

Sutlej Cotton Mills Ltd

Vs

Commissioner of Income-Tax.

((Dr. T.K. Thommen, S.C. Agarwal JJ)

07.11.1990

JUDGMENT

AGARWAL J. -

These appeals by certificate granted by the High Court at Calcutta have been filed against the judgment and order of the said High Court dated May 7, 1965, in Income-tax References Nos. 22 and 73 of 1959. These appeals relate to chargeability of business profits tax under the Business Profits Tax Act, 1947, for the accounting period April 1, 1946, to March 31, 1947.

The appellant, hereinafter referred to as "the assessee", was having a textile mill in what was known as British India at the relevant time. The cloth manufactured at the mill of the assessee was sold in British India as well as in some of the former Indian States. Under section 42(3) of the Indian Income-tax Act, 1922 (hereinafter referred to as "the Income-tax Act"), out of the total business profit made by the assessee in the Indian States, a part was attributed to the assessee's manufacturing operations carried on in British India and it was deemed as income accruing and arising in British India. The remaining part of the profit arising in the Indian States was attributed to its merchandising operations in the said States under section 14(2) (c) of the Income-tax Act and the same was exempted from income-tax unless it was brought into British India. In the income-tax assessment for the assessment year 1947-48 covering the accounting period April 1, 1946, to March 31, 1947, out of the total profits earned by the assessee in the Indian States, the manufacturing portion of the profits was determined at Rs. 4,72,778 and the merchandising portion of the profits was determined at Rs. 5,67,206 and, on that basis, Rs. 4,72,778 was included under section 42(3) of the Income-tax Act in computing the business income of the assessee. During the aforesaid accounting period, a total amount of Rs. 9,01,363 was remitted by the assessee from the Indian States to British India. While making the income-tax assessment, the Income-tax Officer held that remittance to the extent of Rs. 1,18,754 should be treated to have come out of the income which accrued or arose in the Indian States in the same period and the remaining part, viz., Rs. 7,82,609, should be treated to have come out of the income which accrued or arose in the Indian States prior to the accounting period. The Income-tax Officer did not include these sums in his computation of the assessee's British Indian business profits but included the same in the assessee's total income under the head "Other sources"

While making assessment for the purpose of business profits tax, the Income-tax Officer took into consideration the materials and information contained in the corresponding income-tax proceedings and adopted the assessee's business profits as computed in the said income-tax assessment. He, however, included the entire amount of Rs. 5,67,206 which was computed to be the amount of merchandising profits arising in the Indian States in that period for assessing the income of the assessee for the purpose of chargeability of business profits tax. The said assessment was upheld in appeal by the Appellate Tribunal. The assessee submitted an application before the Appellate

Tribunal for reference of the questions of law arising out of the order dated May 13, 1958, passed by the Appellate Tribunal and, on that application, the Appellate Tribunal, by order dated February 13, 1959, referred the following question to the High Court for consideration under section 66(1) of the Income-tax Act :

"Whether, on the facts and in the circumstances of this case, the profits earned outside the taxable territories and brought into the taxable territories during the chargeable accounting period ending on March 31, 1947, were assessable under the Business Profits Tax Act?"

The assessee moved the High Court under section 66(2) of the Indian Income-tax Act, 1922, and, on the said application, the High Court passed an order dated February 22, 1961, directing the Appellate Tribunal to draw up and submit a statement of the case relating to question No. 4 with the amendment as directed in the said order of the High Court. In pursuance of the said order of the High Court, the Appellate Tribunal on December 7, 1962, referred the following question for the consideration of the High Court :

"Having regard to the materials and documents on record, did the Tribunal err in law in holding :

(a) that the amount that was remitted or deemed to have been remitted was covered by the quantum of foreign profits made by the company in the relevant period,

(b) that there was no material before them showing that the remittance was made out of profits made prior to the accounting period?"

Both these references were heard together and decided by the High Court by judgment dated May 7, 1965. The High Court answered the questions referred against the assessee and in favour of the Revenue. Feeling aggrieved by the said decision, the assessee had filed these appeals after obtaining a certificate from the High Court.

Shri B. Sen, learned counsel for the assessee, has submitted that the income-tax authorities were in error in including the entire amount of Rs. 5,67,206, which has been computed to be the amount of merchanting profits arising in the Indian States as part of the taxable profits of the assessee for the purposes of business profits tax on the view that the said amount had been remitted to British India by the assessee during the chargeable accounting period. The submission of Shri Sen is that the said view is inconsistent with the orders passed by the authorities in income-tax assessment proceedings wherein, out of the total remittances to British India amounting to Rs. 9,01,363, a sum of Rs. 1,18,754 only was treated to have come out of the income which accrued or arose in the Indian States during the accounting period April 1, 1946, to March 31, 1947, and the remaining part, viz., Rs. 7,82,609, was treated to have come out of the income which accrued or arose in the Indian States prior to that accounting period. Shri Sen has urged that the assessment records relating to assessment of income-tax for the assessment year 1947-48 were placed before the Appellate Tribunal and there was ample material before the Appellate Tribunal to show that, out of the sum of Rs. 9,01,363 which was remitted, a sum of Rs. 7,82,609 was out of profits made prior to the accounting period and that the Appellate Tribunal was in error in holding that there was no material before them showing that the remittances were made out of profits made prior to the accounting period. Shri Sen contended that the High Court also committed an error in holding that the assessee never raised the point before the revenue authorities that any portion of the profits in the Indian

States out of which the sum of Rs. 9,01,363 was remitted to British India was made before the chargeable accounting period.

We find considerable substance in the aforesaid submissions. In the statements of case that were submitted by the Appellate Tribunal to the High Court in both the references, it has been mentioned in paragraph 5 :

"During this accounting period, there was a total remittance of Rs. 9,01,363 from the Indian States to British India. The Income-tax Officer held that to the extent of Rs. 1,18,754, the said remittance should be treated to have come out of the income which accrued or arose in the Indian States in the same period and the remaining part, viz., Rs. 7,82,609, should be treated to have come out of the income which accrued or arose in the Indian States prior to that accounting period. He did not include these sums in his computation of the company's British Indian business profits but included the same in the company's total income under the head 'Other sources'."

This would show that, in the proceedings for the assessment of income- tax for the assessment year 1947-48 covering the accounting period April 1, 1946, to March 31, 1947, out of the total amount of Rs. 9,01,363 remitted by the assessee from the Indian States to British India, a sum of Rs. 1,18,754 was treated by the Income-tax Officer to have come out of the income which accrued or arose in the Indian States in the same period and the remaining amount of Rs. 7,82,609 was treated to have come out of the income which accrued or arose in the Indian States prior to that accounting period. The Income-tax Officer did not include the said sum of Rs. 7,82,609 in his computation of the assessee's British Indian business profits but included the same in the assessee's total income under the head "Other sources". While making the assessment for the purpose of business profits tax, the Income-tax Officer included the entire sum of Rs. 5,67,206 which had been computed to be the amount of merchanting profits arising in the Indian States during the accounting period, as chargeable to business profits tax, on the view that the said amount had been remitted to British India during the chargeable accounting period. In other words, while making the assessment for the purpose of business profits tax, the Income-tax Officer as well as the Appellate Assistant Commissioner and the Appellate Tribunal have ignored the order passed by the Income-tax Officer in the proceedings for assessment of income-tax for the assessment year 1947-48 covering the same accounting period. While making the assessment for the purpose of business profits tax, the revenue authorities could not take a different view and hold that a larger amount, viz., Rs. 5,67,206, had been remitted by the assessee from the Indian States to British India out of the profits arising in the Indian States during the chargeable accounting period.

The Appellate Tribunal was, in our opinion, not right in proceeding on the basis that there was no material showing that remittances were made out of profits made prior to the accounting period because in paragraph 6 of both the statements of case, the Appellate Tribunal has clearly stated :

"The business profits tax assessment was considered subsequently. In making that assessment, the Income-tax Officer took into consideration all the materials and information contained in the corresponding income-tax proceedings and adopted the company's business profits as computed in the said income-tax assessment."

This shows that the relevant records relating to assessment of income- tax for the same accounting period were before the Income-tax Officer when he made the business profits tax assessment.

The High Court was also not right in rejecting the contention raised by the assessee in this regard on the view that the assessee never raised the point before the revenue authorities that any portion of the profits in the Indian States out of which the sum of Rs. 9,01,363 was remitted to British India was made before the chargeable accounting period and as such the said question could not be taken into consideration. The order dated May 13, 1958, passed by the Appellate Tribunal shows that a contention was raised on behalf of the assessee that the remittances made from Indian States to British India were made out of profits made prior to the accounting period but the said contention was not accepted by the Appellate Tribunal on the view that there was no material before them showing that the remittances were out of profits made prior to the accounting period.

In that view of the matter, the High Court was not justified in answering the questions referred to it against the assessee. Since the matter has not been properly considered by the Appellate Tribunal in the light of the relevant material, namely, the orders passed in the proceedings for assessment of income-tax for the assessment year 1947- 48 covering the same accounting period, which material was before the Appellate Tribunal, the finding recorded by the Appellate Tribunal is defective in law. The questions of law referred to the High Court cannot be answered in view of the defective finding recorded by the Appellate Tribunal without considering the relevant material on record. In these circumstances, we consider that the best course is for the Appellate Tribunal to rehear the appeal and, after considering all the relevant material including the orders passed in the proceedings for assessment of income-tax for the assessment year 1947- 48 covering the same accounting period, record a finding with regard to the amount remitted by the assessee from the Indian States to British India out of the amount of merchanting profits arising in the Indian States during the accounting period April 1, 1946, to March 31, 1947.

The judgment and order of the High Court dated May 7, 1965 is, accordingly, set aside and the answers recorded by the High Court are vacated. The appeals are allowed to the extent and manner indicated above. The parties are left to bear their own costs.

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