

Commissioner of Income-Tax, New Delhi (Now Rajasthan)

Vs

East West Import and Export P. Ltd. (Now Known as Asian Distributors Ltd.).

Civil Appeal No.1294 of 1975

(CJI R. S. Pathak, Rangath Misra JJ)

08.02.1989

JUDGMENT

RANGANATH MISRA J. –

1. This appeal is by special leave and is directed against the judgment of the Bombay High Court dated July 16, 1974, ([1975] 100 ITR 458), on a reference made under section 66(1) of the Indian Income-tax Act, 1922. The year of assessment is 1951-52 corresponding to the accounting year ending March 31, 1951. The question referred by the Tribunal to the High Court at the instance of the Revenue was (at page 459 of 100 ITR) :

"Whether, on the facts and in the circumstances of the case, the assessee-company could not be held to be a company in which the public were substantially interested within the meaning of the Explanation to section 23A(1) by reason of the fact that the shares of the company carrying not less than twenty-five per cent. of its voting power were not, in fact, freely transferable by holders to other members of the public for a large part of the previous year even though they were freely transferable as at the end of the previous year ?"

Initially, the company was incorporated as a private limited company at Jaipur on December 24, 1942, and was known as Messrs. Rajputana Investment Co. P. Ltd. Under articles 4, 81 and 82 of the articles of association of the company, there was restriction on the transfer of shares of the company by the shareholders to other members of the public. These articles were deleted at an extraordinary general meeting of the company held on March 26, 1951, and following the deletion, the restriction on transfer of shares was removed. So was the limit on number of shareholders. On the basis of the amendment, the assessee claimed relief under section 23A(1) of the 1922 Act by pleading that all the statutory requirements were satisfied. The Income-tax Officer refused to accept the stand of the assessee on the ground that while the Explanation contained in section 23A(1) of the Act required that in the course of the previous year, the shares were freely transferable by the holders to other members of the public, the company came to satisfy the requirement only for four or five days of the year. The Appellate Assistant Commissioner adopted the same view whereupon the assessee appealed to the Tribunal. The Tribunal accepted the stand of the assessee and allowed the appeal, whereupon at the instance of the Revenue, the aforesaid question was referred and the case was stated to the High Court under section 66(1) of the 1922 Act. The High Court found in favour of the assessee and against the Revenue. That has led to the present appeal by special leave.

As pointed out above, the short point for consideration in this appeal is as to whether the assessee satisfied the requirements of the Explanation to section 23A(1) of the Act so as to be entitled to the

tax benefit. This court pointed out in the case of CIT v. Afco P. Ltd. [1963] 48 ITR (SC) 76 (p. 80) :

"Section 23A was enacted to prevent evasion of liability to pay super- tax by shareholders of certain classes of companies taking advantage of the disparity between the rates of super-tax payable by individuals and by the companies. The rates of super-tax applicable to companies being lower than the highest rates applicable to individual assesseees, to prevent individual assesseees from avoiding the higher incidence of super-tax by the expedient of transferring to companies the sources of their income, and thereby securing instead of dividends the benefit of the profits of the company, the Legislature had, by Act XXI of 1930, as modified by Act VII of 1939, enacted a special provision in section 23A investing the Income-tax Officer with power, in certain contingencies prescribed in the section, to order that the undistributed balance of the assessable income reduced by the amount of taxes and the dividends shall be deemed to have been distributed at the date of the general meeting."

The Explanation provided :

"For the purpose of this sub-section, -

a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply) and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in the taxable territories or are in fact freely transferable by the holders to other members of the public.

The only question that has engaged the attention of the Tribunal and the High Court at the instance of the respective parties is whether the shares were freely transferable by the holders to other members of the public in the course of the previous year. As we have already pointed out, the Income-tax Officer and the first appellate authority held that the terms of the Explanation required that the shares should have been freely transferable by the shareholders to other members of the public at every point of time during the previous year and transferability should be established by actual transfer. The Tribunal and the High Court took the view that it was not necessary that in fact there should have been some transfer of such shares but transferability as an incidence should have been at every point of time during the whole of the previous year. That being the short question on which this appeal can be effectively disposed of, there is no necessity to refer to other aspects which had been canvassed at earlier stages.

Indisputably, until March 26, 1951, the shares were not freely transferable in view of the three provisions in the articles and with the deletion of these, free transferability of the shares was acquired. There has been no dispute before us that the requirement "if any such shares have been in the course of such previous year" would also apply to the last requirement "are in fact freely transferable by the holders to other members of the public". The only contentious aspect is as to whether "in the course of such previous year" would mean throughout the year or any part of it.

There is no direct authority indicating the true meaning of this requirement in the Explanation one

way or the other. The purpose of enacting section 23A, as pointed out in Afco's case [1963] 48 ITR 76 (SC). was to control evasion of tax.

The Explanation has reference to the point of time at two places : the first one has been stated as "at the end of the previous year" and the second, which is in issue, is "in the course of such previous year". Counsel for the Revenue has emphasised upon the feature that in the same Explanation, reference to time has been expressed differently and if the legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended to convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. There is abundant authority to support the stand of counsel for the Revenue that when the situation has been differently expressed, the Legislature must be taken to have intended to express a different intention.

"Course" ordinarily conveys the meaning of a continuous progress from one point to the next in time or space and conveys the idea of a period of time; duration and not a fixed point of time. "In the course of such previous year" would, therefore, refer to the period commencing with the beginning of the previous year and terminating with the end of the previous year. If that be the meaning of the phrase "in the course of such previous year", it would necessarily mean that free transferability of the shares by the holders to other members of the public should be present throughout the previous year. Admittedly, that was not the position in this case as transferability was acquired only on March 26, 1951. We are of the view that the Tribunal and the High Court went wrong in holding that the conditions required by the Explanation were satisfied and the benefit under the section was available to the assessee.

The appeal is allowed. The other of the High Court approving the view taken by the Appellate Tribunal is set aside and the question referred to the High Court is answered thus :

"On the facts and in the circumstances of the case, the assessee company could not be held to be a company in which the public were substantially interested within the meaning of the Explanation to section 23A(1) by reason of the fact that for a large part of the previous year, the shares were not freely transferable though they were so transferable at the end of the previous year."

and against the Revenue. Parties are directed to bear their own costs throughout.

Appeal allowed.

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