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(1983) 09 MP CK 0036

In the Madhya Pradesh High Court

Case No : IT Reference No. 413 of 1982

National Textile Corpn. Ltd. — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 12-09-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 240
Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 32, 6

Citation : (1984) 19 TAXMAN 256

Hon'ble Judges : Vijaywargiya, J;Sohani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sohani, J.—This is a petition under article 226 of the Constitution of India. The material facts giving rise to this petition briefly are as follows:

i. The petitioner-corporation is a subsidiary of the National Textile Corporation Ltd., New Delhi, a company incorporated and registered under the Companies Act, 1956. Under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974, all the sick textile undertakings specified in the First Schedule of that Act, in the Central Government and vested immediately thereafter in the National Textile Corporation Ltd. on and from the appointed date, namely, 1-4-1974. One of the sick textile undertakings specified in the First Schedule is the Kalyanmal Mills at Indore, which, before the aforesaid appointed date, was owned by respondent No. 3, the Kalyanmal Mills Ltd., Indore. u/s 6 of the Sick Textile Undertakings (Nationalisation) Act, the National Textile Corporation Ltd., New Delhi, is authorised to form a subsidiary corporation and to transfer any sick textile undertaking vested in it to such subsidiary corporation. Accordingly, the National Textile Corporation Ltd., New Delhi, formed the petitioner-corporation as its subsidiary corporation and by an order in writing dated 23-11-1974, transferred all the sick textile undertakings in Madhya Pradesh vesting in it under

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the aforesaid Act, to the petitioner-corporation. The petitioner contends that the undertaking ''Kalyanmal Mills'' has, thus, vested in the petitioner-corporation.

ii. In the year 1940, when the Kalyanmal Mills was an undertaking belonging to respondent No. 3 company, that company entered into a partnership agreement with Walia Bros, of Indore. Under the terms of that agreement, a firm by the name of ''Kalyanmal Mills Tent. Factory'' was constituted for the purpose of manufacture and supply of tents to the Government of India. As regards liability of the aforesaid firm to pay income tax under the provisions of the Indian income tax Act, 1922 (''the 1922 Act'') contention of the firm was that as the manufacture and the sale of manufactured tents took place at Indore, which formed part of the erstwhile Holker State, which was of a non-taxable territory for the purpose of the 1922 Act, in force at the material time, the income, profits and gains of the Kalyanmal Mills Tent Factory were not liable to payment of income tax under the 1922 Act. The department, however, proceeded to assess the income of the firm Kalyanmal Mills Tent Factory on the ground that the price for the supply of tents was payable and was actually paid in the taxable territory. The ITO, accordingly, assessed the Kalyanmal Mills Tent Factory for the assessment years 1942-43 to 1947-48 and levied income tax on the assessee-firm. The company, a partner of the assessee-firm, paid the amount of tax totalling to a sum of Rs. 4,78,260.30 but the matter was taken up in appeal before the AAC, who dismissed the appeal. On further appeal before the Tribunal, the Tribunal, by its order dated 25-11-1971, upheld the contention of the assessee-firm that as no part of the profits and gains of the assessee-firm had arisen in the taxable territory, the income from the supply of tents was not liable to be taxed under the provisions of the 1922 Act. The department sought a reference before the High Court and at the instance of the department a reference was made to this Court but it was answered against the department. The assessee-firm, thus, became entitled to the refund of tax paid by it.

iii. While the proceedings for reference were pending the Sick Textile Undertakings (Nationalisation) Act was passed and as already observed, the undertaking ''Kalyanmal Mills'', which was owned by respondent No. 3 company, came to be vested in the National Textile Corporation Ltd., New Delhi, and thereafter in the petitioner-corporation. The petitioner contends that the Kalyanmal Mills Tent Factory was a part and parcel of the undertaking known as ''Kalyanmal Mills'' and, thus, the petitioner became entitled to the refund of the tax due to the asses-see-firms which was a part of the sick textile undertaking ''Kalyanmal Mills''. The petitioner further contends that the petitioner corporation has a statutory right to receive the amount of refund from the department, but in spite of persistent demands, respondent No. 1, the ITO, under the directions of respondent No. 2, the Commissioner, has made some payments to the aforesaid firm. The petitioner has, therefore, prayed for the issuance of a writ of mandamus directing respondent Nos. 1 and 2 to refund the amount of Rs. 4,78,000 to the petitioner.

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2. In the return filed on behalf of respondent Nos. 1 and 2, it is contended that as the assessee was the firm, ''Kalyanmal Mills Tent Factory'', the assessee alone had a right to receive refund of the amount of tax and that the petitioner could not claim that amount. On behalf of respondent No. 3, the company, it was averred that the Kalyanmal Mills Tent Factory was not a part and parcel of the undertaking known as ''Kalyanmal Mills'' and the right to receive refund of the amount of tax vested in the petitioner-company which had made the payment on behalf of the assessee-firm.

3. Shri Chafekar, the learned counsel for the petitioner, contended that ''Kalyanmal Mills Tent Factory'' was a part and parcel of the undertaking known as ''Kalyanmal Mills'' owned by respondent No. 3 and as the undertaking ''Kalyanmal Mills'' has vested in the petitioner- corporation under the provisions of the Sick Textile Undertakings (Nationalisation) Act, the rights of the undertaking devolved on the petitioner and the petitioner alone was entitled to receive the amount of refund from the department. It was urged that when the department found that the amount of refund was claimed both by the petitioner as well as by respondent No. 3 company, the department should have directed the parties to establish their right before making refund. It was contended that the department kept the petitioner-corporation in dark and illegally refunded a part of the amount of tax recovered from the assessee-firm, to respondent No. 3 company. The learned counsel contended that the department should, therefore, be directed to refund the entire amount of tax recovered from the assessee-firm to the petitioner-corporation.

4. Having heard the learned counsel for the petitioner, we have come to the conclusion that this petition deserves to be dismissed. Under the provisions of section 240 of the income tax Act, 1961 (''the 1961 Act'') where as a result of any order passed in appeal or other proceeding under this Act refund of any amount becomes due to the assessee, the ITO is required to refund the amount to the assessee. It was not disputed before us that the assessee, in the instant case, was the Kalyanmal Mills Tent Factory, a partnership firm, of which respondent No. 3 was a partner. What has vested in the petitioner is the undertaking ''Kalyanmal Mills'' owned by respondent No. 3. Therefore, only the property of the aforesaid undertaking and not the entire property of respondent No. 3 has become vested in the petitioner. Now, whether the firm ''Kalyanmal Mills Tent Factory'' was or was not a part of the undertaking ''Kalyanmal Mills'' is a disputed question of fact and we refrain from expressing any opinion on that question. That question would be decided in appropriate proceedings by a Court on the basis of the material produced before it. The short question for consideration before us is whether we can direct the department to refund the amount of tax paid by the assessee-firm, ''Kalyanmal Mills Tent Factory'', to the petitioner. As already observed, the only obligation imposed by section 240 on the department is to refund the amount of tax to the assessee, who had paid the tax but from whom tax is not found to be due as a result of an order passed in appeal. If the petitioner has become entitled to the property of the assessee-firm

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on the ground that the said firm was a part of the undertaking, ''Kalyanmal Mills'', then the remedy of the petitioner is to take appropriate steps for recovery of that property from the person in possession of that property, after establishing that the said firm was a part and parcel of the undertaking ''Kalyanmal Mills'' vesting in the petitioner. Section 32 of the Sick Textile Undertakings (Nationalisation) Act makes it punishable if a person having in his possession, custody or control any property forming part of an undertaking vesting in the petitioner, wrongfully withholds such property from the petitioner. The petitioner is at liberty to institute such proceedings and against such persons as the petitioner may be advised in this behalf. But no relief can be granted to the petitioner under article 226 because the only statutory duty cast on the department is to refund the amount of tax to the assessee, who had paid the tax. No provision of law was brought to our notice, which casts a duty on the department to refund the amount to the petitioner as soon as claim was put forward by the petitioner to the property of the assessee to whom refund was due. The petitioner is, therefore, not entitled to any relief. This petition under article 226 is, therefore, misconceived. The petition thus fails and is, accordingly, dismissed. In the circumstances of the case, parties shall bear their own costs of this petition. The amount of security deposit, if any, be refunded to the petitioner.

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