

(1954) 11 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Ref. No. 9 of 1954
In Re: Crown Flour Mills Delhi

Date of Decision : 08-11-1954

Acts Referred:

Income tax Act, 1922 — Section 10, 10(2), 3, 4

Citation : AIR 1956 P&H 5

Hon'ble Judges : Bhandari, C.J.;Falshaw, J

Bench : Division Bench

Advocate : R.K. Gauba and D.K. Kapur, for the Appellant; K.N. Raja Gopal Shastri, for the Respondent

Judgement

Bhandari, C.J.—This reference under Sub-section (1) of Section 66, Income Tax Act, raises a point which is as novel as it is new.

2. The assessee firm purchased the Crown Flour Mills for Rs. 7,21,000/- in the year 1945 and sold it for the same amount in the year 1950. During the period of five years in which the mill was used for the purpose of the assessee's business, depreciation was allowed on the building, plant and machinery to the extent of Rs. 1,26,098/-. The Income Tax authorities included this sum of Rs.1,26,098/- in the income profits and gains of the assessee firm in the assessment for 1951-52 under the second proviso to Section 10(2) (vii) of the Income Tax Act.

3. Two questions were agitated before the Tribunal in appeal, one concerning the taxable quantum and the other concerning the validity of the proviso under which the assessment was made. The Tribunal found in favour of the assessee in regard to the quantum of the addition and reduced the addition to a sum of Rs. 86,854/-. They were unable to hold, however, that the impugned proviso was invalid or inoperative in the eye of law.

4. At the request of the assessee the Tribunal have referred two questions of law for the decision Of this Court, namely:

(1) Whether enactment of the second proviso to Section 10(2) (vii) and of the amended Section 2(6-c) which refers to this proviso was "ultra vires" of the

Indian Legislature?

(2) Whether the excess of the sale price of depreciable assets over their written down value to the extent of the depreciation allowed in the past, if correctly deemed to be Income, is a receipt of casual and non-recurring nature not arising from business within the meaning of Section 4(3)(vii) and, therefore, exempt from tax?

5. The learned counsel for the assessee frankly admits that as Parliament has full power to impose and collect taxes on income and as the proviso in question does not violate any of the constitutional limitations, he is unable to support the proposition that the proviso is ultra vires the Indian Legislature. He accordingly requests, and the counsel for the Department agrees, that the first question propounded by the Tribunal be replaced by the following question, namely:

"(1) Whether the second proviso to Section 10(2) (vii), Income Tax Act, 1922, goes beyond the charging provisions of Sections 3 and 4 of the Act and is for that reason invalid?"

6. The material portion of Sub-section (2) of Section 10 is in the following terms.

"(2) Such profits or gains shall be computed after making the following allowances, namely:

(vii) in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, as the case may be, is actually sold or its scrap value:

Provided that

Provided further that where the amount for which any such building, machinery or plant is sold exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the sale took place:

7. Two submissions have been placed before us in support of the contention that the second proviso is void and of no effect. It is stated in the first place, that the proviso in question is repugnant to the charging provisions of Sections 3 & 4 and consequently that it must be deemed to be void for repugnancy. I regret I find myself unable to concur in this contention.

Section 3 declares that every person is liable to pay a tax on his total Income in the preceding year in accordance with, and subject to the provisions of, the Act. Section 4 provides that the total income shall depend upon the locality of accrual of receipt. The second proviso to Section 10(2) (vii) enacts that certain gains from disposition of building, machinery or plant shall be deemed to be profits of the previous year.

Section 2(15) defines the expression "total income" to mean total amount of

income, profits and gains referred to in Sub-section (1) of Section 4 computed in the manner laid down in the Act, and Section 2(6-C) defines the expression "income" to include any sum deemed to be profits under the second proviso to Section 10(2)(vii).

If the tax is to be charged on income in accordance with the provisions of the Act and if a sum deemed to be profits under the second proviso falls within the ambit of the expression "income", it is obvious that there is no inconsistency between the provisions of Sections 3 and 4 and the second proviso to Section 10(2)(vii). Section 3 declares that a tax shall be payable on total income and the second proviso declares that certain accretions of value, as determined by the sale of property, are taxable income.

These two provisions are complementary to each other; they can stand together and can by no stretch of language be regarded as inconsistent with or repugnant to each other.

8. Again it was contended that as the principal function of a proviso is to except something from the enacting clause and not to extend or enlarge the operation of the statute, neither the Department, nor the Tribunal were justified in construing the proviso in question as imposing a liability. It is true that ordinarily a proviso is designed to restrict rather than to enlarge the provision to which it is appended but this is not an inflexible rule and there are cases in which the language might well lead one to the conclusion that the Legislature intended to exercise its enacting power.

If after a careful examination of the proviso, the provision to which it is attached, and the Act as a whole, the Court comes to the conclusion that the Legislature intended to create a liability, it is the duty of the Court to give effect to the intention even though it is embodied in a proviso. The substance and not the form must be looked at for, as pointed out in Craies on Statute Law, Page 203, that which is in form a proviso may in substance be a fresh enactment adding to and not merely qualifying that which comes before. The language of the proviso in the present case makes it quite clear that the Legislature intended to impose a tax on certain gains on the sale of property.

9. Nor is there any substance in the contention that the gains to which a reference has been made in the proviso are of a casual or non-recurring nature and must, therefore, be exempted from taxation. I am unable to subscribe to the view that these gains fall within the ambit of the expression "casual or non-recurring" for, as stated by the Tribunal, buildings must deteriorate and machinery must wear out in due course and a time must arrive more than once in course of the life of an established business when the machinery will have to be replaced.

If the Legislature intended to exempt these gains from taxation, it was scarcely necessary for it to go to the trouble of enacting the proviso in question. This proviso was enacted several years ago but our attention has not been, invited to

any authority in which the view put forward by the assessee has been endorsed either in England or in this country.

It is true that in construing an Act which imposes a burden, doubts should be resolved in favour of the tax-payer but this general rule cannot be applied either when the taxing provision is clear and explicit or when a doubt arises in regard to a provision granting a deduction or an exemption from payment of tax. In -- "United States v. Stewart" (1940) 311 US 60 at p. 71 (A), the Supreme Court observed as follows:

Those who seek an exemption from a tax must rest it on more than a doubt or ambiguity Exemptions from taxation cannot rest upon mere implications."

10. For these reasons, I am of the opinion that notwithstanding the ingenious arguments which were addressed to us, both the questions which have arisen in the case must be answered in the negative.

Falshaw, J.

11. I agree.