Commissioner of Wealth-Tax, Madras

Vs

Ramaraju Surgical Cotton Mills, Ltd.

Civil Appeal No. 674 of 1965

(J. C, Shah, V. Ramaswami-I, V. Bharagava JJ)

05.10.1966

JUDGMENT

BHARGAVA. J.

The respondent is a public limited company incorporated under the Indian Companies Act, 1913 in the year 1939 and was carrying on the business of manufacture of absorbent cotton wool. In March 1955, the Board of Directors resolved to establish a new spinning unit under the name of Sudarsanan Spinning Mills for which a licence was obtained from the Government of India under the Industries (Development and Regulation) Act, 1951 in August 1955. The respondent placed orders for purchase of necessary spinning machinery and plant in the months of January and February, 1956. The construction of factory buildings was taken in hand in March, 1956, and these constructions were completed by December, 1957. The erection of the spinning machinery and the plant in the buildings was completed in several stages commencing from June, 1957. A licence from the Inspector of Factories for working the factory was obtained in June, 1958. The statement of the case further mentioned that the time given to complete the project was extended by the Government up to 17th March, 1959. The respondent was assessed to wealth-tax for the assessment year 1957-58, and in that year the respondent claimed that, in computing the wealth on the valuation date which was 30th September, 1956, an amount of Rs. 1,43,727 should be deducted as being the amount laid out in setting up this new unit. The Wealth Tax Officer disallowed the claim on the ground that the unit was set up prior to the date on which the Wealth Tax Act (hereinafter referred to as "the Act") came into force, i.e., 1st April, 1957. On the same basis, the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal upheld that order. Thereupon, at the request of the respondent, the following question of law was referred for opinion of the High Court of Madras :-

> "Whether the aforesaid asset of Rs. 1,43,727 is exempt under section 5(1)(xxi) read with the second proviso thereunder of the Wealth-tax Act ?"

The High Court answered the question in favour of the respondent, and consequently, this appeal has been brought up to this Court by the Commissioner of Wealth Tax, Madras, by special leave.

The question that fell for determination depended on the interpretation of section 5(1)(xxi) of the Act read with the second proviso to that clause which are reproduced below :

> "5(1)(xxi) that portion of the net wealth of a company established with the object of carrying on an industrial undertaking in India within the meaning of the Explanation of clause (d) of section 45, as is employed by it in a new and separate unit set up

after the commencement of this Act by way of substantial expansion of its undertaking :-

Provided that -

#(a) . . . .(b) . . . .##

Provided further that this exemption shall apply to any such company only for a period of five successive assessment years commencing with the assessment year next following the date on which the company commences operations for the establishment of such unit."

It has been urged before us by learned counsel for the Commissioner that the main provision of clause (xxi) should be interpreted in conjunction with the second proviso so as to give a harmonious construction to both parts of the provision with which we are concerned. Relying on this principle, he urged that we should hold that a new and separate unit is set up only when the company commences operations for the establishment of such unit. He relied on the principle stated by Maxwell in his book "On Interpretation of Statutes' 11th Edn. at p. 155 that there is no rule that the first or enacting part is to be construed without reference to the proviso. "The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest." "The true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail." The view taken by the High Court was challenged on the ground that the High Court had interpreted the principal clause without giving full effect to the language of the proviso.

The High Court held that unless a factory is erected and the plants and machinery installed therein, it cannot be said to have been set up. The resolution of the Board of Directors, the orders placed for purchasing machinery, licence obtained from the Government for constructing the machinery, are merely initial stages towards setting up, however necessary and essential they may be to further the achievement of the end. It is not, however, the actual functioning of the factory or its going into production that can alone be called setting up of the factory. The setting up is perhaps a stage anterior to the commencement of the factory. Thereafter, the High Court referred to a decision of the Bombay High Court in Western India Vegetable Products, Limited v. Commissioner of Income-tax, Bombay City (26 I.T.R. 151.), and on its basis concluded that the proper meaning to be assigned to the expression "set up" in section 5(1)(xxi) would be "ready to commence business." We are unable to agree with the learned counsel for the Commissioner that in arriving at this view, the High Court committed any error. A unit cannot be said to have been set up unless it is ready to discharge the function for which it is being set up. It is only when the unit has been put into such a shape that it can start functioning as a business or a manufacturing organisation that it can be said that the unit has been set up. The expression used in the proviso, under which the period for which the exemption is available is to be determined, is not the same as used in the principal clause. In the proviso, the period of five successive years of exemption has to commence with the assessment year next following the date on which the company commences operations for the establishment of the unit. Operations for the establishment of a unit, from the very nature of that expression, can only signify steps that have to be taken to establish the unit. The word "set up" in the principal clause, in our opinion, is equivalent to the word "established", but operations for establishment cannot be equated with the establishment of the unit itself or its setting up. The applicability of the proviso has, therefore, to be decided by finding out when the company commenced operations for

establishment of the unit, which operations must be antecedent to the actual date on which the company is held to have been set up for purposes of the principal clause. This is also the meaning that the Bombay High Court derived in the case in Western India Vegetable Products Ltd. (26 I.T.R. 151.) where that Court was concerned with the interpretation of the expression "set up" as used in section 2(11) of the Income-tax Act. That Court held : "It seems to us that the expression 'setting up' means, as is defined in the Oxford English Dictionary, 'to place on foot' or 'to establish', and is contradistinction to 'commence.' The distinction is this that when a business is established and is ready to commence business, then it can be said of that business that it is set up. But before it is ready to commence business it is not set up." This view was expressed when that Court was considering the difference between the meaning of the expression "setting up a business" and "commencing of a business." In the case before us, the proviso does not even refer to commencement of the unit. The criterion for determining the period exemption is based on the commencement of the operations for the establishment of the unit. These operations for establishment of the unit cannot be simultaneous with the setting up of the unit, as urged on behalf of the Commissioner, but must precede the actual setting up of the unit. In fact, it is the operations for establishment of a unit which ultimately culminate in the setting up of the unit.

On this interpretation, it is clear that in this case, the claim put forward by the respondent for exemption has been rightly held to be allowable by the High Court. In the statement of the case and in it appellate judgment, the Tribunal did not specifically record any finding as to the date when the unit was ready to go into business and to start production. In the appellate order, it was mentioned that according to the respondent, the unit was set up only when the Inspector of Factories issued a licence to the respondent for working the factory, which was in June, 1958. In the statement of the case, the facts recited show that the construction of the factory buildings was completed by December, 1957 and the erection of the spinning machinery and plant was completed in several stages commencing from June, 1957. On these facts, the High Court, and we consider rightly, proceeded on the basis that the unit was completed and became ready to go into business only after 1st April, 1957, when the Act had already come into force. Consequently, the condition laid down in the principal clause of s. 5(1)(xxi) was satisfied, and the company became entitled to exemption in respect of the value of the assets used up in setting up this unit.

Learned counsel for the Commissioner, however, challenged the right of the respondent to claim this exemption on another ground, viz., that the exemption was claimed in respect of money laid out in a period which was not covered by the period envisaged in the second proviso. It was urged that if it be held that the unit was set up after the Act had come into force on the 1st April, 1957, it must also be held that the operations for the establishment of the unit had been commenced by the company almost simultaneously with the unit having been set up, and that date would, therefore, be a date subsequent to the assessment year 1957-58 in which year the exemption was claimed. This is a question which we do not think can be legitimately raised on behalf of the Commissioner at this stage. The only contention before the Tribunal on behalf of the Commissioner was that the operations for the establishment of the unit had been commenced by the respondent before the Act came into force, and that it should be held that the unit was also set up at the same time when those operations were commenced. There was no contention at any stage that the operations for the establishment of the unit were commenced at a subsequent stage. In fact, it was only for the purpose of urging that the principal clause was not applicable to the case of the respondent that the position was taken up on behalf of the Commissioner that the operations for establishment of the unit had been commenced before 1st April, 1957, and the unit must be held to have been set up at the same time when those operations were commenced. That submission, as we have indicated above, has no force.

In any case, the judgements passed by all the Wealth-tax Authorities show that it was at no stage in dispute that the operations for establishment of the unit had been commenced by the respondent prior to 1st April, 1957. Para 5 of the statement of the case mentions that the wealth-tax officer disallowed the claim on the ground that unit was set up prior to 1st April, 1957. The Appellate Assistant Commissioner also in his judgment said : "In this view of the matter, the appellant set up the undertaking even prior to 1st April, 1957 as operations were carried out prior to that date for the establishment of the undertaking. The operations consisted of the seeking of permission from the Government to instal the unit, and placing of orders with manufacturers of machinery and advancing of moneys towards the purchase of machinery." The Tribunal also disallowed the claim on the basis that the respondent commenced operations for setting up the unit earlier than 1st April, 1957. It does not appear to be necessary for us to express any opinion as to the particular stage at which it can be said that a company commences operations for the establishment of a unit. In the present case, the Tribunal proceeded on the basis that, whatever be the exact date of commencement of the operations for establishment of this unit by the respondent, it was certainly before 1st April, 1957; and we consider that that fact, by itself, is sufficient to entitle the respondent to claim the exemption. The Commissioner cannot, at this stage, be allowed to raise a new question and ask this Court to decide that the date of commencement of the operations for establishment of the unit by the respondent was different from that accepted by the Tribunal. That question was not raised and dealt with by the Tribunal. It is not even a question that might have been raised before the Tribunal and the Tribunal might have failed to deal with, nor is it a question which may not have been raised before the Tribunal and, yet, was dealt with by it. On the principle laid down by this Court in Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co., Ltd., ([1962] 1 S.C.R. 788 : 42 I.T.R. 589.) such a question could not be canvassed before the High Court and cannot be allowed to be raised in this Court. The question referred to the High Court had to be answered on the basis that the respondent did commence operations for establishing this unit before 1st April, 1957; and the further finding of fact recorded by the Tribunal is that a sum of Rs. 1,43,727/- had been invested in setting up the unit by 30th September, 1956, which was the valuation date for the assessment year 1957-58. The very first assessment year after the commencement of the operations for establishment of the unit was this assessment year 1957-58. In the Wealth Tax Act, assessment year has been defined to mean the year for which tax is chargeable under s. 3 of that Act. Since the Act came into force on the 1st April, 1957, the financial year 1957-58 was the first assessment year for which tax became chargeable, and consequently, for purposes of the second proviso to section 5(1)(xxi), the assessment year following the commencement of operations for establishment of the unit in the case of any company which commenced the operations any time before the 1st April, 1957, will be the assessment year 1957-58. Prior to the year 1957-58, there was no assessment year as defined under the Act, and consequently, the first assessment year for which exemption could be claimed was this assessment year 1957-58. The respondent which had commenced operations for establishment of its new unit prior to 1st April, 1957, was rightly allowed exemption in respect of the amount that had been invested by it upto the relevant valuation date. The answer returned by the High Court was, therefore, correct. The appeal fails and is dismissed with costs.

Y.P.

Appeal dismissed.

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