SUPREME COURT OF INDIA

Hukumchand Mills Ltd.

Vs.

Commissioner of Income Tax Central Bombay

C.A.Nos 411 to 415 of 1965

(J. C. Shah, V. Ramaswami and V. Bhargava JJ.)

22.09.1966

JUDGEMENT

RAMASWAMI, J.:

1. These five appeals consolidated by an order of the Bombay High Court arise out of a Reference made by the Income-tax Appellate Tribunal, Bombay Bench ' A' on January 2, 1959 and decided by the Bombay High Court on September 22, 1962. The High Court granted certificates to appeal against its judgement under S. 66-A of the Income-tax Act, 1922 to both the Commissioner of Income-tax, (Central) Bombay and the assessee. Civil Appeals Nos. 411 to 413 of 1965 are brought on behalf of the assessee and Civil Appeals Nos. 414 and 415 of 1965 are brought on behalf of the Commissioner of Income-tax (Central) Bombay.

2. Hukumchand Mills Ltd. (hereinafter referred to as the 'assessee') is a public company incorporated in the previous Indore State. The assessee owns a textile mill there. Up to the assessment year 1949-50 it was being assessed in British India as a non-resident (except in 1948-49 when it was assessed as a resident) on such income as fell within S. 4 (1) (a) or 4 (1) (c) read with

S. 42 of the Income-tax Act, 1922 (hereinafter referred to as the 'Act'). After the Constitution came into force, Indore became a Part B State and the Act was brought into force in such States with effect from April 1, 1950. The assessee therefore became liable to be assessed as a resident from the assessment year 1950-51.

3. The assessee was accordingly assessed as a resident in the years1950-51, 1951-52 and 1952-53. One of the questions which arose for determination in the assessments for these years was the proper written down value of the buildings, machinery etc.of the assessee for calculating the depreciation allowance under S. 10 (2) (vi) of the Act. The assessee relied upon S. 10 (5) (b) and contended that the original cost of the machinery, buildings etc. should be taken for this purpose. That sub-clause provided that in the case of assets acquired before the previous year the written down value was the actual cost less all depreciation actually allowed to the assessee under the Act or any Act repealed thereby. But as no depreciation had been actually allowed under the Act, the assessee contended that the original cost should be taken as the basis of allowing depreciation without taking into consideration the number of years during which the machinery had been working or the depreciation it had suffered or the written down value entered in the books. The case of the Department, on the contrary, was that it was necessary to determine the total income of the assessee to arrive at the taxable proportionate income of the assessee under the Act as a non-resident and as depreciation had been allowed to arrive at such total income, the same must be taken into account to arrive at the written down value as it had been actually allowed with in the meaning of S. 10 (5) (b). The Income-tax Officer and the Appellate Assistant Commissioner rejected the contention of the assesses but the Tribunal, by its order dated October 8, 1958 held that only that part of the depreciation which entered into the computation of the taxable income of the assesses under the Act can be treated as depreciation 'actually allowed' and not the total depreciation which went into the computation of the total income.

4. It was urged before the Tribunal by the Department that although the Income-tax Officer had not considered the provisions of paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950 (hereinafter referred to as the ('Taxation Laws Order'), the said provisions were applicable in the present case and certain amounts of depreciation which are allowed under the industrial Tax Rules, which had the force of law in the Indore State, were required to be deducted in arriving at the written down value of the assets of the assessee. The Tribunal permitted this contention to be raised by the Department. It was pointed out on behalf of the assessee that the contention could not be entertained unless it was found as a fact that the depreciation was actually allowed under the Industrial Tax Rules to the assessee, and unless it was also further held that the Industrial Tax Rules were rules which related to income-tax or super-tax, or any law relating to tax on profits of business. Paragraph 2 of the Taxation Laws Order provides as follows :

"Computation of aggregate depreciation allowance and the 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) of sub-section (2) and the written down value under

clause (b) of sub-section (5) of Section 10 of the Act."

5. In view of this submission made by the parties the Tribunal remanded their matter back to the Income-tax Officer for ascertaining whether any depreciation was allowed under the Industrial Tax Rules and for considering the question whether the said rules related to income-tax or super-tax or any law relating to tax on profits of business and if he decided these questions in favour of the Department he should take into consideration such depreciation actually allowed under the said rules for the purposes of computing the written down value.

6. Under S. 66 (1) of the Act the Tribunal referred the following question of law for the determination of the High Court.

"(1) Whether the words 'all depreciation actually allowed' used in Section 10 (5) (b), of the Indian Income-tax Act refer only to the depreciation allowed for the purpose of determining the amount liable to Indian Income-tax.

(2) Whether the provisions of paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, apply and were correctly applied to the facts of the case".

7. By its judgment dated June 22, 1962 the High Court agreed with the view taken by the Tribunal on the first question and answered it in favour of the assessee. As regards the second question, the High Court held as follows :

"We do not find any thing in the Tribunal's order which indicates that any contention was raised before the Tribunal that paragraph 2 had no application to the case. What was contended was that the questions whether any depreciation was allowed under the Industrial Tax Rules, or if it was allowed, whether such depreciation was under any law or rules relating to income-tax or super-tax etc., not having been determined, the contention raised by the Department on the basis of paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, could not be entertained at that stage, and that contention has been accepted by the Tribunal. In these circumstances, our answer to question No. 2 as framed is that Paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, is a valid provision of law, but it will have application to the present case only if the questions which the Tribunal has asked the Income-tax officer to determine, are determined by the Income-tax Officer in favour of the Department".

Civil Appeals Nos. 411 to 413 of 1965:

8. The sole question argued on behalf of the assessee in these appeals is that the Tribunal was not competent to go into the question whether the provisions of paragraph 2 of the Taxation Laws Order were applicable to the present case and the respondent should not have been allowed to raise the contention for the first time before the Tribunal. It was also argued that the Tribunal ought not to have remanded the case to the Income-tax Officer for ascertaining whether any depreciation was allowed under the Industrial Tax Rules and whether such depreciation should be taken into account for the purpose of computing the written down value. In our opinion there is no justification for this argument. In the first place, no objection was raised before the Tribunal or before the High Court that the department should not have been allowed to raise the question for the first time with regard to the application of paragraph 2 of the Taxation Laws Order. We shall, however, assume in favour of the assessee that the question was implicit in the question actually framed and referred to the High Court. Even upon that assumption we are of opinion that the Tribunal had jurisdiction to permit the question to be raised for the first time in appeal. The powers of the Tribunal in dealing with appeals are expressed in S. 33 (4) of the Act in the widest possible terms. Section 33 (3) of the Act states that "An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner" Section 33(4) reads as follows:

"4. The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and the Commissioner."

The word "thereon", of course, restricts the jurisdiction of the Tribunal to the subject-matter of the appeal. The words 'pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by S. 31 of the Act. Consequently the Tribunal has authority under this Section to direct the Appellate Assistant Commissioner or the Income-tax Officer to hold a further enquiry and dispose of the case on the basis of such enquiry. Rule 12 of the Appellate Tribunal Rules, 1946 made under S. 5-A (8) of the Act provides as follows:

"The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal; but the Tribunal, in deciding the appeal shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule :

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."

Rule 27 states:

"The respondent, though he may not have appealed, may support the order of the Appellate

Assistant Commissioner on any of the grounds decided against him."

Rule 28 is to the following effect :

"Where the Tribunal is of opinion that the case should be remanded it may remand it to the Appellate Assistant Commissioner or the Income-tax Officer, with such directions as the Tribunal may think fit."

In the present case, the subject-matter of the appeal before the Tribunal was the question as to what should be the proper written down value of the buildings, machinery etc. of the assessee for calculating the depreciation allowance under S. 10 (2) (vi) of the Act. It was certainly open to the Department, in the appeal filed by the assessee before the Tribunal, to support the finding of the Appellate Assistant Commissioner with regard to the written down value on any of the grounds decided against it. It was argued on behalf of the appellant that the action of the Tribunal in remanding the case is not strictly justified by the language of Rule 27 or Rule 12. Even assuming that Rules 12 and 27 are not strictly applicable, we are of opinion that the Tribunal has got sufficient power under S. 33 (4) of the Act to entertain the argument of the Department with regard to the application of paragraph 2 of the Taxation Laws Order and remand the case to the Income-tax Officer in the manner it has done. It is necessary to state that Rules 12 and 27 are not exhaustive of the powers of the Appellate Tribunal. The rules are merely procedural in character and do not, in any way, circumscribe or control the power of the Tribunal under S. 33(4) of the Act. We are accordingly of the opinion that the Tribunal had jurisdiction to entertain the argument of the Department in this case and to direct the Income-tax Officer to find whether any depreciation was actually allowed under the Industrial Tax Rules and whether such depreciation should be taken into consideration for the purpose of computing the written down value.

9. For these reasons we reject the argument of Mr. Bobde on behalf of the assessee and dismiss these appeals. There will be no order as to costs.

Civil Appeals Nos. 414 - 415 of 1965 :

10. The question of law arising in these appeals has been the subject-matter of consideration in the decision of this Court in Commr. of Income-tax, M. P. Nagpur and Bhandara v. Nandlal Bhandari Mills Ltd., (1966) 613 ITR 173: (AIR 1966 SC1026) and for the reasons given in that case we hold that the question has been correctly answered by the High Court. We accordingly dismiss these appeals but there will be no order as to costs.

Appeals dismissed.