Commissioner of Income Tax, Bihar and Orissa

Vs

S. P. Jain

Civil Appeal No. 78 of 1975

(Ranganath Misra, G. L. Oza JJ)

24.04.1987

ORDER

1. This appeal is by special leave. The relevant assessment year is 1954-55 corresponding to the accounting period November 1, 1952 to October 31, 1953. The assessee-respondent who is now dead derived income from securities, dividends, Directors' fee, commission and trading in stock. During the assessment year in question several aspects were disputed but assessability of three sums has survived for examination of this Court, namely :

(1) Rs. 16,000 said to be salary payable to the assessee for the last two months;

(2) Rs. 1,82,141 said to be dividend income from two companies as would be presently indicated; and

(3) Rs. 1,85,070 representing the value of perquisites enjoyed by the assessee.

2. The Income Tax Officer found all the three sums to be assessable in the hands of the assessee and included them for the purpose for his assessment. The Appellate Assistant Commissioner, the Appellate Tribunal as also the High Court found in favour of the assessee and deleted these amounts. That is how the revenue is an appeal before this Court after obtaining special leave.

3. So far as the sum of Rs. 16,000 is concerned, there has been a positive finding of fact that notwithstanding the fact that the resolution discounting payment of salary was passed after the expiry of the relevant period, there has been an oral agreement preceding it to discontinue the payment of salary. On the fact found, even on the basis the mode of accounting adopted by the assessee the sum would not be addable. On the first score the revenue must fail.

4. The second aspect relates to the dividend income of the two companies. The Tribunal had recorded the finding in favour of the assessee and the High Court following its own judgment reported in CIT v. Sahu Jain Ltd. [(1970) 76 ITR 628 (Pat)] has held that the dividend was not to be computed in the hands of the assessee as income. This is exactly what the High Court has indicated in the impugned judgment so far as this aspect is concerned.

The two companies which were proceeded against under Section 23-A of the Act (1922) were the Universal Bank of India Ltd. and Sahu Jain Ltd. By the decision of this Court in Universal Bank of India Ltd. v. CIT [(1967) 65 ITR 536 (Pat)] it was held that there was no liability of the Universal Bank of India Ltd. under Section 23-A of the Act for the assessment year in question, namely, 1954-55. In another decision of this Court in CIT v. Sahu Jain Ltd. [(1970) 76 ITR 628 (Pat)] it was held

that the proceedings against Sahu Jain Ltd. under Section 23-A of the Act in regard to the assessment years 1953-54 and 1954-55 were barred. As a consequence of those decisions, it is plain that the assessee also is not liable to pay tax on the sum of Rs. 1,82,141.

5. Learned counsel for the revenue placed before us the decision of this Court is CIT v. Sahu Jain Ltd. [(1976) 103 ITR 135 : (1976) 2 SCC 510 : 1976 SCC (Tax) 193] by which the decision of the Patna High Court [(1970) 76 ITR 628 (Pat)] has been reversed. In view of the reversal, the reasoning given by the High Court would not survive and proceeding under Section 23-A of the Act has been restored and the assessee would be liable in respect of the same. Accordingly, the reasoning given by the High Court is vacated and we hold that the amount relatable to Sahu Jain Ltd. in respect of the year would be assessable in the hands of the assessee. Since there is no indication that the decision in Universal Bank of India v. CIT [(1967) 65 ITR 536 (Pat)] has been reversed we are not prepared to accept the submission of the learned counsel for the revenue that on the same principle we must assume that the decision in Universal Bank of India v. CIT [(1967) 65 ITR 536 (Pat)] has become nullified and the assessee would be liable for the amount. If the decision of the High Court in Universal Bank of India v. CIT [(1967) 65 ITR 536 (Pat)] stands, the order of the High Court in this regard has to be sustained.

6. Section 2(6)(c)(iii) is the relevant provision for deciding as to the taxability of the perquisites. The amendment of that provision under the Finance Act, 1955 became operative from April 1, 1955. Learned counsel submits that the amendment is clarificatory and, therefore, the liability which would otherwise be existing would not be affected by the fact that the law was clarified by the amendment later. We are not inclined to agree with his submission. He next pointed out that the question as to whether the perquisites were convertible into money value is yet under examination. As the Tribunal has remanded the matter, this may go back to the Appellate Assistant Commissioner for reconsideration; therefore, the submits that the matter should be left open. Here again, we are not with him. We accordingly allow the third question to be answered in the same way as has been done by the High Court, that is, against the revenue. The appeal is allowed in part and while we confirm the answer of the High Court to questions 1 and 3, reverse the answer to question 2 in the manner and to the extent indicated above. There will be no order as to costs.

</html