

The Commissioner of Income-Tax, U.P., Lucknow

Vs

M/s. Gurbux Rai Harbux Rai.

Civil Appeals Nos. 1225-1226 of 1967

(K.S. Hegde, A.N. Grover JJ)

24.08.1971

JUDGMENT

GROVER, J. -

1. In these appeals this Court by an order, dated January 21, 1971 directed the Income-tax Appellate Tribunal to submit a supplementary statement of the case on the question whether the proceedings under Section 10-A were started in the course of assessment or reassessment proceedings commenced under Section 15 of the Excess Profits Tax Act, 1940, hereinafter called the "Act."

2. The facts set out in the supplementary statement of the case may be recapitulated. M/s. Gurbux Rai Harbux Rai hereinafter referred to as the "assessee" is a registered firm carrying on business in piece goods. During the chargeable accounting period July 4, 1943 to June 21, 1944 and June 22, 1944 to July 10, 1945 Gurbux Rai and Harbux Rai (each representing his joint family) were the two partners of the assessee with equal shares. In the proceedings for assessment of tax under the Act for the above two chargeable accounting periods the assessee informed the Tax Officer that the joint family of Gurbux Rai had been partitioned and there had been a reconstitution of the business of partnership with effect from July 4, 1943. According to the assessee the constitution of the firm after the partition was that in the firm at Kanpur the former two partners were interested, their share being equal but in the business of the firm at Farrukhabad there were three partners, namely, Harbux Rai with a share of 8 annas, Mst. Chemeli Devi with a share of 4 annas and Gopal Das with a share of 4 annas. In assessing tax under the Indian Income-tax Act, 1922, for the assessment year 1944-45 corresponding to the accounting year from October 19, 1942, to October 7, 1943, the Income-tax Officer held that the partition set up by Gurbux Rai could not be accepted as the same had been made to avoid proper incidence of taxation. He, therefore, assessed the income as that of the assessee and not as the income of a separate firm. The Excess Profits tax being consequential upon the income-tax assessment, the Excess Profits Tax Officer assessed the entire income of the two businesses at Kanpur and Farrukhabad in the hands of the assessee. Against the order passed by the Income-tax Officer in the income-tax assessment the assessee appealed to the Assistant Commissioner. On October 10, 1947, that Officer held that only partial partition had been effected in the joint family of Gurbux Rai. This is what he held :

"..... that partial partition in respect of movable property of Gurbux Rai was effected on a date somewhere near Asadh Samwat 2000, from which date Farrukhabad business was conducted by a separate firm consisting of Harbux Rai, Mst. Chameli and Gopaldas."

The income-tax assessments were consequently modified for the two assessment years 1944-45 and

1945-46. The Excess Profits Tax Officer also started proceedings under Section 10-A of the Act by serving a notice, dated February 3, 1951, on the assessee. The notice required the assessee to show cause why proper adjustment should not be made on the footing that the main purpose of the partial partition of the family of Gurbux Rai was the avoidance of the excess profits tax liability. By an order, dated February 21, 1951, passed under Section 15 of the Act the Excess Profits Tax Officer modified the original assessment for both the chargeable accounting periods. In the revised assessment he included the income of the branch shop at Farrukhabad in the total income of the assessee for the purpose of assessment of excess profits tax.

3. The assessee went up in appeal against the orders of the Excess Profits Tax Officer to the Appellate Assistant Commissioner. These appeals were dismissed. The Appellate Tribunal confirmed the order of the departmental authorities. Thereafter the Tribunal referred the following two questions of law to the Allahabad High Court under Section 21 of the Act, read with Section 66(1) of the Income-tax Act, 1922 -

(1) "Whether on the facts and in the circumstances of this case there was any definite information within the meaning of Section 15 by virtue of which the Excess Profits Tax Officer was competent to reopen the excess profits tax assessments?"

(2) Whether in the circumstances of this case, the Excess Profits Tax Officer was competent to apply the provisions of Section 10-A and make necessary adjustments in pursuance thereto in the revised assessment under Section 15?"

The High Court answered both the questions in the negative.

4. Pursuant to our previous order, dated January 21, 1971, the Tribunal has submitted the necessary material to enable us to give our decision. It has stated that the notices under Section 15 of the Act were issued for both the chargeable accounting periods and they were served on the assessee on February 3, 1951. According to these notices the assessee was called upon to show cause why provisions of Section 10-A of the Act should not be invoked. The assessee submitted a written reply objecting to the applicability of Section 10-A. The Excess Profits Tax Officer obtained approval of the the Inspecting Assistant Commissioner and passed an order under Section 10-A on February 21, 1951. According to the Tribunal the proceedings under Section 15 were pending for both the chargeable accounting periods when the proceedings under Section 10-A of the Act were started by the Excess Profits Tax Officer. It has been added that the notices under Section 15 and under Section 10 were issued on the same date, namely, February 3, 1951, but from the order-sheet it was clear that notice under Section 15 was issued first and the notice under Section 10-A was issued thereafter.

5. It is abundantly clear from the annexures to the supplementary statement of the case that on February 3, 1951, the assessee's counsel and K. S. Kalra and Gurbux Rai were present before the Excess Profits Tax Officer. Receipt of a notice alleged to have been issued under Section 10-A of the Act previously was denied by them. The Tax Officer proceeded to record the following order :

"Issue notice under Section 15 requiring the return to be filed within 60 days of the date of service.

Sd. E.P.T.O.

Also issue notice under Section 10-A as per draft.

Sd. E.P.T.O."

The order-sheet further shows that on February 15, 1951, reply to the notice was received along with the return and it was directed that the same be placed on the record. It is common ground that no objection was taken in this reply that the notice under Section 15 had not been issued before the notice under Section 10-A was issued.

6. Section 15 of the Act provides that if in consequence of definite information which has come into the possession of the Excess Profits Tax Officer he discovers that profits of any chargeable accounting period have escaped assessment, etc., he may at any time serve a notice containing all or any of the requirements which may be included in a notice under Section 13 and may proceed to assess or reassess the amount of such profits liable to excess profits tax. The power so conferred can be exercised in the course of the original assessment or reassessment. It is essential, according to the law laid down by this Court, that before any action can be taken or an order made under Section 10-A there should be a proceeding which should be pending for assessment or reassessment of excess profits tax. In other words in the present case before the provisions of Section 10-A could be applied, the Tax Officer was bound to initiate proceedings under Section 15. According to what the Tribunal has said in the supplementary statement of the case the proceedings under Section 15 had been commenced before action was taken under Section 10-A. We have already referred to the orders which were made on February 3, 1951. It is true that the orders to issue notices under Section 15 and Section 10-A were made at the same time but the notice under Section 15 was ordered to be issued first. Thus the Tax Officer had initiated proceedings under Section 15 before the notice was issued under Section 10-A and it would be a mere hypertechnicality to say that simply because the notice under Section 15 and the notice under Section 10-A were issued on the same date the requirements of the law were not satisfied. The finding of the Tribunal also is to the effect, as noticed before, that proceedings under Section 15 were pending when the proceedings under Section 10-A were taken. The second question, therefore, had to be answered against the assessee and in favour of the Revenue.

7. On the first question the submission of Mr. M. C. Chagla for the assessee is that there was no definite information which had come into possession of the Tax Officer from which it could be said that he had discovered that profits of the relevant chargeable accounting period had escaped assessment. We are unable to agree. The Appellate Assistant Commissioner had made an order on October 10, 1947, in the proceedings relating to the assessment of income-tax of the assessee that there had been only a partial partition in respect of the movable property business of Gurbux Rai. That was certainly an information which came into the possession of the Excess Profits Tax Officer not because of any change of opinion by himself but because of the decision of the Appellate Assistant Commissioner in the income-tax proceedings. This Court has consistently held that the Income-tax Officer would have jurisdiction to initiate proceedings under Section 34(1)(b) of the Income-tax Act, 1922, which is in *pari materia* with Section 15 of the Act if he acted on information received from the decision of the superior authorities or the court even in the assessment proceedings. (See *R. B. Bansilal Abirchand Firm v. Commissioner of Income-tax, M.P.* (70 ITR 74.) and *Assistant Controller of Estate Duty, Hyderabad v. Nawab Sir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad and Others.* (72 ITR 376.) It has next been urged that the alleged object of having a partial partition, namely, of reducing the liability to excess profits tax had never been examined by the Appellate Assistant Commissioner in the income-tax proceedings and therefore it could not be said that there had been escapement of income as a result of information derived from his order. The Appellate Assistant Commissioner apparently did not go into that question because the proceedings before him related to assessment of income-tax. Section 10-A of the Act is a special

provision which deals with the transactions designed to avoid or reduce liability to excess profits tax. The information which came into possession of the Excess Profits Tax Officer of partial partition having been effected was relevant for the purpose of Section 15 and once he had initiated proceedings under that section he was perfectly competent and had jurisdiction to examine for the purpose of Section 10-A whether partial partition had been effected for avoidance or reduction of liability to excess profits tax. The first question, therefore, should have been answered against the assessee and in favour of the Revenue.

8. The appeals succeed and are allowed with costs. The answers to both the questions are returned in favour of the Revenue. One hearing fee.

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