

BOMBAY HIGH COURT

Western India Vegetable Products, Ltd

Vs.

Commissioner of Income Tax

I.T. Ref. No. 38 of 1953

(Chagla, C.J. and Tendolkar, J.)

24.03.1954

JUDGMENT

Chagla, C.J.

1. The Western India Vegetable Products, Ltd. (assessee), was registered as a public company on 29-12-1945, and it received its certificate of commencement of business from the Registrar of Joint Stock Companies on 20-4-1946. The business of the assessee was that of running an oil mill and the assessee purchased a groundnut oil mill in a working condition on 1-11-1946. The assessee was assessed to tax on its business profits for the assessment year 1947-48. The Income-tax Officer held that the assessee started business when it purchased the oil mill on 1-11-1946, and, therefore, the "previous year" of the assessee commenced from 1-11-1946, and ended on 31-3-1947. The Income-tax Officer, therefore, disallowed deductions aggregating to Rs. 27,884-11-9 which were incurred prior to 1-11-1946. On appeal the Appellate Assistant Commissioner held that the expenses incurred after getting the certificate from the Registrar on 20-4-1946, should be treated as expenses incurred for the purpose of carrying on the business in the year of account and allowed a sum of Rs. 24,269. On appeal by the Income-tax Department the Appellate Tribunal fixed 1-9-1946, as the date when the assessee started the business activity and they disallowed the expenses previous to that date.

The assessee asked the Tribunal to make a reference to the High Court. The Tribunal having declined, the High Court directed the Tribunal to refer the following question:

"Whether the mere fact that the first transaction of purchase of raw material took place in September 1946 is by itself a justification for holding that expenses made from April 1946 were not for purpose of business of the company?"

In the statement of the case submitted by the Tribunal, the Tribunal suggested the following

question of law which it considered appropriate:

"Whether there was evidence before the Tribunal to hold that the assessee company commenced its business as from 1-9-1946?"

Chagla, C.J.

The assessee company was incorporated on 29-12-1945, and it obtained a certificate of commencement of business on 20-4-1946. The business of the assessee company was that of running an oil mill.

2. The assessee company was assessed to tax on its business profits for the assessment year 1947-48 and it claimed various expenses as allowable deductions aggregating to Rs. 27,884-11-9. The view taken by the Income-tax Officer was that the assessee company had only commenced business when it purchased the groundnut mill on 1-11-1946, and therefore he disallowed all the expenses which were incurred prior to 1-11-1946. The assessee company went in appeal to the Appellate Assistant Commissioner and substantially the view taken by the Appellate Assistant Commissioner was that the expenses incurred after getting the certificate of commencement of the business should be treated as expenses incurred for the purpose of carrying on the business in the year of account, and therefore barring the sum of Rs. 3,615 in respect of which the assessee had not appealed, the Appellate Assistant Commissioner allowed the balance of Rs. 24,269.

The Department appealed to the Tribunal and the Tribunal took the view that the first purchase of raw material for the purpose of being crushed in the mill which was to be erected was made at the end of September, 1946. They also took the view that some time must have been taken in making arrangements for the purchases and therefore the material date they fixed was 1-9-1946, and they disallowed the expenses previous to 1-9-1946, and allowed expenses subsequent to that date. Therefore, it is to be noticed that the three income-tax authorities had fixed three different dates as the relevant dates. The Income-tax Officer fixed the date as 1-11-1946, on the basis of the purchase of the groundnut oil mill, the Appellate Assistant Commissioner fixed 20-4-1946, as the date on which the certificate of commencement of business was granted to the company, and the Tribunal fixed 1-9-1946, as the date on the basis that some time should be allowed to the assessee company prior to the actual purchase of raw materials. The assessee company asked the Tribunal to make a reference to this Court.

The Tribunal having declined, we directed the assessee company to make a reference and to refer to us the following question:

"Whether the mere fact that the first transaction of purchase of raw material took place in September 1946 is by itself a justification for holding that expenses made from April 1946 were not for purpose of business of the company?"

3. Now, having perused the statement of the case, we are inclined to agree with the Tribunal that the appropriate question which should have been referred to us was:

"Whether there was evidence before the Tribunal to hold that the assessee company commenced its business as from 1-9-1946?"

The question that we asked the Tribunal to refer carried in it an implication that the only fact that the Tribunal took into consideration was that the first transaction of purchase of raw materials took place at the end of September, 1946. That underlying assumption seems to be incorrect because in the statement of the case the Tribunal points out that there were many other facts taken into account in fixing the date of the commencement of the business like certificate of commencement of business, the date of the purchase of the mills, the details of the expenses given in the order of the Appellate Assistant Commissioner and so on.

4. Mr. Palkhivala has placed strong reliance on the judgment of the Appellate Assistant Commissioner and also on the various items of expenses which have been allowed by the Appellate Assistant Commissioner, and the whole gravamen of Mr. Palkhivala's charge against the Tribunal is that the Tribunal has overlooked the nature of these expenses and has not applied its mind to them, and Mr. Palkhivala says that the order of the Tribunal makes it clear that they did not take into consideration these expenses. Now, when we look at the order of the Tribunal, in para 1 the Tribunal says this:

"Business can only be said to have commenced when some activity in relation to carrying on the business is done. It may be the purchase of raw material, placing an order for raw material, sales and so on."

Therefore, they are giving illustrations of what a business activity may be. When we asked them to submit a statement of the case they have amplified and elaborated this statement which appeared in para.1 of the statement and have elaborated the statement. They have told us that they have taken into consideration the details of the expenses given in the order of the Assistant Appellate Commissioner. Now, we are not prepared to reject the statement of a responsible body like the Income-tax Tribunal when it informs us that in arriving at its decision the details of the expenses were taken into consideration. Therefore, the question that we have ultimately to answer and which is the real question that arises on the order of the Tribunal is

"Whether there was evidence before the Tribunal for holding that the assessee company commenced its business as from 1-9-1946?"

5. Now, it is rather unfortunate that in the order of the Tribunal and also in the question which they themselves have suggested really arises, they should have used the expression "commenced" although in fairness to the Tribunal it may be pointed out that the very interesting

question which has been debated at the bar was never urged, argued or even suggested before the Tribunal, and the question that has been raised before us is that there is a distinction and a clear distinction between a person commencing a business and a person setting up a business, and that for the purposes of the Indian law what we have to consider is the setting up of a business and not the commencement of a business.

6. Now, turning to our statute, the deductions claimed are under Section 10(2) and they are in relation to a business, and in order that those deductions can be allowed, the business must be carried on by the assessee. In this case it is not disputed that the business was carried on in the relevant previous year which is the financial year 1946-47, but the important question that has got to be considered is from which date are the expenses of this business to be considered permissible deductions, and for that purpose the section that we have got to look to is Section 2(11), and that section defines the "previous year" and for the purpose of a business the previous year begins from the date of the setting up of the business. Therefore, it is only after the business is set up that the previous year of that business commences and in that previous year the expenses incurred in the business can be claimed as permissible deductions.

Any expenses incurred prior to the setting up of a business would obviously not be permissible deductions, because those expenses would be incurred at a point of time when the previous year of the business would not have commenced. We must, therefore, look at the decision of the Tribunal as really referring to the setting up of the business in the language of Section 2(11) and not expenses connected with the commencement of the business. Mr. Palkhivala says that if that be the correct approach, then the Tribunal has misdirected itself in considering the commencement of the business and not the setting up of the business. Let us try and understand whether there is any difference between the two expressions "setting up" and "commenced", and if so, what is the difference. It has often been said that the English language does not contain synonyms and every English expression must mean something different, however slight the differences from any other expression. English language is full of nuances and if possible we must give a different meaning to the expression "setting up" from the expression "commenced". Mr. Joshi very strongly relied on a judgment of Mr. Justice Rowlatt reported in - *'Birmingham and District Cattle By-Products Co., Ltd. v. Commr. of Inland Revenue'*, In that case the assessee company was incorporated on 20-6-1913, and between that date and 6-10-1913, the directors arranged for the erection of works and the purchase of plant and machinery, and entered into agreements relating to the purchase of products to be used in the business and to the sale of finished products. On 6-10-1913, the installation of plant and machinery being completed, the company commenced to receive raw materials for the purpose of manufacture into finished products. For the purposes of Excess Profits Tax a question arose as to the computation of average amount of capital employed by the company during the accounting period, and the company contended that it commenced business on the date of its incorporation, viz., on 20-6-1913, and that the pre-war standard should be based on the profits shown by revised accounts for the period 20-6-1913 to 30-6-1914, and Mr. Justice Rowlatt held, upholding the view of the Commissioners, that the business of the company had commenced on 6-10-1913. Now, this is

indeed a very strong case on facts in support of the Commissioner, because the view taken by Mr. Justice Rowlatt is that everything that had been done by the company before the installation of the plant and machinery was completed was preparatory to the commencement of the business and it was only when the company actually started receiving raw materials for the purpose of manufacture into finished products, the plant and machinery being ready, that it could be said that the assessee company had commenced business, and this is what the learned Judge says (p.97): Referring to their minutes, "having looked round, and having got their machinery and plant, and having also employed their foreman, and having got their works erected and generally got everything ready, then they began to take the raw materials and to turn out their products." Therefore, if this case were to be applied to the present assessee, then we would be driven to the conclusion that, if anything, the Tribunal has taken a view of the case very favourable to the assessee because on the facts of this case it would seem that the Income-tax Officer was right in holding that the net expenses prior to 1-11-1946, should not be allowed as permissible deductions. That is why it is important to consider whether the expression used in the Indian statute for setting up a business is different from the expression Mr. Justice Rowlatt was considering, viz., "commencing of the business." It seems to us that the expression "setting up" means, as is defined in the Oxford English Dictionary, "to place on foot" or "to establish", and in contradistinction to "commence" the distinction is this that when a business is established and is ready to commence business, then it can be said of that business that it is set up. But before it is

¹(1919) 12 Tax Cas 92

ready to commence business it is not set up. But there may be an interregnum, there may be an interval between a business which is set and a business which is commenced, and all expenses incurred after the setting up of the business and before the commencement of the business all expenses during the interregnum, would be permissible deductions under Section 10(2). Now, applying the test to the facts here, the company actually commenced business only on 1-11-1946, when it purchased a groundnut oil mill and was in a position to crush groundnuts and produce oil. But prior to this there was a period when the business could be said to have been set up and the company was ready to commence business, and in the view of the Tribunal one of the main factors was the purchase of raw materials from which an inference could be drawn that the company had set up its business; but that is not the only factor that the Tribunal has taken into consideration.

The Tribunal has, as pointed out in the statement of the case, scrutinised the various details of the expenses given in the order of the Appellate Assistant Commissioner; and having scrutinised those expenses the Tribunal has come to the conclusion on an interpretation more favourable to the assessee than the one we are giving to the expression "setting up" that these expenses do not show that the business was set up prior to 1-9-1946. In our opinion, it would be difficult to say that the decision of the Tribunal is based upon a total absence of any evidence. As we have often said, we are not concerned with the sufficiency of evidence on a reference. It is only if there is no evidence which would justify the decision of the Tribunal that a question of law would arise which would invoke our advisory jurisdiction which after all is a very limited jurisdiction.

7. We will, therefore, redraft the question submitted by the Tribunal as follows:

"Whether there was evidence before the Tribunal to hold that the assessee company set up its business as from 1-9-1946?",

and we will answer that in the affirmative. No order as to costs. Notice of motion dismissed with costs.

Order accordingly.