

Commissioner of Income-Tax

Vs

Banque Nationale De Paris.

Civil Appeal No. 6087 of 1983

(S. C. Agarwal, G. B. Pattanaik JJ)

21.03.1997

JUDGMENT

G.B. PATTANAIAK J. –

1. This appeal by special leave is against the judgment of the Bombay High Court in Income-tax Reference No. 86 of 1970 (see [1981] 130 ITR 534). At the instance of the Revenue, on an application being filed under section 256(1) of the Income-tax Act, 1961, the Tribunal referred the following two questions to the High Court for being answered and the High Court answered both the questions in the affirmative in favour of the assessee and against the Revenue. The two questions are (at page 538) :

"(1) Whether, on the facts and in the circumstances of the case, income by way of any 'interest on securities' received from the Government could be excluded in the computation of chargeable profits in terms of clause (x) of rule 1 of the First Schedule to the Super Profits Tax Act, 1963 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only the proportionate interest of Rs. 5,19,804 on borrowings should be deducted from the interest amount of Rs. 12,93,828 received by the assessee from the Indian concerns, and not the whole of the interest amount of Rs. 10,12,252 paid by the assessee to various parties, in order to determine the net interest income for the purposes of exclusion from the chargeable profits in terms of clause (x) of rule 1 of the First Schedule to the Super Profits Tax Act, 1963 ?"

The short facts leading to the questions being referred are that the assessee, Banque Nationale de Paris, is a non-resident company and admittedly it had not made any arrangement for declaration and payment of dividends in India during the calendar year 1962. A sum of Rs. 2,18,802 which the assessee had received towards interest on securities had been included in the assessee's total income for the purpose of assessment. The assessee's contention was that the super profits tax assessment made by the Departmental authority is erroneous as the assessee was entitled to exclusion of the aforesaid interest amount in computing the chargeable profits in accordance with clause (x), rule 1 of the First Schedule to the Super Profits Tax Act, 1963, as the entire interest amount had been received from the Government. Since the Super Profits Tax Officer did not exclude the aforesaid amount as contended by the assessee the matter was carried in appeal to the Appellate Assistant Commissioner. The said appellate authority w

The assessee during the relevant period had also received a sum of Rs. 12,93,828 by way of interest

on advances given to Indian concerns. The total amount of interest which the assessee received from various sources was Rs. 25,19,560. The assessee before the Super Profits Tax Officer had claimed deduction of the entire Rs. 12,93,828 which it had received by way of interest on advances given to Indian concerns. The Super Profits Tax Officer in computing the income by way of income from Indian concerns arrived at the figure of Rs. 1,61,617. The Super Profits Tax Officer was of the view that the interest to be excluded from the chargeable profits is the net amount of interest after deducting the interest which the assessee paid to its depositors and creditors as well as after deducting other proportionate expenses and thus the said Super Profits Tax Officer determined that the net income by way of interest to be excluded from the chargeable profits on this head is Rs. 1,61,617. The assessee then carried the mat

After arguing for a considerable period, Dr. Gauri Shanker, learned senior counsel appearing for the appellant, did not press the second question and, therefore, we are not required to deal with the said question in this appeal. Dr. Gauri Shanker, learned senior counsel appearing for the Revenue, however, so far as the first question is concerned, contended that under section 4 of the Super Profits Tax Act, a super profits tax is to be charged on every company on the amount on which the chargeable profits of the previous year exceeds the standard deduction at the rate specified in the Third Schedule. "Chargeable profits" has been defined under section 2(5) to mean the total income of an assessee computed under the Income-tax Act, 1961, for any previous year and adjusted in accordance with the provisions of the First Schedule. The First Schedule provides the rules for computing the chargeable profits and in making such computation it stipulates that while computing the total income for the year in question un

"Income, profits and gains and other sums falling within the following clauses shall be excluded from such total income. . ."

Since clause (vi) indicates that the income chargeable under the Income-tax Act under the head "Interest on securities" it is that clause which is applicable and not clause (x) as has been applied by the appellate authority and confirmed by the Tribunal and even the High Court has answered the question framed in favour of the assessee.

Mr. Ganesh, learned counsel appearing for the assessee, on the other hand, contended that the assessee being a non-resident company and clause (x) having made it clear that income by way of any interest which the company receives from any Government or local authority or Indian concern, it is clause (x) that would apply and, therefore, the High Court has not committed any error in answering the question posed in favour of the assessee. For better appreciation of the point in issue it will be appropriate to extract clauses (vi) and (x) in extenso :

"(vi) income chargeable under the Income-tax Act under the head 'Interest on securities' derived from any security of the Central Government issued or declared to be income-tax free or from any security of a State Government issued income-tax free, the income-tax whereon is payable by the State Government;

(x) in the case of a non-resident company which has not made the prescribed arrangements for the declaration and payment of dividends within India, its income by way of any interest or fees for rendering technical services received from Government or a local authority or any Indian concern;"

The question that arises for consideration, therefore, is whether in computing the chargeable profits

of the assessee of a previous year, from the total income computed for the year under the Income-tax Act, the adjustment would be made in the case of the assessee in accordance with clause (vi) or clause (x). According to Mr. Ganesh, learned counsel appearing for the respondent, the expression "any interest" in clause (x) is of the widest ambit and covers every type of income by way of interest of a non-resident company and in that view of the matter there is no justification to give a restrictive meaning to the aforesaid expression "any interest" to mean interest other than those covered under clause (vi). Learned counsel also urged that the court in interpreting a particular provision of a statute need not add or subtract words into it if the meaning of the provision is clear and it is only when there is any ambiguity or absurdity in giving the plain meaning of a word of statute that it will be permissible

Having considered the rival submissions we find considerable force in the argument advanced by learned counsel appearing for the Revenue. Under Chapter IV of the Income-tax Act, the total income of an assessee is computed and under section 14 there are only six heads of income, namely :

- A. Salaries;
- B. Interest on securities;
- C. Income from house property;
- D. Profits and gains of business or profession;
- E. Capital gains; and
- F. Income from other sources.

Head B has been omitted by the Finance Act, 1988, with effect from April 1, 1989, but was there during the relevant period with which we are concerned in the present case. Section 18, as it stood, deals with "interest on securities" and it provided that the amounts due to the assessee in the previous year shall be chargeable to income-tax under the head "Interest on securities" are :

- (i) interest on any security of the Central or State Government;
- (ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

When clause (vi) of rule 1 of the First Schedule to the Super Profits Tax Act stipulates that the income chargeable under the Income-tax Act under the head "Interest on securities" derived from any security of the Central Government or a State Government, it is, therefore, necessarily referable to section 14(B) so far as the heads of income is concerned, and section 18 so far as the type of securities, interest from which has to be computed in arriving at the income of the assessee, is concerned. It does not make any distinction between a non-resident company or any other individual assessee. That being the position in allowing adjustment in computing the chargeable profits of a previous year of an assessee from the total income computed for the year under the Income-tax Act, what would be deducted so far as interest on securities derived from the Central Government or State Government is concerned, is in accordance with clause (vi) of rule 1 of the First Schedule to the Super Profits Tax Act and clause (x) holds securities as part of his trading business in the course

of his business and derives interest therefrom then under which head the same would fall. It was in this context that this court observed (at page 702) :

"The head of income of which the source is 'interest on securities' has its characteristics for income-tax purposes and falls under the specific head covered by section 8 of the Act, and where an item falls specifically under one head it has to be charged under that head and no other. This interpretation follows from the words used in sections 6, 8 and 10 which must be read so as to give effect to the contrast between 'income, profits and gains' chargeable under the heads 'Interest on securities' and 'Income, profits and gains' chargeable under the head 'Business'. Thus on this construction the various heads of 'income, profits and gains' must be held to be mutually exclusive, each head being specific to cover the item arising from a particular source. It cannot, therefore, be said that qua the assessee in the present case and for the purpose of securities held by it, section 8 is more specific and section 10 general or vice versa, and, therefore, no question of the applicability of the principle generalia s

Though this case is not a direct authority on the question of interpretation of rule 1 of the First Schedule to the Super Profits Tax Act, 1963, but the principles therein would apply with full force and, therefore, the income under the head "Interest on securities" derived from securities of the Central or the State Government having fallen under the head under section 14(B) of the Income-tax Act as it stood then, as well as under section 18 of the said Income-tax Act as it stood at the relevant point of time, when the question of computation of chargeable profits of a previous year under the Super Profits Tax Act crops up, then the adjustment as provided under clause (vi) of rule 1 of the said First Schedule has to be made from the total income computed for the said year under the Income-tax Act for the purpose of levy of super tax. The Appellate Assistant Commissioner, the Tribunal and the High Court have committed error in holding that clause (x) of rule 1 of the First Schedule to the Super Profits Tax A

In the aforesaid premises we are of the considered opinion that in the matter of computation of the chargeable profits of the assessee for the purpose of levy of super profits tax under the provisions of the Super Profits Tax Act, 1963, from the total income of the assessee computed for the year in question under the Income-tax Act, it would be entitled to the adjustment of the amount received as interest on securities derived from any security of the Central Government or the State Government as per clause (vi) of rule 1 of the First Schedule inasmuch as the said amount is chargeable under the Income-tax Act under the head "Interest on securities" which was in force at the relevant period and not under clause (x) of rule 1 of the First Schedule to the Super Profits Tax Act as held by the High Court. The impugned judgment of the High Court is accordingly set aside and the first question posed by the Tribunal is answered in favour of the Revenue and against the assessee. The appeal is accordingly allowed.