SUPREME COURT OF INDIA

The Commissioner of Income Tax

Versus

Sardar Arjun Singh Ahluwalia (Deed) Lrs.

(S.P. Bharucha, M. Jagannadha Rao and V.N. Khare, JJ.)

Civil Appeal Nos. 1206-07 of 1982.

26.10.1999

JUDGMENT

S.P. Bharucha, J. - The questions that were the subject matter of the impugned order of the High Court read thus :

"(1) Whether on the facts and in the circumstances, the Tribunal is justified in law in holding that the income of assessee became liable to be assessed in the assessment years 1966-67 and 1967-68 and not in the years 1946-47 and 1947-48 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the remuneration received by the assessee from the Kalyanmal Mills Ltd. in the assessment years 1966-67 and 1967-68 pursuant to the final decree passed in favour of the assessee on 14th December 1956, could not be held to be income of the assessee which had accrued to him in the years 1946-47 and 1947-48 ?

There was a difference of opinion between the two learned Judges who heard the reference under Section 256(1) of the Income Tax Act, 1961. One learned Judge answered both question in favour of the Revenue and the other learned Judge answered both questions in favour of the assessee. By reason of the different of opinion, the reference was then heard by a third learned Judge, the then Chief Justice. He answered the first question in favour of the Revenue and the second question in favour of the assessee. This has given rise to cross appeals by the Revenue and the assessee.

It is common ground that the question that should be addressed, and should have been addressed, is only question No. 1, the answer to question No. 2 being merely consequential upon the answer to question No. 1.

Briefly stated, the facts are :

In January 1946 the late assessee, Arjun Singh Ahluwalia, entered into an agreement in the name of M\s. Ahluwalia & Sons with Kalyanmal Mills Ltd., Indore to sell to

merchants all kinds of waste cotton of different qualities and quantities produced by the Mills on the terms and conditions that were contained in the letter of the Managing Director of the Mills dated 2nd January, 1946. There were disputes between the parties and the agreement was terminated on 9th November, 1948. The amounts due to the assessee not having been paid, he filed a suit and the trial court passed a preliminary decree for talking accounts. The same was upheld, with minor modifications, by the High Court. Accounts having been taken, a final decree was passed on 14th December, 1965. Pursuant thereto, the assessee was paid Rs. 10,000\- between 1st April, 1965 and 30th March, 1966 and Rs. 65.532\- between 1st April, 1966 and 31st March, 1967. These amounts were brought to tax in the hands of the assessee for the Assessment Years 1966-67 and 1967-68 respectively. The Income Tax authorities and then the Tribunal held that the relationship between the Mills and the assessee was that of master and servant and that the said amounts that had been paid to him were taxable under the head of "salary". Arising out of the order of the Tribunal, the two questions afore-mentioned were placed before the High Court for construction.

That the relationship between the Mills and the assessee was that of master and servant and that the said amounts had been received by the assessee as salary is not in dispute. The question really is whether clause (a) of Section 15 of the Income Tax Act, 1961, applies, as contended by learned counsel on behalf of the assessee, or clause (c) thereof, as contended by the Revenue. Section 15, as it then stood, reads thus :

"15. The following income shall be chargeable to income-tax under the head "Salaries" -

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation - For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due."

According to learned counsel for the assessee, the salary or remuneration was due from the Mills to the assessee in the previous years relevant to the Assessment Years 1946-47 and 1947-48 and they were, by reason of the said clause (a), chargeable to tax in those assessment years, whether paid or not. It is his submission also that the said amounts received by the assessee cannot be termed "arrears of salary", so that clause (c) has no application. According to learned counsel for the Revenue, on the other hand, the said amounts not having been charged to tax to the Assessment Years 1946-47 and 1947-48, they became liable to tax in the years in which they were paid to the assessee by the Mills.

Section 15 must be read harmoniously. It is clear that the amounts of salary that were payable by the Mills to the assessee in the previous years relevant to the Assessment Years 1946-47 and 1947-48 could have been brought to tax in those assessment years, whether paid or not. The point is that they were not made chargeable to tax in those years. The said amounts were paid to the assessee only in the previous years relevant to the Assessment Years 1966-67 and 1967-68. The question is whether they are caught by the net created by the said clause (c). We do not see any justification for holding that these amounts are not arrears of salary. They were due by the Mills to the assessee for an earlier period and they were not paid; they were, therefore, arrears of salary. Clause (c) applies to such arrears of salary provided such arrears had not be charged to income tax for any earlier previous year. The said amounts, admittedly, were not charged to income tax for any previous year prior to the Assessment Year 1966-67. In our view, therefore, the amounts do fall within the net created by the said clause (c), which is, broadly put, intended to catch such salary as has escaped the charge of income tax in earlier years.

Learned counsel for the assessee also contended that the Income Tax Act did not extend to the Holkar State, within, which the said salary or remuneration had been earned by the assessee from the Mills, in the previous years relevant to the Assessment Years 1946-47 and 1947-48 and, therefore, the said amount could not have been charged in income-tax in those previous years. In his submission, the said clause (c) would apply only to arrears of salary which could have been charged but were not charged. We do not find it possible to accept the argument. The words used to clause (c) are "if not charged to income tax", and appear to us to be wide enough to cover cases where the charge could or could not have been imposed.

In the result, we answer the first question in the affirmative adn in favour of the Revenue. No answer to the second question is required.

The appeals filed by the assessee (C.A. Nos. 1508-09\82) are, therefore, dismissed.

The appeals filed by the Revenue (C.A.Nos. 1206-07\82) relate only to the answer against it on the second question and thy do not require consideration. Those appeals are, therefore, disposed of. No orders as to costs.