
(1998) 07 MAD CK 0123

In the Madras High Court

Case No : R. Jayasimha Babu and N.V. Balasubramanian, JJ. Tax Case No. 318 of 1991 22nd July, 1998

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

ADDISON and CO. LTD.

RESPONDENT

Date of Decision : 22-07-1998

Acts Referred:

Citation : (1999) 154 CTR 500

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Full Bench

Judgement

R. JAYASIMHA BABU, J:

The question referred to us by the Tribunal, at the instance of the Revenue which question arises out of the Tribunals order regarding assessment of the respondent company under the Companies (Profits) Surtax Act for the asst. yr. 1980-81, is as to "whether on the facts and in the circumstances of the case, the Tribunal is right in holdings that the capital base under the Surtax Act should not be deducted in proportion to the relief allowed in the Income Tax assessment under ss. 32A, 35B and Chapter VI-A of the IT Act, invoking r. 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964".

2. Rule 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964 reads thus :

A. Where a part of the income, profits and gains of a company is not includible in its total income as computed under the IT Act, its capital shall be the sum ascertained in accordance with rr. 1, 2 and 3, diminished by an amount which bears to that sum in the same proportion as the amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains. "

3. This rule refers to the part of the income, profits or gains "not includible in the total income". This Court in the case of Add]. CIT vs. Bimetal Bealings Ltd. 1978 CTR (Mad) 50 : (1978) 110 ITR 131 hag held that r. 4 is inapplicable to the

deduction under Chapter VI-A of the Act. It was also observed in that decision that the words "not includible in the total income" used in r. 4 of the Act are referable to the income declared by s. 10 of the IT Act as not being included in the total income of the assessee. The Tribunal has held that the deduction under s. 32A and 35B of the Act also do not attract the operation of the r. 4 of the Second Schedule to the Companies (Profit) Surtax Act, 1964.

4. Learned counsel for the Revenue sought to distinguish the decision of this Court in the case of Addl. CIT vs. Bitnetal Bearings Ltd. (supra) which decision to the extent it held that r. 4 is not attracted to deduction under Chapter VI-A of the IT Act was approved by the Supreme Court in the case of Second Income Tax Officer and Another Vs. Stumpp Schuele and Somappa (P) Ltd., , on the ground that the computation of the income is required to be made in accordance with ss. 30 to 43A of the Act, and, therefore, even before the total income is computed the deductions under ss. 32A and 35B of the Act are taken into account, and to that extent the income of the assessee is reduced for the purpose of taxation and constitutes income not includible in the total income of the assessee for the purpose of computation of the profits and gains under the IT Act. Counsel also submitted that unlike Chapter VI-A of the Act which provides for deduction from gross total income computed, ss. 32A and 35B of the Act, are invoked and applied even before the total income is determined. Reference was also made to the definition of "gross total income" in s. 8013(5) of the IT Act, which reference to the total income as computed under s. 29 in accordance with the provisions of the Act as gross total income from which deductions provided for in Chapter VI-A and are to be made.

5. Rule 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964 was enacted in the year 1964 before the s. 80A and other associated sections of the Act came to be introduced in the IT Act in the year 1965. Rule 4 was not thereafter amended. The reference to total income in r. 4 was not altered to gross total income. We cannot, however, on that ground hold that the total income referred to in r. 4, is the total income calculated in accordance with ss. 30 to 43A of the Act, insofar as the business income is concerned. The crucial words in r. 4 are "not includible in the total income". Only such income though derived by the assessee by way of profits and gains of its business as is not required to be included for the purpose of computing the total income under the IT Act alone is required to be taken into account under r. 4 for the purpose of proportional reduction of the capital base. If the income that is required to be considered for the purpose of computation of total income, though a part of that income is not subjected to tax on account of deduction and exemption granted, such income cannot be characterized as income "not includible in the total income". The income which has not been brought to the charge of tax by reason of s. 10 of the Act would certainly constitute income not includible in the total income for the purpose of computation under the IT Act. It is only that income which is meant to be taken note of for the purpose of r. 4.

6. We, therefore, answer the question referred to us in the affirmative in favour of the assessee, and against the Revenue. In the circumstances of the case, there will be no order as to costs.

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