Mitsui Steamship Co. Ltd.

Vs

C. I. T., West Bengal, II, Calcutta

M/S. Kawasaki Kisen Kaisha Ltd.

Vs

C. I. T. West Bengal, II, Calcutta

Civil Appeals Nos. 1072-1079 of 1970

(H.R. Khanna, A. C. Gupta JJ )

07.02.1975

JUDGMENT

GUPTA, J. -

1. These two groups of appeals, brought on certificates granted by the High Court at Calcutta, arise out of two references under Section 66(2) of the Indian Income-Tax Act, 1922 involving similar questions of law.

2. Mitsui Steamship Co. Ltd., appellant in Civil Appeals Nos. 1072-1075 of 1970 and M\s. Kawasaki Kisen Kaisha Ltd., appellant in Civil Appeals Nos. 1076-1079 of 1970, are both non-resident shipping companies having their registered offices in Japan. Civil Appeals Nos. 1072-1075 of 1970 relate to assessment years 1957-58, 1958-59, 1959-60 and 1960-61 for which the previous years were the financial years ending on March 31, 1957, 1958, 1959 and 1960 respectively. Civil Appeals Nos. 1076-1079 of 1970 relate to assessment years 1956-57, 1957-58, 1958-59 and 1959-60, the corresponding previous years being the financial years ending on March 31, 1956, 1957, 1958, and 1959 respectively. The appellant in each case had been assessed to income-tax for the years mentioned above under the Indian Income-Tax Act, 1922 (hereinafter referred to as the Act of 1922) in respect of its net Indian earnings. In the assessment proceedings the appellant companies had claimed as deductible allowance under Section 10(2)(xv) of the Act 1922 the tax paid by them on their business assets under the local tax law in force in Japan. The Income-tax Officer rejected the claim on the view the incidence of tax under the Japanese law falls on the assessee companies in their capacity as the owners of the business assets and not as traders. On appeals preferred by the assesses the Appellate Assistant Commissioner took the view that the tax paid under the local tax law in Japan was an allowable expenditure under Section 10(2)(xv) of the Act of 1922. The Tribunal also affirmed the view taken by the Appellate Assistant Commissioner overruling the contention raised on behalf of the Revenue that the nature of tax imposed by the Japanese statue was similar to the wealth-tax payable in India which was not a permissible deduction under Section 10(2)(xv).

3. In civil Appeals Nos. 1072-75 of 1970 the question referred under Section 66(2) was :

whether on the facts and in circumstances of the case, the property tax and vessels tax paid by the assessee in Japan on its land, buildings and other tangible assets and ships were allowable as deduction under Section 10(2)(xv) of Income-Tax Act, 1922 ?

In Civil Appeals Nos. 1076-1079 of 1970 the question referred was :

Whether on the facts and in the circumstances of the case, the property tax paid by the assessee in Japan on its vessels was allowable as deduction under Section 10(2)(xv) of the Income Tax Act, 1922 ?

The two questions though worded a little differently, depend for their answers on a correct appreciation of the character of the Japanese tax.

4. The High Court on a consideration of the various provisions of the Japanese statute held under the local tax law in Japan it was the ownership of the assets that was material and not their actual user in business, and relying on the decision of this Court in Travancore Titanium Product Ltd. v. C. I. T. (60 ITR 277 : (1966) 3 SCR 321 : AIR 1966 SC 1250), answered the question referred to it in both cases in the negative and in favour of the Revenue. In the case of Travancore Titanium Products Ltd., this Court was considering the question whether a sum paid as wealth-tax was deductible from the profits and gains of the assessee's business under section 10(2)(xv) of the Act of 1922. In holding that the amount of tax paid on the net wealth of an assessee under the Wealth-Tax Act was not a permissible deduction, this court observed :

The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the tax-payer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business, i.e., between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business.

5. The judgment of the High Court mainly turned on Article 341(4) of the Japanese statute. From an English translation of the statute filed before the Tribunal it appears that the statute is divided into four Books. All the Articles to which we will refer for the purpose of these appeals are in Chapter III, Section 2 of Book Four which contains Articles 341 to 746. Chapter III bears the heading "Ordinary Taxes of City, Town or Village" and Section 2 deals with "Municipal Property Tax". Article 341 defines certain terms concerning municipal property tax, and in so far as it is relevant for the present purpose, it reads as follows :

With respect to municipal property tax, the terms listed in the following items shall have the definition given to them under the respective items :

> #(1) property : Land, houses and depreciable assets;(2) Land : * * *(3) Houses : * * *##
>
> (4) Depreciable assets : Assets (excluding the mining right, fishing right, patent right and other depreciable intangible property) other than land and house which can be used for business purpose and the amount of depreciation of which is included in the loss or necessary expenditures in the computation of income as provided for in the Corporation Tax Law or the Income Tax Law (including the property similar to those properties which are owned by the person upon whom the corporation tax or the income tax has not been imposed). However, automobiles and bicycles which are the objects of the automobile tax,

and bicycles and carts which are the objects of the cart tax respectively shall be excluded;

6. Referring to the definition of 'depreciable assets' the High Court pointed out that under the Japanese law the assets which could be used for business purpose were subjected to tax and it was not required that these assets should in fact be used for business purpose. The High Court took the view that the tax paid by the assesses under the Japanese law was in their capacity as owners of the assets and not as traders, and applying the test adopted in the Travancore Titanium case (supra) the High Court held that the tax paid by the assesses under the local tax law in Japan was not deductible as a business expense under the Act of 1922.

7. The Travancore Titanium Product Case (supra) was decided by a Division Bench of this Court in the year 1966. The impugned orders of the High Court in the two references out of which these appeals arise were both made in 1969. In 1972 a larger Bench of this Court expressed the view in the case of Indian Aluminium Co. Ltd. v. C. I. T. (84 ITR 735 : (1972) 2 SCC 150 : (1973) 1 SCR 15) that the test adopted in Travancore Titanium Product case : (SCC p. 162 para 20)

that "to be a permissible deduction there must be a direct and intimate connection between the expenditure and the business, i.e., between the expenditure and the character of the assessee as a trader, and not as owner of assets, even they are assets of the business" needs to be qualified by stating that if the expenditure is laid out by the assessee as 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.

It was held in Indian Aluminium Company's case that the wealth-tax paid on assets held by the assessee for the purpose of his business, was deductible as a business expense in computing the assessee's income from business.

8. Within a few months of the decision in Indian Aluminium Company's case (supra) which was rendered on March 29, 1972, In the Tax (Amendment) Ordinance 1972 (7 of 1972) was promulgated on July 15, 1972 to amend the Income-tax Act, 1961, and to provide for barring, in the computation of total income in respect of certain assessment years prior to the assessment year 1962-63, deduction of amounts paid on account of wealth-tax. The Ordinance was later repealed and replaced by the Income-tax (Amendment) Act, 1972 (41 of 1972) containing similar provisions. The Amendment Act which received the assent of the President on August 28, 1972 sought to restore, as the Statement of Objects and Reasons says, the position established in the case of Travancore Titanium Products Ltd. v. C. I. T. (supra) which was virtually overruled by the later decision in Indian Aluminium Co. Ltd. v. C. I. T. that wealth-tax paid by an assessee in respect of his business assets was not deductible as a business expense in computing the assessee's income from business. Section 2 of the Amendment Act inserted with retrospective effect a new sub-clause (iia) in clause (a) of Section 40 of the Income-tax Act, 1961 which specifies the amounts not deductible in computing the income chargeable under the head "Profits and gains of business or profession". Sub-clause (iia) adds to the list of amounts not to be deducted "Any sum paid on account of wealth-tax". To this sub-clause an explanation was added extending the meaning of the expression wealth-tax for the purpose of the sub-clause. The explanation reads :

Explanation. - For the purpose 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;

Section 4 of the Amendment Act which bears directly on the appeals before us provides :

4. Wealth-tax not deductible in computing the total income for certain assessment years. - Nothing contained in the Indian Income-tax Act, 1922 (11 of 1922) shall be deemed to authorise, or shall be deemed ever to have authorised, any deduction in the computation of the income of any assessee chargeable under the head "Profits and gains of business, profession or vocation" or "Income from other sources" for the assessment year commencing on the 1st day April, 1957, or any subsequent assessment year, of any sum paid on account of wealth-tax.

To this Section also an explanation was added saying :

Explanation. - For the purposes of this section, "wealth-tax" shall have the same meaning as is assigned to it in the Explanation to sub-clause (iia) of clause (a) of Section 4C of the principal Act.

Section 5 of the Amendment Act contains a saving clause to which it is not necessary to refer for the purpose of these appeals.

9. We have mentioned earlier the assessment years concerned in the instant appeals. The question is, what is the effect of the Income-Tax (Amendment) Act, 1972 on these appeals. The amendments introduced do not appear to touch the principle laid down in Indian Aluminium Companies Case (supra) that when a person has a dual capacity of a trader-cum-owner, and he pays tax in respect of property which is used for the purpose of trade, the payment must be taken to be in the capacity of a trader. The Amendment Act only adds the sum paid on account of wealth-tax to the list of amounts not deductible in computing the assessee's income from business. Therefore, any amount paid by the assessee on account of a tax other than the wealth-tax on his business assets would be outside the scope of the Amendment Act and would continue to be governed by the law laid down in Indian Aluminium Company's case. The explanation to the new sub-clause (iia) inserted in Section 40 of the Income-Tax Act, 1961, which Section 4 of the Amendment Act adopts for the purposes of that section, defines "wealth-tax" to include, inter alia, besides wealth-tax chargeable under the Wealth-Tax Act, 1957, "any tax of a similar character chargeable under any law in force in any country outside India". The only contention raised before us on behalf of the Revenue was that the nature of the tax paid by the assesses in Japan on their business assets is similar to the wealth-tax payable under the Wealth-Tax Act, 1957. This leads to a comparison of the two statutes, Wealth-Tax Act, 1957 and the local tax law of Japan, to find out whether they are of a similar character. The supplementary statement of case drawn up by the Tribunal pursuant to an order of this Court dated April 11, 1973 discloses that the assets belonging to the appellants with which we are concerned in these appeals were all used by them in their business during the relevant previous years and also that the payment of tax under the Japanese law was incidental to the carrying on of the business of the assesses.

10. From an examination of the provisions contained in Book Four of the Japanese statute, it appears to us that there is a basic difference between the Wealth-Tax Act, 1957 and the local tax law of Japan. Wealth-tax in India is charged on the net wealth of the assessee. Net wealth as defined in Section 2(m) of the Wealth-Tax Act, 1957 means, broadly, the aggregate value of all the assets, wherever located, belonging to the assessee minus the total amount of the debts, with certain

exceptions, owed by him. Generally speaking, by the value of an asset, other than cash, is meant its market value. 'Assets' has been defined in clause (e) of Section 2 of the Act as including property of every description, movable or immovable, with certain specified exemptions. Wealth-tax in India is a notional tax charged by the Central Government. The municipal property tax in Japan is imposed on property as defined in Article 341(1). In this definition, property includes only land, houses and depreciable assets and not property of every description. Depreciable assets has been defined in Article 341(4), inter alia, as assets other than land and house which can be used for business purpose, but these assets again exclude all depreciable intangible property and property which are the objects of other taxes like automobiles, bicycles and carts. Article 342 lays down that the municipal property tax shall be imposed on property by the city, town or village in which the property concerned is located and provides that with respect to vessels, vehicles and other objects similar in nature which are included in depreciable assets, the city, town and village in which the principal port of anchorage or regular keeping place is located shall be the city, town or village authorised to impose the municipal property tax. Further it appears that under the Japanese law, tax is charged at the standard rate of 1.4 per cent. on the value of the property computed in the manner laid down in the statute providing the taxable basis, and in certain special cases it may go up to 2.5 per cent, which is the maximum; in India, the rates of wealth tax vary, increasing progressively with the amount of net wealth of the assessee.

11. The broad features of the two statutes we have noted above reveal their basic dissimilarity. Unlike the wealth tax in India, the municipal property tax of Japan is a local tax imposed on certain specified properties by the city, town or village in which the properties are located. The wealth tax is a notional tax chargeable on the net wealth of a person with certain specified exemptions. The difference in the manner of determination of the taxable basis of the properties and the rates of taxation emphasis the basic difference between the two taxes. Of course, there are certain points of similarity between the two laws, as there must be, both being taxing statutes, but these similarities do not remove the fundamental difference in the aim, object and the basic structure of the two Acts.

12. Accordingly we allow the appeals, discharge the answers given by the High Court to the questions referred to it in these two cases, and answer the questions in the affirmative and in favour of the assesses. In the circumstances of the case we direct the parties to bear their own costs both here and in the High Court.

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