The Commissioner of Income Tax, Madhya Pradesh

Vs

Messrs Binodiram Balchand, Indore

Civil Appeal No. 27 of 1969

(J.C. Shah, K.S. Hegde JJ)

16.12.1969

JUDGMENT

HEGDE, J. -

1. In this appeal by certificate brought by the Commissioner of Income-tax, Nagpur, two questions arise for consideration. They are :

2. What is the "previous year" in respect of the source of income, viz., managing agency and selling agency and financing of the Binod Mills Ltd., Ujjain for the purpose of assessment for the assessment year 1950-51, whether the year ended March 31, 1950 or the year ended Diwali, 1949; and (2) whether for the purpose of bringing to tax the dividend income of the assessee for the assessment year 1950-51 and having regard to the provisions of the Part B States (Taxation Concessions) Order, 1950 (in short 'Order'), the dividend income say of Rs. 54,468/- (gross Rs. 50,137/-) as well as the dividend income of Rs. 2,28,392/- should be subjected to tax at the concessional rates mentioned in the Schedule to the 'Order' as held by the High Court.

3. The assessee is a Hindu undivided family with its head office at Indore and branched at several other places in some of the former Part B States including the State of Madhya Bharat. It derived its income from several sources such as property, businesses, managing agency commission, shares in partnership firms etc. The assessee's family at one time was carrying on business at Bombay and was assessed in the status of non-resident Hindu undivided family. Its business in Bombay was, however, closed down some time in 1945 and no assessment was made on it for the year 1948-49 and 1949-50. Till the assessment year 1947-48, the "previous year" adopted by the assessee was the appropriate Diwali year. For the assessment year 1950-51, the assessee claimed that in respect of its income by way of commission from the managing and selling agency of the Binod Mills Ltd., Ujjain, its "previous year" was one ending on March 31, 1950, and on that basis it contended that the commissioner accrued to it during the calendar year 1948 could not be brought to tax. This contention was not accepted by the Income-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal. They took the view that the case of the assessee is covered by the proviso to section 2(11) (i)(a) of the Income-tax Act, 1922 (in short "the Act"). According to their view, the assessee had "once been assessed". Therefore its was not open to it to vary its "previous year". In view of that finding, the assessee was assessed on the basis that the Diwali year beginning from 2nd November, 1948, and ending on October 21, 1949, is the relevant account year. In that account year, the assessee derived net dividend income of Rs. 2,62,860/- from the Binod Mills Ltd., Ujjain. Out of this income Rs. 34,468/- were attributable to the profits that accrued or that could be deemed to have been accrued to the Binod Mills in Part A State. But the remaining amount of Rs. 2,28,392/- was held to be attributable to profits which accrued in Part B State, viz., Madhya Bharat. As the

dividend income attributable to profits accruing in Part A State was subject to tax under the Act, the Income-tax Officer grossed up the net dividend of Rs. 34,468/- to Rs. 50,137/- under section 16(2) of the Act. This income was subjected to income-tax and super-tax at the rates prescribed by the Fiance Act, 1950, rejecting the claim of the assessee for concession in regard to this income under the 'Order'. The balance of Rs. 2,28,392/- was not subjected to any income-tax in view of the provisions contained in Paragraph 12 of the 'Order'. It was, however, subjected to super-tax at the concessional rates mentioned in the 'Order'. The Tribunal rejected the contention of the assessee that the dividend income of Rs. 2,28,392/- was not subject to super-tax under Paragraph 12 of the 'Order' and that the amount of Rs. 2,62,860/- should not have been apportioned as the Income-tax Officer had done as neither income-tax nor super-tax was leviable on those profits and, in any case, super-tax was payable on the entire dividend income, only at the concessional 'rates'. On a reference made under Section 66(1) of the Act, the High Court held that the "previous year" in respect of the managing agency and selling agency sources of income is the financial year ending March 31, 1950. With regard to the other question, the High Court held that the income-tax payable on the entire dividend income included in the total income after exclusion of the non-taxable dividend under Paragraph 12 of the 'Order' would be at the concessional rates prescribed in the 'Order' and further that the assessee is liable to pay super-tax at the concessional rates mentioned in that 'Order' on the entire dividend income. Hence this appeal.

4. So far as the first question is concerned, viz., whether the assessee was entitled to take the financial year as the relevant previous year, the same is concluded by our decision in Commissioner of Income-tax, Madhya Pradesh v. Kanchanbai (Civil Appeal No. 19 of 1969), just now delivered. For the reasons mentioned therein the decision of the High Court on this point is confirmed.

5. This takes us to the second question, namely, whether the dividend income of the assessee should have been assessed both for the purpose of income-tax as well as super-tax at the rate prescribed in the Schedule to the 'Order'.

6. The High Court's finding that the dividend income accrued or received by the assessee in Madhya Bharat is subjected to super-tax as well as its finding that a part of dividend income is subject to income-tax had not been appealed against. Hence it is not necessary to go into that question. Therefore the question that remains for examinations is whether the High Court was right in holding that the income-tax and super-tax leviable on the dividend income is at the concessional rates mentioned in the 'Order'.

7. It may be noted that in Madhya Bharat till April 1, 1950, there was no State law relating to the charge of income-tax and super-tax. Paragraph 3(v) of the 'Order' defines the expression "State rate of tax". The Explanation to that definition says "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 (in the present case 1st day of April, 1950), shall, for the purposes of this clause, be deemed to be the rates specified in the Schedule". Paragraph 4(i) says that the provisions of Paragraphs 5, 6 sub-paragraph (1) of Paragraph 11, 12 and 13 of this Order shall apply .....

> "(iii) in the case of any other assessee who is not resident in the previous year in the taxable territories or in the taxable territories other than Part B States, to so much of the income, profits and gains included in his total income as accrue or arise in any Part B State and are not deemed to accrue or arise, or are not received or deemed to be received within the meaning of clause (a) of sub-section (1) of Section 4 of the Act, in the taxable territories other than the Part B States."

8. The assessee in the relevant "previous year" was a resident of Madhya Bharat. His income with which we are concerned in this appeal exclusively to the benefit of Paragraphs 5, 6, sub-paragraph (1) of Paragraphs 11, 12 and 13 of the 'Order'.

9. Paragraph 5 deals with the income of a "previous year" chargeable in the Part B State in 1949-50. The assessee's case does not fall within its scope. Paragraph 6 deals with income of the "previous year" which does not fall under Paragraph 5. That paragraph, to the extent it is material for our present purpose reads :

> "The income, profits and gains of any previous 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;
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> (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;
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> (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."

10. The provisos to that paragraph are not relevant for our present purpose.

11. In view of clauses (i) to (iii) of Paragraph 6 read with the Explanation to paragraph 3(v), the tax payable by the assessee, income-tax as well as super-tax, has to be computed on the basis of the formulae given in Paragraph 6. In other words, the assessment will have to be made at the concessional rate mentioned in the Schedule to the 'Order'.

12. Paragraph 12 of the Order deals with dividends. It reads :

> "Where the total income of an assessee chargeable to tax for the assessment for the year ending on the 31st day of March, 1951, includes any income from dividends paid by a company registered in a State in which there was no State law relating to the charge of income-tax and super-tax and the dividend is paid out of profits which were not liable to be taxed, in whole or in part, either in the State or in the taxable territories, no income-tax shall be payable by the assessee on such proportion of the dividend as the non-taxable profits of the company arising in the State bear to the total income of the company."

13. The income with which we are concerned in this case is dividend income. It was paid by a

company registered in a Part B State in which there was no State law relating to the charge of income-tax and super-tax. The department does not dispute that the dividend income of Rs. 2,28,392/- is only subject to super-tax and no income-tax is leviable thereon. In other words it does not contest the finding that that dividend income falls within the scope of paragraph 12 of the 'Order'. Once that is conceded, as has been done, then there can be no doubt, in view of paragraph 6 of the 'Order' that on that amount super-tax has to be levied only at the concessional rate prescribed in the Schedule to the 'Order'.

14. Regarding Paragraph 3(v), 6 and 12 together, the position that emerges is that the assessee is liable to pay income-tax on Rs. 50,137 at the rates mentioned in the Schedule to the 'Order' and further he is also liable to pay super-tax on the entire dividend income at the rates mentioned in the Schedule to that 'Order'.

15. For the reasons mentioned above, the view taken by the High Court is correct. Hence this appeal fails and the same is dismissed with costs.

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