

(1998) 06 MAD CK 0054

In the Madras High Court

Case No : Tax Case No. 318 of 1991 (Reference No. 161 of 1991)

Commissioner of Income Tax

APPELLANT

Vs

Addison and Co. Ltd.

RESPONDENT

Date of Decision : 22-06-1998

Acts Referred:

Companies (Profits) Surtax Act, 1964 — Rule 4
Income Tax Act, 1961 — Section 10

Citation : (2000) 245 ITR 656

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

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

Tribunal's order regarding the assessment of the respondent-company under the Companies (Profits) Surtax Act for the assessment year 1980-

81, is as to "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the capital base under the

Surtax Act should not be deducted in proportion to the relief allowed in the Income Tax assessment under sections 32A 35B and Chapter VI-A of

the Income Tax Act, 1961, invoking Rule 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 :

4. Where a part of the income, profits and gains of a company is not includible in its total income as computed under the Income Tax Act, its

capital shall be the sum ascertained in accordance with rules 1, 2 and 3, diminished by an amount which bears to that sum 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 Additional Commissioner

of Income Tax Vs. Bimetal Bearings Ltd., has held that Rule 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 Rule 4 of the Act is referable to the income declared by Section

10 of the Income Tax Act as not being included in the total income of the assessee. The Tribunal has held that the deduction under sections 32A

and 35B of the Act also do not attract the operation of Rule 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964.

4. Learned counsel for the Revenue sought to distinguish the decision of this court in the case of Additional Commissioner of Income Tax Vs.

Bimetal Bearings Ltd., , which decision to the extent it held that Rule 4 is not attracted to deduction under Chapter VI-A of the Income Tax 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 Section 30 to 43A of the Act, and, therefore, even before

the total income is computed the deductions under sections 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 Income Tax Act. Counsel also submitted that unlike Chapter VI-A of the Act which provides for

deduction from gross total income computed, sections 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 Section 80B(5) of the Income Tax Act, which reference to the

total income as computed in accordance with the provisions of the Act as gross total income from which deductions provided for Chapter VI-A 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 Section 80A and other

associated sections of the Act came to be introduced in the Income Tax Act in the year 1965. Rule 4 was thereafter amended. The reference to

total income in Rule 4 was not altered to gross total income. We cannot, however, on that ground hold that the total income referred to in Rule 4 is

the total income calculated in accordance with sections 30 to 43A of the Act, in so far as the business income is concerned. The crucial words in

Rule 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 Income Tax Act alone is required to be taken into account under

Rule 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

characterised as income ""not includible in the total income"". The income which has not been brought to the charge of tax by reason of Section 10

of the Act would certainly constitute income not includible in the total income for the purpose of computation under the Income Tax Act. It is only

that income which is meant to be taken note of for the purpose of Rule 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.