(2005) 04 CAL CK 0041

In the Calcutta High Court

Case No : Writ Petition No. 2512 of 2002

Exide Industries Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Companies Act, 1956 — Section 209
Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 28, 37(1), 43B

Citation : (2005) 1 ILR (Cal) 569

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : D. Pal, Manisha Seal and S. Mukherjee, for the Appellant;Shibdas Banerjee and Asha Ghutghutia, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The constitutional validity of Clause (f) of Section 43B of the income tax Act, 1961 is in question in this writ petition. The clause was inserted by way of an amendment by the Finance Act, 2001 with effect from April 1, 202.

2. The effect of the clause is that notwithstanding anything contained in any other provision of the income tax Act, 1961 allowing deduction under it of any sum payable by the Assessee as an employer in lieu of any leave at the credit of his employee'', deduction of such sum shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the Assessee according to the method of accounting regularly employed by him) only in computing the income referred to in Section 28 of that previous year in which such sum is actually paid by him.

3. The case of the Petitioners is this. The method of accounting of the first Petitioner is mercantile, as required by the Companies Act, 1956, Section 209. It floated beneficial schemes for its employees for encashment of leave. In every

financial year it set apart in a separate account requisite amount as provision for encashment on accrued leave, which is calculated on actual valuation basis. The amount so set apart is then charged to the profit and loss account as provision for leave encashment. The confusion regarding the nature of the liability came to an end with the apex court decision in Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, . Being a liability accrued in present its deduction was allowable u/s 37(1) of the income tax Act, 1961. But to nullify the apex court decision, quickly the legislative power was exercised to amend the law for disallowing the deduction in the absence of discharge of the liability by actual payment. The state action is arbitrary and unreasonable. No objects and reasons for the amendment were disclosed. Without any intelligible differentia an ordinary trading liability was separated from all other similar liabilities. It was then included in a section and grouped with some liabilities, with which it had no rational nexus.

4. By referring me repeatedly to the objects and reasons previously stated for making Section 43B and amending it from time to time, counsel for the Petitioners laid stress upon the absence of disclosed objects and reasons for the amendment. I am, however, minded to agree with counsel for the Respondents that the existing statement of objects and reasons should be referred to, if one is in search of the objects and reasons for insertion of the clause in question. I think he is again right in saying that for the amendment the legislature was not required to state and disclose the objects and reasons.

5. I venture to say that statement of objects and reasons is appended to a Bill by its introducer with a view to emphasizing the need of the legislation. If an amendment of the existing enactment is carried out for enlarging its scope, the existing objects and reasons, if previously stated regarding need of the enactment, in my view, should be presumed to be the objects and reasons also for the amendment, when further statement is not appended to the Bill. An enactment would, in any case, raise the presumption that or making it the legislature used its wisdom after necessary deliberation; there is therefore no scope to refer to any absence or insufficiency of objects and reasons for questioning the property of exercise of the legislative power.

6. Counsel for the Petitioners argued that the act of sigling out the leave encashment liability from all other trading liabilities amounted to an arbitrary and unreasonable classification of similar liabilities. While he referred me to the decisions in E.P. Royappa Vs. State of Tamil Nadu and Another, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; R.K. Garg and Others Vs. Union of India (UOI) and Others, ; John Vallamattom and Another Vs. Union of India (UOI), and State of Haryana and Another Vs. Jai Singh, , counsel for the revenue cited to me the one in Federation of Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others,

7. It seems to me that the authorities cited to me do not need a detailed reference, since there is no dispute regarding the proposition that an arbitrary or

unreasonable classification of similar liabilities would offend Article 14 of the Constitution. In my view, it cannot be said in this case that similar liabilities were arbitrarily or unreasonably classified into different categorizes.

8. A liability on account of benefit to the employee refers to a particular class of liability as distinct from every other; it is not of the same nature that various other trading liabilities are. It is not an ordinary trading liability; it is a benefit meant for the employee, the weaker of the two and who has always received legislative protection in furtherence of our constitutional goal. Here it is evident that the legislature wanted to protect the interests of the employee. So, in my judgment, its separation from others should not be regarded as arbitrary or unreasonable.

9. I am unable to agree with counsel for the Petitioners that insertion of Clause (f) had no rational nexus with the objects sought to be achieved by Section 43B and its other clauses. From the objects and reasons stated for making Section 43B and amending it from time to time, it is apparent that the legislature was vexed also with the problems plaguing the due discharge of the employer''s diverse obligations and liabilities towards his employee. The law makers in their wisdom felt that even regarding certain liabilities accrued in praesenti, the employer should not be granted the benefit of deduction unless he discharged them by making actual payment.

10. In view of the apex court decision in Bharat Earth Movers (Supra) case there can be no dispute that the employer''s liability on account of leave encashment accrues the moment the leave is credited to the account of the employee. It is, however, not discharged, or rather cannot be discharged, at once, since its discharge is entirely dependent on the wish first to be exercised by his employee. It also does not, of cause, create a corresponding right of the employee to seek its discharge by actual payment the moment it accrues.

11. Thus the position of law existing at the date of insertion of Clause (f) did not oblige the employer to actually pay the leave encashment benefit either to his employee or to any fund or to any third party, though the liability was an accrued one. If the employer, of his own accord, maintained a fund, he maintained it for his own convenience and not because of any legal obligation. But in view of the mercantile system of accounting followed he was justified in showing the accrued liability and claiming deduction. There was nothing to prevent him from enjoying the benefit of deduction and at the same time from controlling and using the amount for his own benefit, till he was compelled to give the benefit of the leave in question to the employee concerned. It is evident that the clause was inserted to curb the abuse of existing law and protect the interests of the employee.

12. I do not think the legislature transgressed its field while inserting the clause in question. By citing to me the apex court decision in G.C. Kanungo and D.C. Routray Vs. State of Orissa, , counsel for the Petitioners argued that the legislative power exercised in the wake of the decision in Bharat Earth Movers

(Supra) case was evidently resorted to nullify that decision of the apex court. It is true that the action neutralized the effect of the apex court decision in Bharat Earth Movers w case, but I do not agree that it has amounted to encroachment upon the powers of the judiciary. Once the existing legal position was explained by their Lordships, I think, it was quite natural for the legislature to examine the situation and legislate according to the need. The binding decision of the highest court was not nullified in the process; only the position of law was changed prospectively.

13. For these reasons I do not find any merit in the challenge thrown by the Petitioners to the vires of Clause (f) of Section 43B of the income tax Act, 1961 and hence I dismiss the writ petition without any order for costs.