

Commissioner of Income-Tax, Delhi Central

Vs

Modi Spinning and Weaving Mills Co. Ltd.

Civil Appeal No. 330 of 1976

(M.M. Punchhi, S.C. Agarwal)

26.10.1990

JUDGMENT

This appeal is directed against the judgment dated March 13, 1972, made by a division bench of the Allahabad High Court in Income-tax Reference No. 457 of 1968 deciding the following question of law in favour of the assessee and against the revenue :

"Whether, on the facts and in the circumstances of the case, the assessee can be said to have complied with the provisions of proviso (b) to section 10(2)(vib) of the Indian Income-tax Act, 1922, and was, therefore, entitled to allowance of development rebate on the plant and machinery installed after January 1, 1958".

It would be unnecessary to detail the facts which led to the framing of the question and the answer given. The dispute centered around the timing of the creation of the reserve known as the development rebate reserve. In CIT v. Veeraswami Nainar [1965] 55 ITR 35, the Madras High Court took the view that development rebate reserve should be made at the time of making up the profit and loss account, this view was affirmed by this court in Indian Overseas Bank Ltd. v. CIT [1970] 77 ITR 512. Both cases arose under the Indian Income-tax Act, 1922. A distinction was drawn between development rebate reserve and other reserves creatable under the Companies Act and Income-tax Act and it was required to be separately created. On the appearance of Indian Overseas Bank's case [1970] 77 ITR 512(SC) on the scene, it appears that an important circular of the Central Board of Direct Taxes was unwittingly mowed down, that circular was of October 4, 1965, and stands reproduced as Circular No. 189 dated January 30, 1976, in [1976] 102 ITR (St.) 90. The Board's explanation with regard to the position for creation of statutory reserve for allowance of development rebate was in these terms :

- (a) In the case of certain industrial undertakings, particularly those in which there is Government participation either by way of capital, loan or guarantee, and where there are certain obligation by law or agreement about the maintenance of reserve for development purposes, the development rebate reserve may be treated as included in the said reserve though not specifically created as a development rebate reserve.
- (b) In a case where the total income computed before allowing the development rebate is a loss, there was no legal obligation to create any statutory reserve in that year as no development rebate would actually be allowed in that year.
- (c) Where there was no deliberate contravention of the provisions, the Income-tax Officer may condone genuine deficiencies subject to the same being made good by

the assessee through creation of adequate additional reserve in the current year's books in which the assessment is framed.

This led to a spate of litigation. Pressing Indian Overseas Bank's case [1970] 77 ITR 512(SC,) some taxing authorities in some cases took revisional and rectificatory actions, these reached various High Courts. The Gujarat High Court in Surat Textile Mills Ltd. v. CIT [1971] 80 ITR 1 opted for what may be called a narrow view in assuming that besides Explanation (a) reproduced above Explanations (b) and (c) as well stood wiped out by Indian Overseas Bank's case [1970] 77 ITR 512(SC). In these circumstances. The Central Board of Direct Taxes took the step of withdrawing in the year 1972 the Circular dated October 14, 1965, to the extent it stood superseded by the decision in Indian Overseas Bank's case [1970] 77 ITR 512(SC) and the judgment of the Gujarat High Court in Surat Textile Mills Ltd. v. CIT [1971] 80 ITR 1.

Other High Courts took what may be called a broader view, the trend of reasoning in those cases was that Explanation (a) alone was done away with by this court in Indian Overseas Bank's case [1970] 77 ITR 512(SC) but Explanations (b) and (c) were still alive, in this connection Veerabhadhra Iron Foundry v. CIT [1968] 69 ITR 425(AP), Tata Iron and Steel Co. Ltd. v. N. C. Upadhyaya [1974] 96 ITR 1(Bom) and CIJ v. Sardar Singh [1972] 86 ITR 387 (Punj.) may be seen.

In the face of such difference of opinion, it was represented to the Board that earlier instructions dated October 14, 1965, represented the correct position of law and that its withdrawal to the extent it was presumed to be overruled by this court in Indian Overseas Bank's case [1970] 77 ITR 512 had created unnecessary hardship to the assesseees.

It appears that the instant case out of which this appeal has arisen was decided by the Allahabad High Court taking the broader view. Special leave was sought by the Revenue from this court on the question of resolving the conflict between the two views. Leave was granted at a time when the Board itself had clarified the matter, vide Circular No. 189 dated January 30, 1976 - [1976] 102 ITR (St.) 90 - of which hint has been left earlier. The Board states to have re-examined the issue involved coming to the view that, except the clarification given in paragraph (a) above, which stood superseded by the decision of this court in Indian Overseas Bank's case [1970] 77 ITR 512, the clarifications given in paragraphs (b) and (c) quoted above hold good. It can thus legitimately be stated that the Board has itself opted for the view expressed in Tata Iron and Steel Co. Ltd.'s case [1974] 96 ITR 1(Bom) and other cases of the kind taking the broader view in the matter. When the Board has itself opted for that view and that view is being followed by the income-tax authorities concerned, we see no reason to do the exercise of taking any side of the two views and leave the matter at that, it is undisputed that the Board's view is not only valid under the new Income-tax Act, 1922, as well.

For the foregoing discussions, this appeal fails and the judgment of the High Court is left untouched, in the circumstances of the case, there will be no order as to costs.

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