

ANDHRA PRADESH HIGH COURT

Uper Spinning Mills Limited

Vs

Commissioner of Income Tax

(A. Sambasiva Rao, C.J.)

31.06.1978

JUDGEMENT

A. Sambasiva Rao, C.J.

(1.) M/s. Super Spinning Mills Ltd., Hindupur, is a public limited company. Financial year is its accounting year. For the assessment year 1971-72, the assessee-company claimed, for the purpose of assessment of surtax, inclusion in its capital two sums of Rs. 28,43,984 and Rs. 1,93,577. That was on the basis that on the first day of the accounting year, i.e., on April 1, 1970, the aforesaid amounts were shown in the balance-sheet under "general reserve" and "80K tax-free dividend reserve", respectively. It was the assessee's claim that in the computation of capital under Rule 1 of the Second Schedule to the Companies (Profits) Surtax Act, 1964, these two amounts should be included. The ITO declined to do so and excluded the said two amounts from the computation of the capital of the company. The AAC in the assessee's appeal upheld its claim in part. He held that the amounts standing in the general reserve account at the beginning of the year was a reserve for the purpose of capital computation. At the same time, he was not prepared to include the total sum of Rs. 28,43,984 shown under the head "General reserve" in the computation of the capital. Out of this, he excluded a sum of Rs. 4,00,000 which, according to him, was recommended by the directors to be paid as dividends from out of the general reserve and which recommendation was approved at the general body meeting held later. The appellate officer found that the dividends were also paid as proposed by the directors from out of general reserve. In the result, he held that the sum of Rs. 4,00,000 so paid should, therefore, be excluded from the computation of capital, since it was earmarked for payment of dividends and, therefore, only the balance of Rs. 24,43,984 should be treated as reserve to be included in the capital for the purpose of surtax. He also held that the sum of Rs. 1,93,577 shown in the balance-sheet under tax-free dividend reserve was a reserve to be included in the capital. To do this he relied on the decision of the Kerala High Court in *CIT v. Periakaramalai Tea and Produce Co. Ltd*¹.

(2.) BOTH the assessee and the revenue carried the matter in appeals to the Tribunal. The revenue objected to the inclusion of Rs. 24,43,984 and Rs. 1,93,577 in the capital computation

while the assessee objected to the exclusion of Rs. 4,00,000. The Tribunal upheld the contention of the revenue in regard to the sum of Rs. 4,00,000 and held that only Rs. 24,43,984 out of the general reserve of the assessee-company of Rs. 28,43,984 should be included in the computation of the capital of the company. In doing this, it relied on the principle of relating back laid down by the Supreme Court in *CIT v. Mysore Electrical Industries Ltd.* [1971] 80 ITR 566. In the view of the Tribunal that principle of relating back would apply to the present case, because though the general reserve was shown in the balance-sheet as on March 31, 1970, at Rs. 28,43,984, the board of directors recommended on 30th of June, 1970, to appropriate Rs. 4,00,000 out of the said amount towards dividends and this recommendation was ratified by the general body of the shareholders later. The Tribunal, therefore, felt that by operation of the principle of relating back, the sum of Rs. 4,00,000 should be deducted from the general reserve of Rs. 28,43,984 shown in the balance-sheet on 31st March, 1970. In so far as the sum of Rs. 1,93,577 representing the "80K tax-free dividend" is concerned, it found that the same was not earmarked for a particular purpose and was not retained to provide for a known liability. It purported to have applied the tests laid down by the Division Bench of this court in *Vazir Sultan Tobacco Co. Ltd, v. CIT*² Then it referred to the Kerala High Court's decision in *CIT v. Periakaramalai Tea and Produce Co. Ltd*, and felt that the position in regard to "80K tax-free dividend" amount stood on a stronger ground than the retirement gratuity dealt with in the Kerala case and held that the amount formed part of the reserve and so it should be included in the computation of the capital. Thereupon, the Tribunal referred the following question to the High Court at the instance of the assessee : "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that (for purposes of computing capital, under the Companies (Profits) Surtax Act, 1964, for assessment year 1971-72) the general reserve of the assessee-company of Rs. 28,43,984 as on April 1, 1970, should stand reduced by Rs. 4 lakhs, being the dividend declared for year ended March 31, 1970, at the annual general meeting held on 26th August, 1970?" It also referred the following question at the instance of the department : "Whether, on the facts and in the circumstances of the case, 80K tax-free dividend reserve of Rs. 1,93,577 is eligible for inclusion in the computation of capital under the Companies (Profits) Surtax Act, 1964, for surtax assessment for the assessment year 1971-72 ?"

(3.) THESE are the two questions which are to be answered now. In order to answer them, consideration of the material provisions of the C. (P.) S. T. Act, 1964, is necessary. This Act has been enacted for the purpose of imposing " a special tax on the profits of certain companies". Section 4 of the Act is the charging provision. It enjoins that there shall be charged on every company, surtax in respect of so much of its chargeable profits of the previous year or previous years, as the case may be, as exceed the statutory deduction, at the rate or rates specified in the Third Schedule. So, surtax is to be levied on the chargeable profits which exceed the permissible statutory deduction. The words "chargeable profits" are defined in Section 2(5) as: ".....the total income of an assessee computed under the Income-tax Act, 1961 (43 of 1961), for any previous year or years, as the case may be, and adjusted in accordance with the provisions of the First Schedule." ;

Cases Referred.

- 1[1973] 92 ITR 65
- 2[1974] 96 ITR 248