The Commissioner of Income Tax, West Bengal II, Calcutta

Vs

M/s. Naga Hills Tea Co. Ltd.

Civil Appeal No. 496 (NT) of 1970

(K.S. Hegde, P. Jagmohan Reddy, H.R. Khanna JJ)

08.02.1973

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the decision of the Calcutta High Court in a reference under Section 66(1) of the Indian Income Tax Act, 1922 (to be hereinafter referred to as the 'Act'). The question referred to the High Court for its opinion reads :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee, having not been assessed to super-tax for the assessment year 1958-59, the unabsorbed reduction in rebate under clause (i)(a) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1957, could not be set off against the rebate available to the assessee under the Finance Act, 1959, and that accordingly the Income Tax Officer was not justified in reducing the rebate of Rs. 16,114 available to the assessee for the assessment year 1959-60 ?"

2. Following its earlier decision in Commissioner of Income Tax, West Bengal-I v. Deoria Sugar Mills Ltd., ((1971) 80 ITR 408 (Cal.) the High Court answered that question in favour of the assessee. Aggrieved by that decision the Commissioner of Income Tax for West Bengal has brought this appeal.

3. The facts material for the purpose of deciding this question as could be gathered from the case stated by the Tribunal may now be set out. The assessment year with which we are concerned in this case is 1959-60; the relevant accounting year being the calendar year 1958. The assessee is a Tea Company. For the assessment year 1959-60 it was assessed to a total income of Rs. 55,257. The Corporation tax payable by the assessee on that amount was computed at Rs. 26,357. On that a rebate of Rs. 16,114 was allowed under the provisions of the Finance Act, 1959. Thereafter that rebate was withdrawn by the Income Tax Officer on the ground that there was an unabsorbed reduction of rebate amounting to Rs. 27,144 in the assessment year 1957-58. While making assessment for the assessment year 1959-60 the Income Tax Officer reduced the rebate to nil by taking into consideration the unabsorbed reduction of rebate in the assessment year 1957-58. At this stage it may be noted that in the assessee's assessment for the assessment year 1958-59 the loss of Rs. 73,920 was determined and no corporation tax was levied for that year.

4. It was contended before the Income Tax Officer that the unabsorbed reduction in rebate for the year 1957-58 could only be carried forward and set off against the rebate for the assessment year 1958-59 under the provisions of the Finance Act, 1958, and as there was no rebate available for the

assessment year 1958-59, the unabsorbed reduction in rebate exhausted itself and could not be further set off against the rebate available for the assessment year 1959-60. This contention was rejected by the Income Tax Officer. In appeal, the Appellate Assistant Commissioner confirmed the decision of the Income Tax Officer but on a further appeal being taken to the Tribunal, the Tribunal accepted the contention of the assessee and thereafter, at the instance of the Commissioner, the question formulated above was referred to the High Court. As mentioned earlier, the High Court has answered that question in favour of the assessee.

5. We may now read the relevant provisions of the Finance Act, 1959. They are found in Paragraph D of Part II of the First Schedule to the Finance Act, 1959 and are as under :

> "In the case of the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (XXXI of 1956), -
>
> # RATE OF SUPER-TAXOn the whole of its profits and gains fromlife insurance business. 11%In the case of every other company, - RATE OF SUPER-TAXOn the whole of the total income 50%##
>
> Provided that, -
>
> (i) a rebate at the rate of 40 per cent. on so much of the total income as consists of dividends from a subsidiary Indian company and a rebate at the rate of 35 per cent. on the balance of the total income shall be allowed in the case of any company which -
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> (a) in respect of its profits liable to tax under the Income Tax Act for the year ending in on the 31st day of March, 1960, has made the prescribed arrangements for the declaration and payment within India of the dividends payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of sub-section (3-D) of Section 18 of that Act; and
>
> (b) is such a company as is referred to in sub-section (9) of Section 23-A of the Income Tax Act with a total income not exceeding Rs. 25,000;
>
> (ii) a rebate at the rate of 40 per cent. on so much of the total income as consists of dividends from a subsidiary Indian company and a rebate at the rate of 30 per cent. on the balance of the total income shall be allowed in the case of any company which satisfied condition (a) but not condition (b) of the preceding clause;
>
> (iii) a rebate at the rate of 40 per cent. on so much of the total income as consists of dividends from a subsidiary Indian company and a rebate at the rate of 20 per cent. on the balance of the total income shall be allowed in the case of any company not entitled to a rebate under either of the preceding clauses :
>
> Provided further that, -
>
> (i) the amount of the rebate under clause (i) or clause (ii) shall be reduced by the sum, if any, equal to the amount or the aggregate of the amounts, as the case may be, computed as hereunder -

(a) on that part of the aggregate of the sums arrived at in accordance with clause (i) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1958 (XI of 1958), as has not been deemed to have been taken into account, in accordance with clause (ii) of the said proviso, for the purpose of reducing the rebate mentioned in clause (i) of the said proviso to nil;

#(b)....."##

6. At the outset we may mention that the provision of law is extremely confusing. It required more then one reading on our part to understand what it means. One thing is clear from the provision, namely it does not provide for carryover of any unabsorbed rebate from year to year. Mr. Ramachandran contended that when the Finance Act says "on that part of the aggregate of the sums arrived at in accordance with clause (i) of the second provision to Paragraph D of Part II of the First Schedule to the Finance Act, 1958 (Act XI of 1958), as had not been deemed to have been taken into account, in accordance with clause (ii) of the said proviso, for the purpose of reducing the rebate mentioned in clause (i) of the said proviso to nil", it means that the unabsorbed deduction of rebate can be carried forward until it is reduced to nil. We are unable to accept this contention as correct. In our opinion, all that provision provides for is that if there is any unabsorbed reduction of rebate in the assessment year 1958-59, then that can be taken into consideration while allowing rebate in the assessment year 1959-60. We are unable to read into the provision in question a power to the Revenue to take into consideration any unabsorbed reduction in rebate for any year prior to 1958-59. That is the view taken by the Calcutta High Court in the case mentioned earlier. The Calcutta High Court opined in that case that the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1959 provides that the amount of rebate to be allowed under clauses (i) and (ii) of the first proviso thereto has to be reduced to the sum, if any, equal to the amount or the aggregate of the amount, as the case may be, computed in the manner set out in the second proviso. If further observed :

"Now, clause (i)(a) of the second proviso refers to the aggregate of the sums arrived at in accordance with clause (i) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act of 1958. The aforesaid proviso in 1958 Act, therefore, can apply only when there was a total income in terms of 1958 Act and certain reduction from that total income remained unabsorbed in 1958. If a particular assessee had suffered loss in 1958, there was no income to which a rate of super-tax prescribed in the 1958 Act could be applied and if no rate of super-tax was applicable, there was no question of rebate or reduction in rebate to be allowed under the 1958 Act."

7. We are in entire agreement with the view expressed therein. At any rate the view taken by the High Court appears to be a reasonable view. If a provision of a Taxing Statute can be reasonably interpreted in two ways, that interpretation which is favourable to the assessee has got to be accepted. This is a well accepted view of law.

8. In the result this appeal fails and the same is dismissed with costs.

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