Dehradun Tea Co. Ltd. and Another

Vs

The Commissioner of Income Tax, U. P

Civil Appeals Nos. 56 to 61 of 1970

(K. S. Hegde, P. Jagmohan Reddy JJ)

12.12.1972

JUDGMENT

HEGDE, J. -

1. These are appeals by special leave. They are directed against the decision of the High Court of Allahabad in a reference under Section 66(1) of the Indian Income Tax Act, 1922 (to be hereinafter referred to as "the Act"). The common question of law referred in these appeals was :

> "Whether the tax paid by the assessee-company on the tea-garden lands under the U.P. Large Land Holdings Tax Act, 1957 (U.P. Act XXXI of 1957), is liable to be deducted under Section 10(2)(xv) ?"

2. The High Court answered this question in favour of the revenue. It did so following the decision of this court in Travancore Titanium Products Ltd. v. Commissioner of Income-tax ((1966) 60 ITR 277 (SC) : (1966) 3 SCR 321 : AIR 1966 SC 1250).

3. It may be noted that the assessee companies (there are two companies) are taxed under Section 10 of the Act. Their income is considered as business income. The assessee companies are tea-growers and the activity they carry on is a business activity. Therefore, the question is whether the tax paid by them under the U.P. Act XXXI of 1957 is an item of expenditure coming within the scope of Section 10(2)(xv) of the Act. In Indian Aluminium Co. Ltd. v. Commissioner of Income-tax ((1972) 2 SCC 150), a five-judges Bench of this Court modified the decision of this Court in Travancore Titanium Products case (supra), holding that if the expenditure laid out by the assessee is as an owner-cum-trader and the expenditure is really incidental to the carrying on of his business it must be treated to have been laid out by him as a trader and as incidental to his business. On the basis of that rule it came to the conclusion that the wealth-tax paid by a trader on his business assets is liable to be deducted under Section 10(2)(xv) of the Act. Applying the ratio of that decision to the facts of the present case it is clear that the lands owned by the assessee companies are its business assets and the tax paid thereon under the U.P. Act XXXI of 1957 is an item of expenditure laid out by the assessee companies as traders and as incidental to their business. Consequently, the same must be treated as an item of expenditure under Section 10(2)(xv) of the Act.

4. Mr. Karkhanis appearing for the revenue contended that so far as tea-growers are concerned they are both the owners of lands as well as traders. It is for that reason they are assessed only on 40 per cent. of their net income, applying Rule 24 of the rules framed under the Act. According to him the tax paid under the U.P. Act XXXI of 1957 is a tax levied on the owners and not on the traders. Consequently, the ratio of the decision of this Court in Indian Aluminium Co.'s case (supra), is

inapplicable. We are unable to accept this contention as correct. A tea-grower is considered under the Act, read with the rules, as an owner-cum-trader. Therefore, any item of expenditure incurred by him must be considered as an item of expenditure incurred by a trader in connection with his business activity. It is true that only 40 per cent. of the net income of the tea-growers are brought to tax under the Act; but, at the same time, the tea-growers will also be entitled only to 40 per cent. of the expenditure incurred by them. Under Rule 24, only 40 per cent. of the net income is brought to tax. Hence, we are unable to accept the contention of Mr. Karkhanis that the ratio of the decision of this Court in the Indian Aluminium Co.'s case (supra) is inapplicable to the facts of this case.

5. Lastly, Mr. Karkhanis contended that in view of the Income Tax (Amendment) Act, 1972, an assessee company is not entitled to claim any deduction in respect of the tax paid by them. In this connection he relies on Section 2 of the Amendment Act of 1972. That Section reads :

> "2. Amendment of Section 40. - In Section 40 of the Income Tax Act, 1961 (43 of 1961) (hereinafter referred to as the Principle Act), after sub-clause (ii) of clause (a), the following sub-clause shall be, and shall be deemed always to have been, inserted, namely :
>
> '(iia) any sum paid on account of wealth-tax.
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> Explanation. - For the purposes of this sub-clause, 'wealth-tax' means wealth-tax chargeable under the Wealth Tax Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession, carried on by the assessee, whether or not the debts of the business or profession are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;...'."

6. We are unable to accept the contention of Mr. Karkhanis that this section has any bearing on the point arising for decision in this case. Herein we are not dealing with wealth-tax, i.e., a tax on net assets nor with any of the taxes referred to in the Explanation.

7. In the result these appeals are allowed and the answer given by the High Court is revoked and the question referred to the High Court is answered in favour of the assessees. In other words, the answer to the question is that, on the facts and in the circumstances of the case, the tax paid under the U.P. Large Land Holdings Tax Act, 1957, is an admissible deduction from the taxable income of the assessee-companies. The appellants are entitled to the costs of these appeals in this Court as well as in the High Court but there will be only one hearing fee.

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