

RAJASTHAN HIGH COURT

Associated Stone Industries

Vs.

Commissioner of Income-Tax

D.B. I.T. Reference Nos. 67 of 1979 and 94 of 1980

(J.S. Verma, C.J. and I.S. Israni, JJ.)

04.08.1987

JUDGMENT

J.S. Verma, C.J.

1. This order shall also dispose of Income-tax Reference No. 94 of 1980. Both these references relate to the same assessee and they involve for decision the same question of law in respect of the two assessment years 1973-74 and 1975-76. The question of law referred by the Tribunal under Section 256(1) of the Income-tax Act, at the instance of the assessee, for decision by this court is the following, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the surtax paid by the assessee-company was not allowable as a deduction in computing the total income under the Income-tax Act ?"

2. The assessee, M/s. Associated Stone Industries (Kota) Ltd., is a public limited company. In respect of both these assessment years 1973-74 and 1975-76, the assessee claimed deduction of surtax liability determined on the basis of the assessee's income from business. This claim was not made before the Income-tax Officer but for the first time before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner allowed the assessee's claim for this deduction. However, on further appeal, the Tribunal held that such a deduction could not be given by virtue of Section 40(a)(ii) of the Income-tax Act, 1961, being a tax levied on the profits or gains of the assessee's business. Aggrieved by the view taken by the Tribunal, the assessee applied for reference of the above question of law arising out of the Tribunal's order for both the assessment years to this court for its decision. This is how the question arises for

decision before us.

3. The surtax, of which deduction is claimed by the assessee, has been levied by the provisions contained in the Companies (Profits) Surtax Act, 1964. It is an Act to impose a special tax on the profits of certain companies. This is clearly mentioned in the statement of objects and reasons of the Act. The charging provision is contained in Section 4 of the Act. It lays down that every company shall be charged for every assessment year commencing on and from April 1, 1964, a tax, referred to in the Act as surtax, in respect of so much of its "chargeable profits" of the previous year or years, as the case may be, as exceed the "statutory deduction" at the rate or rates specified in the Third Schedule. In short, the provision is to tax chargeable profits for the relevant period deducting there from the statutory deductions. The definition of "chargeable profits" and "statutory deduction" is contained in Section 2 of the Act. The chargeable profits is defined to mean the total income of the assessee computed under the Income-tax Act, 1961, and adjusted in accordance with the provisions of the First Schedule. It is, therefore, clear that the surtax under this Act is to be charged on the chargeable profits during the relevant period of assessment, which means the total income computed under the Income-tax Act, 1961, deducting there from the permitted statutory deductions. The question is whether the amount payable as surtax by the assessee is, therefore, an amount not deductible by virtue of Section 40(a)(ii), which reads as under :

"40. Notwithstanding anything to the contrary in Sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession ',--

(a) in the case of any assessee-

(i) any interest.

(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains."

A bare perusal of this provision is sufficient to indicate that even if the amount of surtax can be claimed as a deduction under any of the provisions contained in Sections 30 to 39, the same could not be permitted as a deduction by virtue of Section 40(a)(ii), the language of which is wide enough to include the surtax within its ambit. The plain

meaning of this provision is that any rate or tax levied on the profits or gains of any business falls within its ambit. As already indicated, the surtax is determined on the chargeable profits which means the income of an assessee computed under the Income-tax Act, 1961. In our opinion, this alone is sufficient to reject the assessee's contention.

4. Learned counsel for the assessee in all fairness pointed out to us two decisions in *A.V. Thomas and Co. Ltd. v. Commissioner of Income Tax* ¹ and *Sundaram Industries Ltd. v. Commissioner of Income Tax*, ² which take the same view. Reference is also made therein to a decision of the Supreme Court in *Jaipuria Samla Amalgamated Collieries Ltd. v. Commissioner of Income Tax*, ³ dealing with the corresponding provision in the Indian Income-tax Act, 1922. It was pointed out by the Supreme Court in that decision that such a provision was meant to exclude a tax or a cess or a rate, the assessment of which would follow the determination or assessment of profits or gains of any business, profession or vocation in accordance with the provisions of the Income-tax Act. This decision of the Supreme Court clearly supports the view taken by us which is in consonance with the view taken in the above decisions by the Kerala and Madras High Courts.

5. Consequently, the reference is answered against the assessee and in favor of the Revenue in respect of both the assessment years, i.e., 1973-74 and 1975-76, as under:

The Tribunal was justified in holding that the surtax paid by the assessee would not be allowed as a deduction in computing the total income under the Income-tax Act, 1961.

Reference Answered.

Cases Referred.

1. [1986] 159 ITR 431 (Ker) [FB]
2. [1986] 159 ITR 646 (Mad)
3. [1971] 82 ITR 580