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**(1981) 01 CAL CK 0028**

**In the Calcutta High Court**

**Case No : Income-tax Reference No. 303 of 1974**

Commissioner of Income Tax

APPELLANT

Vs

Plastica Moulders (P.) Ltd.

RESPONDENT

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**Date of Decision :** 07-01-1981

**Acts Referred:**

Income Tax Act, 1961 — Section 104

**Citation :** (1981) 24 CTR 342 : (1982) 134 ITR 114 : (1981) 6 TAXMAN 274

**Hon'ble Judges :** Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

**Bench :** Division Bench

**Advocate :** Suhas Sen and Samar Banerjee, for the Appellant; None, for the Respondent

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## **Judgement**

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question has been referred to this court:

" Whether, on the facts and in the circumstances of the case, and on a correct interpretation of Clause (1)(c)(iii)(B) of the second proviso to Paragraph F of the First Schedule to the Finance Act, 1965, the Tribunal was correct in holding that the amount by which the rebate from Income Tax payable by the assessee should be reduced under the said clause should be computed with reference to the proposed dividend of Rs. 24,000 and not with reference to the dividend of Rs. 60,000 relating to the profits of the assessment year 1964-65 though declared and distributed during the previous year for the assessment year 1965-66 ? "

2. The assessee is a private limited company engaged in the manufacture of plastic goods. The provisions of Section 104 of the I.T. Act apply in the case of the assessee. There is also no dispute that according to sub-el. (B) of Clause (c) of the second proviso to Paragraph F of the Finance Act, 1965, its rebate from tax was liable to reduction @ 7.5% on the whole amount of its dividends other than dividends on preference shares. It will be relevant to set out the proviso as also the relevant provisions of the Finance Act, 1965, which are as follows :

" Paragraph F

In the case of every company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (XXXI of 1956),--

Rate of income tax

On the whole of the total income 80 per cent.: Provided that a rebate shall be allowed in the case of such companies on such income at such rate or rates as are specified hereunder :.....

Provided further that--

(i) the amount of rebate arrived at under the preceding proviso in the case of a company referred to in item I or item II of that proviso shall be reduced by the sum, if any, equal to the amount or the aggregate of the amounts, as the case may be, computed as hereunder :--

(a) On the aggregate of the sums computed in the manner provided in cl. (i) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1964 (V of 1964), as reduced by the amount, if any, which is deemed to have been taken into account, in accordance with cl. (ii) of the said proviso, for the purpose of reducing the rebate mentioned in clause (i) of the said proviso to nil ;

at the rate of 100 per cent.

(b) On the amount representing the face value of any bonus shares or the amount of any bonus issued to its shareholders during the previous year with a view to increasing the paid-up capital except where such bonus shares or bonus have been issued wholly out of the share premium account of the company after the 31st day of March, 1964;

at the rate of 12.5 per cent.

(c) in addition, in the case of --

(i) a company as is referred to in section 108 of the Income Tax Act, or

(ii) a company as is referred to in clause (iii) of sub-section (2) or sub-section (4) of section 104 of the said Act, or

(iii) such a company as is exempt from the operation of section 104 of the said Act by a notification issued under the provisions of sub-section (3) of that section, which has declared or distributed to its shareholders during the previous year any dividends other than dividends on preference shares --

(A) in the case of a company which since the date of the commencement of its activities has declared or distributed any dividends for the first time during the previous year or any one of the four previous years immediately preceding such previous years --

on that part of the dividends other than dividends on preference shares which exceeds ten per cent, of the paid-up equity capital

at the rate of 7.5 per cent.

(B) in any other case -- on the whole amount of the dividends other than dividends on preference shares

at the rate of 7.5 per cent.

(ii) Where the sum arrived at in accordance with Clause (i) of this proviso exceeds the amount of the rebate arrived at under the preceding proviso, only so much of the amounts of reduction mentioned in sub- Clauses (a), (b) and (c) of Clause (i) of this proviso as is sufficient, in that order, to reduce the rebate to nil shall be deemed to have been taken into account for the purpose :....."

3. The ITO held that the reduction in the rebate was to be calculated on a dividend of Rs. 60,000 which though related to the profits of the earlier year, that is to say, assessment year 1964-65, was distributed during the year under reference. He, accordingly, reduced the rebate by Rs. 4,500, being the tax on Rs. 60,000 @ 7.5%.

4. The assessee went up in appeal before the AAC. Before the AAC, it was contended that the assessee's rebate was liable to be reduced at 7.5% on the dividends of Rs. 24,000 only which was proposed to be distributed @ Rs. 6 per share out of the profits of the year under reference. The AAC rejected the contention observing that the provisions of the Finance Act were very clear on this point and there was no ambiguity in the same. He, therefore, confirmed the order of the ITO on this aspect.

5. The assessee went up in further appeal before the Tribunal. The same contention was urged before the Tribunal on behalf of the assessee. The Tribunal found on a perusal of the assessee's profit and loss appropriation account that the assessee earned a net profit of Rs. 69,456 during the year under reference, which together with the carried forward credit balance as per last account amounting to Rs. 12,648, gave a total of Rs. 82,105. Out of this the following provisions were made :

(i) Provision for taxation

Rs. 40,000

(ii) Proposed dividend

Rs. 24,000

(iii) Balance transferred to balance-sheet

Rs. 18,105

Total

Rs. 82,105

6. According to the Tribunal, therefore, it was clear that additional tax could be imposed only on the sum of Rs. 24,000 being the proposed dividend and subsequently declared by the assessee which in other words meant that the rebate could be reduced only to the above extent. The Tribunal also found that the dividend of Rs. 60,000 proposed to be declared by the assessee related to the earlier year and had nothing to do with the income of the current year. The Tribunal, therefore, was of the view that additional tax should be recalculated on the amount of Rs. 24,000 only or, in other words, the rebate should be reduced to the above extent only and due relief should be granted on the assessee's account. In the aforesaid circumstances, the question, as indicated before, has been referred to this court.

7. Now, the question centres on the interpretation of the expression "in the case of a company which since the date of the commencement of its activities had declared or distributed any dividends for the first time.....other than dividends on preference shares". Now, therefore, the reduction of the rebate is by the language of the section limited to the extent a declaration or distribution of dividend is made. To hold that the dividend declared or distributed must be out of the income of the current year for the year under assessment would be going beyond the language used by the Legislature. Perhaps, the Tribunal thought that as the reduction of the rebate granted to the taxes related to the profits of the year, the reduction should be calculated on the basis of the dividend declared out of the income of the current year for the year under assessment. But, in fiscal statutes, as is well known, one should be guided by the language used ; there is no scope for equity or intent. It is true that from one point of view it might be unfair to reduce the rebate granted to tax relief, if such dividends are declared out of the profits of the previous year. On the\* other hand, if this construction that has appealed to the Tribunal is applied then the assessee can go on postponing the declaration of the dividend and thereby avoid the reduction of the rebate for the other years also. Indeed, in this case, in the previous year also, out of the profit of which this additional dividend of Rs. 63,000 was sought to be declared, the same rate of: reduction of rebate was there, but the company did not declare a dividend in that year, and thereby avoided reduction. If in this year, the company declares and distributes dividend in respect of the earlier year and, even then, avoids the reduction of the rebate, the company would really be getting a double benefit. But, these considerations by themselves, in our opinion, should not be a determining factor. The language used in the relevant provision for the reduction of rebate is in respect of the dividend declared or distributed ; it does not provide that there should be a further condition that the dividend declared and distributed must relate to the dividend declared and distributed out of the profits for the year under consideration. These views find support in the observation of the Division Bench of the Madras High Court in the case of George Oakes Private Ltd. Vs. Commissioner of Income Tax, Madras, . There Clause (b) of Section D of Part II of Schedule I to the Finance Act, 1956, was to be attracted

if there was a distribution of dividend during the previous year in excess of the six per cent. of the paid-up capital of the company even though the dividend was declared in respect of earlier years under the direction of the ITO u/s 23A. There, what happened was in March, 1955, the assessee-company declared a dividend of Rs. 68,750. An additional dividend of Rs. 3 lakhs was also declared in compliance with the direction of the ITO u/s 23A and relating to the years 1949-50 and 1950-51. The ITO proposed to withdraw the rebate on super-tax on the sum of Rs. 68,750 under Part II-D(b) of Schedule I of the Finance Act, 1956. The assessee contended that the withdrawal of rebate could not be made as the dividends related to the years 1949-50 and 1950-51, and, alternatively, that as the declaration of the dividend had been made pursuant to the direction of the ITO, u/s 23A, as it stood then, it must be deemed to be in respect of the years 1949-50 and 1950-51. It was held that though the dividends related to the assessment years 1949-50 and 1950-51, as they had been declared in the previous year relevant to the assessment year 1956-57, the requirements of Clause (b) of Part II-D of Schedule I to the Finance Act, 1956, were satisfied. Though the declaration of dividend was made under a direction u/s 23A, it was actually covered by the second proviso to that section and the withdrawal of rebate on super-tax was, therefore, justified.

8. In this connection, reference is made to the observation of the learned judge at pp. 713 and 714 of the report.

9. For the aforesaid reasons we are of the opinion that the Tribunal was in error in the view it took. The question, therefore, is answered in the negative and in favour of the revenue. There will be no order as to costs.

Sudhindra Mohan Guha, J.

10. I agree.