
(1996) 08 GAU CK 0019
In the Gauhati High Court
Case No : IT Reference No. 14 of 1992

Commissioner of Income Tax	Vs	APPELLANT
Highway Construction Co. (P.) Ltd.		RESPONDENT

Date of Decision : 06-08-1996

Acts Referred:

General Clauses Act, 1897 — Section 9
Income Tax Act, 1961 — Section 256(1), 80J

Citation : (1997) 92 TAXMAN 265

Hon'ble Judges : S.B. Roy, J; D.N. Baruah, J

Bench : Division Bench

Advocate : G.K. Joshi, for the Appellant; A.K. Saraf and K.K. Gupta, for the Respondent

Judgement

D.N. Baruah, J.—In this reference u/s 256(1) of the income tax Act, 1961 ("the Act"), the following four questions have been referred for opinion of this Court:-

1. Whether, on the facts and circumstances of the case, the Tribunal did not err in facts as well as in law in holding that the date of accrual of compensation amount is 30-3-1979 and not 14-9-1979?
2. Whether, on the facts and circumstances of the case, the Tribunal did not err in facts as well as in law in holding that the assessee is an industrial company?
3. Whether, on the facts and circumstances of the case, the Tribunal was correct in holding that the assessment for the assessment year 1980-81 completed on 23-3-1984 on the basis of the return of income submitted on 23-3-1983 was not barred by limitation?
4. Whether, on the facts and circumstances of the case, the Tribunal was correct in holding that the amounts receivable by the assessee in accordance with arbitration award relating to execution of contract works under MES authorities were not capital receipt exempt from tax?

The first two questions have been referred at the instance of the revenue and the remaining two questions at the instance of the assessee. The facts for the purpose of answering these questions may be stated as follows:

The assessee is a company with limited liability incorporated under the Companies Act, 1956. The assessee-company follows the mercantile system of accountancy. The accounting year of the assessee was financial year, that is, from 1st April to 31st March. The relevant accounting year ended on 31-3-1979. For the said assessment year, the assessee-company filed its return of income on 24-4-1983 disclosing a total income of Rs. 990 only. However, the Assessing Officer after making various disallowances and additions completed the assessment at a total income of Rs. 4,57,410. While making the assessment the Assessing Officer made addition of Rs. 11,09,441 which amount was received by the assessee-company by way of compensation on the basis of a decision given by the Delhi High Court in Suit No. 1186-A of 1978 and IA No. 537 of 1979 passed on 30-3-1979 in connection with the contract work executed by the assessee in Military Engineering Service. The assessee-company claimed that the aforesaid amount was a capital amount and in fact the same accrued to the assessee-company on 30-3-1979 due to the decree given by the Delhi High Court and as such the said amount was not liable to be assessed in the assessment year 1980-81. However, the Assessing Officer did not accept the contention of the assessee-company. According to the Assessing Officer, the awarded amount accrued to the assessee-company not on 30-3-1979, that is, the date on which the Delhi High Court gave the decision against the arbitration award but on 14-9-1979 when the actual compensation money along with interest was received by the assessee-company. The Assessing Officer also did not accept the claim of the assessee-company that the compensation was a capital receipt and, therefore, it was exempted from tax. The assessee-company further claimed allowance u/s 80J of the Act taking it to be an "industrial company"; this claim was also turned down by the Assessing Officer. The Assessing Officer did not consider the assessee as "industrial company" because basically it was carrying on the business of contract.

2. Being dissatisfied the assessee-company preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) also dismissed the appeal. Situated thus, the assessee-company preferred yet another appeal before the Tribunal. The Tribunal held that the date of accrual of compensation amount was on 30-3-1979, the date on which the Delhi High Court gave the verdict regarding compensation and not on the date of receipt of the compensation, that is, on 14-9-1979. However, the Tribunal held that the assessee-company was an "industrial company". Regarding the limitation, the Tribunal held that it was not barred by limitation. The Tribunal also held that the amount in question was a revenue receipt and not a capital receipt. Hence, the present reference as stated above.

3. We have heard Mr. G.K. Joshi, the learned senior standing counsel for the

revenue, and Dr. A.K. Saraf, the learned counsel for the assessee- company.

4. Regarding the first question, Dr. Saraf submits that in a mercantile system of accountancy, the income is taken to be on a date on which it became due and not on the date when the amount is received. In this case, as per the terms of the contract certain goods were to be supplied by the department and on failure to do so the assessee-company had to supply those materials by paying money. When the amount was claimed by the assessee-company, it was disputed by the department. This led to a reference to an arbitration proceeding in terms of the contract. In the arbitration proceeding, the arbitrator awarded the compensation holding that when the assessee-company spent the amount, it was entitled to receive the same amount. The matter was taken up to the Delhi High Court and ultimately the Delhi High Court confirmed the award given by the arbitrator in the arbitration proceeding. Mr. Joshi has strenuously argued that the date on which the amount was received was the date of income of the assessee-company. Dr. Saraf has disputed the same. It is well-settled that in a mercantile system of accountancy the date when the amount becomes due should be taken as the date of income and not the date on which the amount was received. Dr. Saraf has drawn our attention to a decision of this Court in *Commissioner of Income Tax Vs. Sikaria Sons and Co.,* . In the said decision, this Court observed thus:

...These records show that the claim of the assessee was disputed by the Army Purchase Organisation and the dispute was ultimately settled by the High Court several years later. In the light of these facts, the view taken by the Tribunal that it cannot be said that the assessee had acquired the right to receive the amount even when the supplementary bill was submitted and the mere filing of a claim cannot give rise to a right to receive the amount, appears to be correct.

In the above case after the award was given by the arbitrator and before the order passed by the High Court supplementary bill was raised in terms of the award given by the arbitrator. This Court held that the date of submission of supplementary bill could not be the date when the amount became due nor it was on the date when the award was made by the arbitrator. As per the said decision, the money became due only when it was finally decided by the High Court. Dr. Saraf has also drawn our attention to a decision of the Apex Court in *Morvi Industries Ltd. Vs. Commissioner of Income Tax (Central) Calcutta,* . In this case also the Apex Court had the occasion to consider "the due date". The Apex Court after discussing the entire aspects of the matter held thus:

...The dictionary meaning of the word "accrue" is "to come as an accession, increment, or produce: to fall to one by way of advantage: to fall due". The income can thus be said to accrue when it becomes due. The postponement of the date of payment has a bearing only insofar as the time of payment is concerned, but it does not effect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately....

In the said decision, the Apex Court also held as under:

...It is well-known that the mercantile system of accounting differs substantially from the cash system of book-keeping. Under the cash system, it is only actual cash receipts and actual cash payments that are recorded as credits and debits; whereas under the mercantile system, credit entries are made in respect of amounts due immediately they become legally due and before they are actually received;....

5. From the above two decisions it is abundantly clear that the receipt of payment is not the guiding factor to determine the date of accrual of income under the mercantile system of accountancy, it is only when the amount becomes due. In the present case, the amount became due on the final decision of the High Court of Delhi. Therefore, we answer the question No. 1 in the affirmative in favour of the assessee and against the revenue.

6. Regarding question No. 2, the facts available in the Paper Book indicate that the assessee-company undertook to carry out construction works on contract basis. The construction of building like that of dam, etc., cannot be said to be an industrial undertaking. In this connection Mr. Joshi has drawn our attention to a decision of the Apex Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, . While discussing this aspect of the matter the Apex Court observed that the word "production" or "produce" when used in juxtaposition with the word "manufacture", takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, inter mediate products and residual products which emerge in the course of manufacture of goods. The Court observed thus:

...Would any person who has constructed a dam say that he has manufactured an article or that he has produced an article? Obviously not. If a dam is an article, so would be a bridge, a road, an underground canal and a multi-storeyed building. To say that all of them fall within the meaning of the word "articles" is to overstrain the language beyond its normal and ordinary meaning. It is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles; it is composed of stones, concrete, cement, steel and other manufactured articles like gates, sluices, etc. But to say that the end product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed; it is not manufactured or produced. The expressions "manufacture" and "produce" are normally associated with movables -articles and goods, big and small - but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road, or a building....

From the said decision of the Apex Court it is abundantly clear that a construction work of building, etc., cannot be said to be a manufacturing process

and if it is not the manufacturing process, the company cannot be said to be "industrial company". In view of this we answer question No. 2 in the negative in favour of the revenue and against the assessee.

7. Regarding the 3rd question, Mr. Joshi submits that the Tribunal was justified in holding that it was not barred by limitation. The assessment is permissible within one year from the date of filing of the return. In the present case the return was filed on 23-3-1983 and assessment was made on 23-3-1984. The contention of Dr. Saraf is that this is barred by one day. It is well-settled principle of law that while computing the particular period, the first day is to be excluded. Section 9 of the General Clauses Act, 1897 gives an idea about commencement and termination of time. Relevant portion of section 9 of the General Clauses Act is extracted below:

Commencement and termination of time - (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

In Maxwell on the Interpretation of Statutes, Twelfth Edition at page 309 it is stated as follows:

Where a statutory period runs "from" a named date "to" another, or the statute prescribes some period of days or weeks or months or years within which some act has to be done, although the computation of the period must in every case depend on the intention of Parliament as gathered from the statute, generally the first day of the period will be excluded from the reckoning, and, consequently, the last day will be included.

Therefore, from the above it is clear that while computing the period of one year the first day is to be excluded. In view of this in our opinion the assessment was not barred by limitation. Accordingly, we answer the question No. 3 in the affirmative against the assessee and in favour of the revenue.

8. The last question referred to is whether the amount received is capital receipt or the revenue receipt. The assessee-company in order to complete the work supplied certain materials for the completion of the work which under the terms of the contract was the duty of the department to supply. In the arbitration proceeding compensation was awarded for the costs incurred by the assessee-company. This was affirmed by the Delhi High Court. In our opinion this was a revenue expenditure so far as the assessee is concerned because it was a part of the business. In this connection, a reference may be made to a decision of the Apex Court in Commissioner of Income Tax, Nagpur Vs. Rai Bahadur Jairam Valji and Others, . In the said case, the Apex Court held: When once it is found that a contract was entered into in the ordinary course of business, any compensation received for its termination would be a revenue receipt, irrespective of whether its performance was to consist of a single act or a series of acts spread over a

period.

In view of the above, we answer question No. 4 in the affirmative in favour of the revenue and against the assessee.