CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Deoria Sugar Mills Ltd

(Sankar Prasad Mitra and S Mukharji, JJ.)

01.04.1969

JUDGMENT

Sankar Prasad Mitra, J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act, 1922. The assessment year is 1959-60. The previous year ended on the 31st August, 1958. The Income-tax Officer, while making the assessment for the year 1956-57, found that the assessee had issued bonus shares to the extent of Rs. 3,58,800 and had also declared dividend to the extent of Rs. 44,944. He held that in terms of the Finance Act of 1956, the gross of corporation tax payable on the total income would be Rs. 43,460.25. He said that out of this sum a rebate @ 0-4-0 annas per rupee was allowable ; but this rebate had to be reduced in respect of the bonus shares issued @ 0-2-0 annas per rupee and also of the excess dividend over 6 per cent. @ 0-2-0 annas per rupee. In these premises, the Income-tax Officer computed the reduction in rebate at Rs. 45,973.62 and held that there was no unabsorbed reduction in rebate amounting to Rs. 20,219.37.

2. Again, while he was assessing the income for 1957-58, the Income-tax Officer worked out the rebate at Rs. 11,487.90 (@ 30%) under the Finance Act, 1957. He, thereupon, determined the unabsorbed reduction of rebate at Rs. 8,731.10 after taking into consideration the unabsorbed reduction of 1956-57.

3. In the assessment year 1958-59 the question of set-off of rebate did not arise as there was a net loss of Rs. 37,046.

4. For the year 1959-60 the Income-tax Officer worked out the corporation tax payable by the assessee as follows:

Rs.
Rs.

Super-tax on Rs. 1,01,165 @ 50% 50,582.50 Less rebate @ 30% 30,349.50 Reduction inrebate as per sub-clause (a) of clause (i) of the second proviso to Paragraph D of Part II of the Schedule, the unabsorbed reduction in rebate 8,731.10 21,618.49 28,964.10 Less paid under

section 18A 28,964.10 Super-tax payable Nil
5. The assessee objected to the reduction of rebate by the sum of Rs. 8,731.10. But the Appellate Assistant Commissioner decided against the assessee. Before the Tribunal the assessee submitted that it was beyond the competence of the Finance Act to provide for levy of tax with reference to declaration of dividend on bonus shares in an earlier year. The department contended that the Tribunal was incompetent to deal with the question of vires. The Tribunal did not accept the department's contention but did not choose to go into the question of vires. The Tribunal held that, on merits, the assessee was entitled to succeed. The Tribunal said that for the assessment year 1958-59, the assessee's total income resulted in a figure of loss, and there was no question of any reduction of corporation tax or reduction of rebate applicable to a company : and even assuming that the sum of Rs. 8,731.10 being unabsorbed reduction or rebate was to be considered in the assessment year 1958-59, there was no reduction of super-tax applicable to the company and, as such, the reduction in rebate would have exhausted itself. The Tribunal, accordingly, held that in the assessment year 1959-60 the rebate of super-tax @ 30% applicable to the assessee could not be cut down by Rs. 8,731.10.

6. The following questione have been referred to this court:
"(1) Whether, on the facts and in the circumstances of the case, Sub-clause (a) of Clause (i) of the second proviso to Paragraph D of Part II, of the Finance Act, 1959 has been validly enacted ?
(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in allowing the rebate of super-tax in full under the provisions of the Finance Act, 1959, without reducing it by the sum of Rs. 8,731.10?"

7. It appears that three principal controversies have to be settled in this reference, viz., (1) whether the sum of 8,731.10 is deductible from the rebate under Sub-clause (a) of Clause (i) of the second proviso to Paragraph D of Part II of the Schedule to the Finance Act, 1929 ? (2) whether the Tribunal or the High Court or the Supreme Court in a reference under the Income-tax Act can go into the question of vires of the Finance Acts ; and (3) whether the particular provision under consideration is ultra vires ?
8. Let us first discuss the competence of an Appellate Tribunal under the Income-tax Act and consequently the High Court and the Supreme Court (hearing a reference under the said Act) to consider the question of vires of the Finance Acts.

9. The Supreme Court's observations in K.S. Venkataraman and Co. (P.) Ltd. v. State of Madras, . in this connection may in the first instance be referred to. At page 130 it is stated :

> "As the Tribunal is a creature of the statute it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act (i.e., the Income-tax, Act). The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it. As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision. At the most the only question that it may be called upon to decide is whether the Tribunal has jurisdiction to decide the said question^ On the express provisions of the Act it can only hold that it has no such jurisdiction. The appeal under Section 66A(2) to the Supreme Court does not enlarge the scope of the said jurisdiction. This court can only do what the High Court can."

10. It is clear, therefore, that the question of vires of any of the provisions of the Income-tax Act cannot be gone into by the Appellate Tribunal constituted under the Act or in a reference to the High Court under Section 66 of the Act or in an appeal to the Supreme Court under Section 66A(2).

11. The Supreme Court has reiterated the same principles in Commissioner of Income-tax v. Straw Products Ltd., . Beharilal Shyamsunder v. Sales Tax Officer, . and in C. T. Senthilnathan Chettiar v. State of Madras, .. The Calcutta High Court has taken the same view in *Commissioner of Wealth-tax v. Jhagrakhand Collieries (Private) Ltd*[1]*.,*

12. We have now to discuss the Appellate Tribunal's powers to question the vires of the annual Finance Act. Dealing with the position of the Finance Acts in relation to the Income-tax Act, the Privy Council in *Maharajah of Pilhapuram v. Commissioner of Income-tax*[2]

> ".... it should be remembered that the Indian Income-tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finace Act."

13. This shows that the Income-tax Act and the Finance Act are supplementary to each other and former has no operative effect without the aid of the annual Finance Act.

14. The Supreme Court has further elaborated this proposition in Chatturam Horilram Ltd. v. Commissioner of Income-tax, . in these words :

> "Thus, under the scheme of the Income-tax Act, the income of an assessee attracts the quality of taxability with reference to the standing provisions of the Act but the payability and the quantification of the tax depend on the passing and the application of the annual Finance Act, Thus, income is chargeable to tax independent of the passing of the Finance Act but until the Finance Act is passed no tax can be actually levied."

15. The close connection between the Income-tax Act and Finance Act is further evident from the provisions of Section 294 of the income-tax Act of 1961 corresponding to Section 67B of the Act of 1922. Section 294 runs thus :
"If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of income-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is, more favourable to the assessee, were actually in force."

16. The charging Section, namely, Section 4 of the Act of 1961, corresponding to Section 3 of the 1922 also, inter alia, provides :

> "Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person...."

17. All these prvoisions clearly indicate that the Income-tax Act has no operative force of its own and the Finance Act appears to be. an integral part of the Income-tax Act itself. Now, since the vires of the Income-tax Act cannot be enquired into either by the Appellate Tribunal or the High Court or the Supreme Court in terms of the aforesaid provisions, these authorities have no jurisdiction also to deal with the vires of the annual Finance Acts.

18. In these premises, we need not give any answer to question No. 1 in this reference but as the department's counsel has argued the point at length, we may broadly discuss the legal position.

19. It appears from paragraph 8 at page 2 of the statement of the case that the assessee submitted before the Tribunal that it was beyond the competence of the Finance Act to provide for levy of tax with reference to declaration of dividends or bonus shares in an earlier year.

20. The relevant provisions of paragraph D of Part II of the First Schedule to the Finance Act, 1959, is as follows :

"In the case of the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (XXXI of 1956),--

RATE OF SUPER-TAX

On the whole of its profits and gains from life insurance business 11%

In the case of every other company,--

RATE OF SUPER-TAX

On the whole of the total income 50%

Provided that,--

(i) a rebate at the rate of 40 per cent, on so much of the total income-as consists of dividends from a subsidiary Indian company and a rebate at the rate of 35 per cent. an the balance of the total income shall be allowed in the case of any company which--.....
(ii) a rebate at the rate of 40 per cent. on so much of the total income as consists of dividends from a subsidiary Indian company and a rebate at the rate of 30% on the balance of the total income shall be allowed in the case of and company which satisfies condition (a) but not condition (b) of the preceding clause;.....
Provided further that,--

(i)the amount of the rebate under Clause (i) or Clause (ii) shall be reduced by the sum, if any, equal to the amount or the aggregate of the amounts, as the case may be, computed as hereunder : --
(a) on that part of the aggregate of the sums arrived at in accordance with clause (i) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1958 (XI of1958), as has not been deemed to have been taken Into account, in accordance with clause (ii) of the said proviso, for the purpose of reducing the rebate mentioned in clause (i) of thesaid proviso to nil ;.....
The whole amount of such part. "

21. It seems that under these provisions super-tax is being levied on the whole of the total income of the assessee. But under the first proviso certain rebates have been provided for and in the second proviso there are provisions for reduction of rebates under specified circumstances. In other words, these provisions relating to rebate and reduction do not levy tax on any income. They take into consideration only rebates and reductions on the basis whereof the income chargeable to super-tax is to be ascertained.

22. In these premises, the assessee's submission to the Tribunal questioning the competence of the Finance Act appears to be of no substance. We may, in this connection, refer to a decision of the Madras High Court in *Papanasam Mills Co. (Private) Ltd., v. Commissioner of Income-tax*[3], The Madras High Court has said the provisions, of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1956, which provide that the standard rebate in super-tax permissibe to a company under the first proviso to that Paragraph shall be reduced if the dividends declared by the company are in excess of the minima specified therein, are valid. There is no levy, as such, according to the Madras High Court, of any super-tax on the excess dividend : super-tax is levied only on the total income of the previous year; that levy is authorised by Section 55 of the Income-tax Act : and the rate is authorised by Part II-D of the First Schedule to the Finance Act of 1956. The Madras High Court is of the view that it is within the competence of the legislature to prescribe the limits within which relief from that levy could be given. In other words, it is open to the legislature to prescribe the basis for the grant of the rebate, and co-relale the rebate to excess dividends, whether paid out of the total income of the previous year or from any other source. And whether or not the excess dividends came out of the total income of the previous year, the quantum of the dividends regulate the rebate and not the super-tax itself, either the charge or the rate. We respectfully agree with these views of the Madras High Court.

23. Let us now go into the merits of this case which bring us to the consideration of the issue whether the sum of Rs. 8,731.10 would be deductible from the rebate in terms of the aforesaid provisions.

24. Learned counsel for the department has argued before us that the deduction envisaged by the second proviso aforesaid is irrespective of whether or not there was deduction or unabsorbed deduction in the immediately preceeding year. He says that under the Act of 1959 a fresh calculation would have to be made and notionally it has to be ascertained what has or has not been taken into account. Admittedly, in this case, owing to the losses which the assessee had suffered in the immediately preceding year the obvious conclusion is that this sum of Rs. 8,731-10 cannot be deemed to have been taken into account under the Finance Act of 1958.

Accordingly, says counsel for the Commissioner, the Tribunal was not correct in allowing the rebate of super-tax in full in the instant reference.

25. We are unable to accept these contentions on behalf of the department. In our view, the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1959, provides that the amount of rebate to-be allowed under Clauses (i) and (ii) of the first proviso thereto has to be
reduced by the sum, if any, equal to the amount or the aggregate of the amount, as the case may be, computed in the manner set out in the said second proviso. Now, Clause (i)(a) of the second proviso refers to the aggregate of the sums arrived at in accordance with Clause (i) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance. Act of 1958. The aforesaid second proviso of the. 1959 Act, therefore, can. apply only when there was a total income in terms of the 1958 Act and certain reductions from that total income remained unabsorbed in 1958. If a particular assessee had suffered a loss in 1958, there was no income to which a rate of super-tax prescribed by the 1958 Act could be applied. And if no rate of super-tax was applicable, there was no question of any rebate or any reduction of rebate to be allowed under the 1958 Act. There could also be no unabsorbed reduction of rebate computed in accordance with the provisions of the 1958 Act. In these circumstances, we are of opinion that, to a case of this nature, the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act of 1959 cannot be attracted at all.

26. Our answers to the questions in this reference are as follows :

1. Yes, but this court has no jurisdiction to deal with this matter.

2. Yes.

27. Each party will bear and pay its own costs of this reference.

Cases Referred.

1[1968] 67 I.T.R. 572 (Cal)
2[1945] 13 I.T.R. 221, 223 (P.C.)
3[1961] 43 I.T.R. 53 (Mad)