

(1964) 03 BOM CK 0007

In the Bombay High Court

Case No : Miscellaneous Application No. 420 of 1963

Burmah Shell Refineries Ltd.

APPELLANT

Vs

A.V. Raman, Income Tax Officer, Companies Circle I (1),
Bombay and Another

RESPONDENT

Date of Decision : 25-03-1964

Acts Referred:

Income Tax Act, 1961 — Section 154

Citation : (1965) 56 ITR 310

Hon'ble Judges : Y.S. Tambre, J; S.P. Kotwal, J

Bench : Division Bench

Advocate : N. A. Palkhivala, for the Appellant; G.N. Joshi, for the Respondent

Judgement

Tambre, J.—By this petition under article 226 of the Constitution of India, the petitioner seeks to get quashed the notices dated the 25th of September, 1953, issued by the Income Tax Officer, Companies Circle, Bombay, the first respondent hereto, u/s 154 of the Income Tax Act of 1961. The petitioner-assessee is a company incorporated in Bombay under the Indian Companies Act. The main business of the company is to refine crude oil. We are here concerned with the two assessment years 1957-58 and 1958-59 relating to which both the notices have been issued. It is not in dispute that the petitioner-company, being a newly established undertaking, is entitled to the benefit provided under sub-section (1) of section 15C of the Indian Income Tax Act, 1922 (11 of 1922), which was the Act which governed the assessment of the petitioner-company in the aforesaid relevant assessment years, and the benefit provided by sub-section (1) of section 15C is that tax is not payable by such a company on so much of the profits or gains derived by it as do not exceed 6 per cent. per annum on the capital employed in the undertaking. The manner in which the figure of the capital employed is to be computed is prescribed in Rules made by the Central Board of Revenue. The dispute between the parties relates to the computation of the super-tax. It is not in dispute that the assessment of the petitioner-company is made in accordance with the provisions of the Finance Acts of 1957 and 1958,

but the material provisions of both these Acts are similar. It is sufficient to state facts relating to the assessment year 1957-58. The total income determined by the first respondent in the assessment order amounted to Rs. 6,04,32,270. The determination of the figure of the capital employed within the meaning of section 15C was done at Rs. 21,35,42,325 and 6 per cent. thereof amounted to Rs. 1,28,18,538 and this is the amount in respect of which it is not in dispute that the petitioner-company is entitled to have the benefit provided in sub-clause (ii) of the first proviso to paragraph D of the Finance Act of 1957. Now 50 per cent. of the total income is a basic tax liability of the company under the aforesaid paragraph D of Part II of the First Schedule of the Finance Act of 1957. Super-tax has been mentioned in the assessment order as corporation tax and that is how it is popularly known in the case of a company. The basic corporation tax liability thus determined was Rs. 3,02,16,135. Calculating the rebate at 30 per cent., the amount determined was Rs. 1,81,29,681. Now the company had declared dividends in the relevant assessment year and the dividend declared was in excess of 6 per cent. of the capital employed. The figure of the withdrawal of rebate thus calculated by the Income Tax Officer amounted to Rs. 21,07,550. The Income Tax Officer thus determined the rebate at Rs. 1,60,22,131. Deducting the amount of rebate, the Income Tax Officer determined the super-tax or corporation tax liability of the petitioner-company on its total income at Rs. 1,41,94,004. Now the aforesaid determination of the corporation tax liability of the petitioner-company was on the basis that the liability was of the entire income. As already stated, the petitioner-company being one which was entitled to the benefit u/s 15C, the benefit to which the company was entitled under that provision in respect of the aforesaid figure of Rs. 1,28,18,538 had to be determined. For the determination of that figure, what the Income Tax Officer did was to ascertain the average rate of corporation tax at which the total income of Rs. 6,04,32,270 had been taxed and the average rate for corporation tax determined by the Income Tax Officer was 23.48745%. Calculating the super-tax on the aforesaid amount of Rs. 1,28,18,538 at the average rate of 23.48745%, the figure determined by the Income Tax Officer amounted to Rs. 30,10,747.70. The Income Tax Officer deducted this amount from the aforesaid figure of Rs. 1,41,94,004 and thus determined the net corporation tax liability of the petitioner-company at Rs. 1,11,83,256.30. This assessment order was made on August 30, 1961. On 23rd September, 1963, the Income Tax Officer issued two impugned notices u/s 154 of the Indian Income Tax Act. In the said notices the Income Tax Officer mentioned that there was a mistake apparent from the record within the meaning of sections 154 and 155 of the Indian Income Tax Act and the proposed rectification would have the effect of enhancing the assessment and reducing the refund and increasing the petitioner's tax liability. The Income Tax Officer informed the assessee to appear in person or by an authorised representative in his office on 6th October, 1963. The notice also gave the petitioner-company an option of sending a reply in writing if it so chose, before the aforementioned date. The Income Tax Officer also wrote a covering letter which was sent to the petitioner along with the two notices and the said letter of

date 23rd September, 1963, is exhibit C collectively to the petition. The material part of this letter is in the following terms :

"In the assessment completed for the above years u/s 23(3), it is seen that there is a mistake apparent from the records in the computation of relief due to the company on the profits u/s 15C for each year. While the basic rate of super-tax is 50%, rebate has been given on the entire income at 30% and further rebate at 23.48% has been given on the 15C-portion of the income also. Thus, the 15C-portion of the income has been given rebate at the total rate of 30 plus 23.48%, i.e., 53.48%. The basic rate of super-tax being 50% the total rebate admissible cannot exceed this rate and hence the rebate given on the 15C-portion of the income in excess of 50% at the rate of 3.48% has to be taken back. I propose to rectify the assessment on this basis. Please let me know whether you have any objections for this proposal on or before October 6, 1963."

2. The petitioner-company by its reply dated the 4th October, 1963, pointed out to the respondent that the Income Tax Officer was not correct in assuming that the rebate had been granted to the petitioner-company at the rate of 53.48% on the portion of the income falling u/s 15C, but on the other hand, the rebate granted to the petitioner-company on this amount was only to the extent of 26.51255%. There was thus no mistake apparent on the face of the record, and hence, there was no case for rectification. This letter of the petitioner-company was followed by its attorney's letter dated the 14th November, 1963, and it indicates that the petitioner-company had appeared before the Income Tax Officer and had explained its stand. As the first respondent was inclined to proceed in the matter further in pursuance of the aforesaid notices u/s 154, the petitioner-company had moved this court by a writ petition seeking the aforesaid relief.

3. Mr. Palkhivala, the learned counsel for the petitioner-assessee, contends that the jurisdiction of the Income Tax Officer to issue notice u/s 155 of the Indian Income Tax Act, 1961, arises on the existence of a mistake which is apparent from the record. There is no mistake apparent from the record. On the other hand, the facts assumed by the Income Tax Officer that the petitioner had been granted rebate at 53.48 per cent. on the portion of the income falling u/s 15(1) is on the face of it erroneous. The action taken by the Income Tax Officer under this notice is without jurisdiction and, therefore, the notices are liable to be quashed.

4. Mr. Joshi for the revenue on the other hand contends that there is a mistake on the face of the record. He frankly concedes that it is not possible for him to support the line of reasoning adopted by the Income Tax Officer in his aforesaid covering letter of 23rd September, 1963. But, according to him, the method adopted by the Income Tax Officer, i.e., the first respondent hereto, in determining the super-tax payable by the assessee-company is not in accordance with the provisions of sub-section (3) of section 17 of the Indian Income Tax Act, 1922, and that is a mistake apparent on the face of the record which could be

detected by merely having a look at the assessment order and reading the relevant provisions of sub-section (3) of section 17 of the Indian Income Tax Act. Therefore, the Income Tax Officer was acting within his jurisdiction in issuing the said notices u/s 154 of the Indian Income Tax Act, 1961. The mere fact that the line of reasoning adopted in the covering letter is defective cannot have the effect of rendering the notices invalid. Section 154 in the new Act corresponds to section 35 in the earlier Act in the matter of a rectification of mistake, and it is not in dispute that the exercise of power by the Income Tax Officer to take action either u/s 154 or u/s 35 depends on the existence of "any mistake apparent from the record". If there be no mistake apparent from the record then the action purported to be taken by the Income Tax Officer either u/s 154 or u/s 35 is liable to be quashed, it being one without jurisdiction. What is a mistake apparent from the record has been recently dealt with by us and we need not repeat all those things here. There can hardly be any doubt that if the method adopted by the Income Tax Officer in determining super-tax payable by the assessee-company is not in accordance with the provisions of sub-section (3) of section 17, then it would be a mistake apparent from the record inasmuch as the determination of the liability is not in accordance with the provisions of law and thus requires rectification. Of course, if on the other hand, of the relevant provisions of law, constructions more than one are possible and for determination of the rival contentions, a detailed debate, or argument or investigation is required, it could hardly be said to be a mistake on the face of the record. The question, therefore, that arises is whether the method adopted by the Income Tax Officer is not in accordance with sub-section (3) of section 17 of the Act. Now as already stated the method adopted by the Income Tax Officer in determining the super-tax payable by the assessee-company was that he first preceded to determine the super-tax payable by the assessee-company on the footing that the super-tax was payable on the entire total income and then he proceeded to determine the average rate at which the super-tax has been so determined on the total income of the petitioner-company. Thereafter, the Income Tax Officer proceeded to calculate corporation tax (i.e., super-tax) in respect of the amount of profits determined u/s 15C of the Act but in respect of which, by reason of the provisions of sub-section (1) of section 15C of the Act, no tax was payable by the petitioner-company at the average rate at which corporation tax has been determined on the total income of the petitioner-company. The Income Tax Officer then proceeded to deduct that figure from the total corporation tax computed on the total income and the balance arrived at has been determined by him as the super-tax payable by the assessee-company. The relevant portion of sub-section (3) of section 17 of the Income Tax Act, 1922, provides "Where there is included in the total income of any assessee any income exempted from tax under.....section 15C, the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income." The mode indicated in section 17(3) for the determination of the tax

liability thus is first to determine the amount of super-tax which would be payable on the entire total income determined, and then to ascertain the proportion which the total income less the income exempted u/s 15C bears to the total income and then to reduce the super-tax determined in that proportion. Obviously, the method adopted by the Income Tax Officer is not in accordance with sub-section (3) of section 17 of the Indian Income Tax Act, 1922. The mistake in abstract could be said to be mistake apparent from the record. We then asked Mr. Palkhiwala to calculate super-tax payable in accordance with the aforesaid mode provided by sub-section (3) of section 17, and Mr. Palkhiwala after calculating told us that the figure of the tax liability arrived at according to this method amounts to Rs. 1,11,83,020 which for all practical purposes is the amount of the super-tax computed to be payable by the assessee-company. Now the Income Tax Officer has determined the super-tax payable by the assessee-company according to the method adopted by him and the super-tax payable amounted to Rs. 1,11,83,256.30 nP. in excess of the amount that gets determined by the mode provided under sub-section (3) of section 17 of that Act. A copy of the calculation made by Mr. Palkhiwala in respect of the tax payable is given to us by the learned counsel for the petitioner for being placed on record. In the circumstances, we asked Mr. Joshi, the learned counsel for the revenue, whether, for the purpose of the present case, on adopting the mode provided in sub-section (3) of section 17 of the Act any material difference is likely to ensue in the matter of super-tax liability of the assessee-company and whether on proper calculation, the tax liability would exceed the tax liability determined by the Income Tax Officer. Mr. Joshi frankly conceded that so far as the present case is concerned there is going to be no material difference in the matter of tax liability of the petitioner-company. The only reason why the respondents opposed this petition was that it should not be understood that the mode adopted by the Income Tax Officer was a correct mode made in accordance with sub-section (3) of section 17 of the Act. Though in the present case no material difference has resulted, it is likely that, in other cases, the method adopted by the Income Tax Officer may result in material loss to the revenue. In the circumstances, in our opinion, though technically there is a mistake apparent on the face of the record, in substance it is not one in which an action u/s 154 is called for. To allow the proceedings to be taken under the notices would only result in unnecessary waste of time of the public authorities as well as of courts. In the circumstances, in our opinion, the view taken by the Income Tax Officer in the notices that the rectification of the mistake will have the effect of enhancing the assessment or reducing the refund or increasing the petitioner company's tax liability, is erroneous. The notices are, therefore, liable to be quashed.

5. In the result, we quash and set aside the notices and restrain the respondents from taking any action on the basis of the aforesaid notices. The rule is made absolute with costs.

6. Petition allowed.