and which the High Court would be incompetent to decide, under the Indian Income-tax Act.

In the result we accept the appeal, set aside the order of the High Court of Rajasthan as far as the assessment year 1943-44 is concerned and remand the case to the High Court. The High Court will dispose of the reference in accordance with law. In view of the circumstances of the case, there will be no order as to costs.

Appeal allowed. Case remanded.

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