

(1985) 08 BOM CK 0025

In the Bombay High Court

Case No : I. T. APPEAL No"s. 4366 AND 4367 (BOM.) OF 1983

SETH INDUSTRIES LTD.

APPELLANT

Vs

FIRST Income Tax OFFICER.

RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Income Tax Act, 1961 — Section 28(iv)

Citation : (1986) 17 ITD 30

Hon'ble Judges : I. S. Nigam, A.M.;I. S. Nigam??I. S. Nigam, A.M.

Bench : Division Bench

Judgement

Per Shri I. S. Nigam, Accountant Member - These two appeals, one relating to the assessment year 1980-81 and another relating to the assessment year 1981-82, filed by the assessee-company against the consolidated order of the Commissioner (Appeals) VII, Bombay, deal with the same issue and are, therefore, for the sake of convenience disposed of by a common order.

2. The assessee is a limited company. We were given to understand at the time of the hearing of the appeals that the assessee-company was the proprietor of Simplex Woollen Mills and besides manufacturing woollen cloth, were engaged in export of shoddy wollen blankets, blanketing cloth, blaxer, etc. Under the export promotion scheme of the Government of India, the assessee-company, in view of its exports, became eligible for import entitlement. These import entitlements were received during the previous years relevant to the assessment year 1980-81 and 1981-82 and were transferred to others for a price. The price, thus, received by the assessee-company amounted to Rs. 7,53,455 for the assessment year 1980-81 and Rs. 5,20,202 for the assessment year 1981-82. It was claimed before the ITO in the course of the assessment proceedings that these receipts were not liable to tax. The ITO, however, did not accept the assessee's claim and held that these receipts were income of the assessee-company and were consequently includible in the assessee's total income. On appeal, the Commissioner (Appeals) held that the receipts in question were business receipts

and were, therefore, rightly assessed as a business income by the ITO. The assessee-company has, therefore, come up with the common point of dispute in the present appeals before us.

3. The assessees learned counsel, Shri Dastur, at the outset submitted to us that even though the issue is covered by the ruling of the Honble Bombay High Court in the case of Metal Rolling Works Pvt. Ltd. Vs. Commissioner of Income Tax, , the judgment of the Honble Bombay High Court requires reconsideration by the Honble Bombay High Court. Elaborating on his arguments and citing the ruling of the Honble Allahabad High Court in the case of Bijli Cotton Mill (P.) Ltd. Vs. Commissioner of Income Tax, Shri Dastur submitted that the taxability of a receipt is fixed with references to its character at the moment it is received and not what is done with the receipts thereafter. Citing an example, Shri Dastur, submitted that the import entitlements received in lieu of export performance could be utilised either by importing the raw materials, for which the import entitlements were issued, and using the raw materials, thus, imported in the manufacture of the assessees own products, or selling the raw materials, thus, imported to others without using them in the assessees own manufacturing operations or the import entitlements itself could be transferred to others for a price without importing the raw materials and there was still another possibility that the import entitlements received may not be used at all and may lapse. Shri Dastur submitted that the profit in the first three instances will not be the same, while in the fourth instance there will be no profit at all if the import entitlement was not utilised at all and was allowed to lapse. In these circumstances, according to Shri Dastur, if the profit on import entitlements was to be considered at the time of the receipt, it is not possible to work out under which category the profit should be worked out and whether any profit at all should be worked out. Alternatively, Shri Dastur argued before us, if the import entitlement were assessed at the time of receipt and a again at the time they were transferred to others for a price or utilised for import of raw materials, which were sold to others or for import of raw materials, which were utilised in the assessees own manufacturing business and the furnished products manufactured by the assessee were sold, it will amount to double assessment of the value of the import entitlements, once at the time of the receipt and the second time when they were put to use or transferred to others. Our attention was invited to the ruling of the Honble Supreme Court in the case of Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, wherein their Lordships laid down that the consequences of a suggested construction are of help in understanding the meaning of a statutory provision in case of doubt or ambiguity. According to Shri Dastur, since these consequence flowing from the judgment of the Honble High Court of Bombay in the case of Metal Rolling Works (P.) Ltd. (supra) were not brought to the notice of their Lordships, the judgment of their Lordships of the Honble Bombay High Court requires reconsideration by the Honble Bombay High Court.

4. An alternative argument put forward by Shri Dastur was that even if the

import entitlements were treated as business assets, the profit on their sale or transfer can only be worked out by deducting from the sale price their market value on the date they became the assets of the business. For this proposition reliance was placed on two decisions of the Honble Supreme Court in the cases of Commissioner of Income Tax, West Bengal Vs. Hantapara Tea Co. Ltd., and Commissioner of Income Tax, Patiala Vs. Groz-beckert Saboo Ltd., . On this basis Shri Dastur claimed before us that the market value of the import entitlements on the date they were received by the assessee was the same for which they were transferred subsequently and, therefore, on the sale or transfer of these import entitlements there was no questions of any surplus, which may be liable to tax.

5. Shri Dastur, therefore, vehemently argued before us that whichever way the matter was looked into the price received on transfer of import entitlements could not be treated as income of the assessee-company and the addition on this account made by the ITO both for the assessment year 1980-81 and the assessment year 1981-82 was unjustified and was wrongly upheld in the appeal by the Commissioner (Appeals).

6. On the other hand, the learned departmental representative, Shri Mahadeshwar, referred to the ruling of the Honble Calcutta High Court in the case of Jeewanlal (1929) Ltd. Vs. Commissioner of Income Tax, wherein their Lordships dealt with the arguments raised by the assessee's learned counsel here and held that the import entitlements were acquired by the assessee in the course of its dealing as an exporter, the acquisition of the right envisaged the right to import goods as well as the right to part with the same, the fact that the assessee was not a dealer in import entitlements and whether the assessee intended to resell the import entitlement were not decisive of the question, the import entitlements had been acquired in the course of the carrying on of the business and if in dealing with then in the relevant accounting years the assessee made profits, the profits were assessable as revenue profits. In this connection Shri Mahadeshwar also pointed out that the import entitlements were both received and transferred by the assessee-company during the previous year for both the assessment year under appeal before us and, therefore, the arguments now raised before us their value at the time of the receipt and the value at the time of their transfer, etc., was merely academic. He then referred to the ruling of the Honble Allahabad High Court in the case of Agra Chain Mfg. Co. Vs. Commissioner of Income Tax, wherein their Lordships laid down that the import entitlements were directly relatable to the assessee's trading activities and, hence, the receipts from the sale of the import entitlements were in nature of supplementary trading receipts, which were taxable, and besides the import entitlements were a benefit within the meaning of section 28(iv) of the Income Tax Act, 1961 (the Act) which had been converted into money, and, therefore, the amount received by the assessee on transfer of the import entitlements was chargeable to tax under the head Profits and gains of business or profession. Reference was also made by him to the observations of the Honble Supreme

Court in the case of Bhagwan Dass Jain Vs. Union of India (UOI) and Others, wherein their Lordships laid down that what can be converted into income can be reasonably regarded as giving rise to income. Summing up Shri Mahadeshwar vehemently argued before us that the surplus realised on sale or transfer of import entitlements was income of the assessee-company and the addition on this account made by the revenue authorities was perfectly justified and was rightly upheld in appeal by the Commissioner (Appeals).

7. We have carefully considered the rival submission. It is not under dispute that the import entitlements were received by the assessee-company during the previous year and were also sold or transferred by the assessee-company in the same year. In these circumstances, the controversy of whether the value of the import entitlements should be assessed at the time of the receipt or at the time of the sale or transfer or if it is assessed at the time of receipt as well as the time of sale or transfer, it should be after deducting from the sale price the market value thereof at the time of sale is merely academic. It will be necessary here to point out that in the case of Groz-Beckert Saboo Ltd. (supra) the raw materials and semi-finished goods received free of cost were along with the machinery purchased by the assessee, which was a capital transaction and it was in this context that the Honble Supreme Court laid down that the profit on sale of these assets will be only after deducting from the sale price the market value of the assets at the time they became the stock-in-trade of the assessee and not the original cost to the assessee. However, in the present case the import entitlements were received by the assessee not in the course of a capital transaction but in the course of carrying on the business of exports, i.e., in the course of the trading activities and, therefore, what was received was by itself on revenue account and not on capital account. The ruling of the Honble Supreme Court in the case of the Groz-Beckert Saboo Ltd. (supra) is, therefore, distinguishable on the facts of the present case. Similarly in the other case of Hantapara Tea Co. Ltd. (supra) the issue before their Lordships was whether the thatch, bamboo, fuel, etc., were grown by the assessee in its own tea estate and were used for the purposes of tea business, the market value thereof should be allowed as a deduction in working out the business income and it is obvious that the facts of that case are very different from the facts of the case under consideration here. This ruling also is, therefore, of no assistance to us here. It is true that as laid down by the Honble Supreme Court in the case of Surat Art Silk Cloth Mfrs. Association (supra) the consequences of a suggested construction are helpful in understanding the meaning of a statutory provision in case of doubt or ambiguity. However, there appears to be no doubt or ambiguity in the present case and, therefore, this ruling of the Honble Supreme Court, in our view, will not be applicable. On the other hand, the Honble Supreme Court in the case of Bhagwan Das Jain (supra) has laid down that what can be converted into income can be reasonably regarded as giving rise to income. We have the authority of the Honble Allahabad High Court in the case of Jeewanlal (1929) Ltd. (supra) that the import entitlements were acquired by the assessee in the course of its

dealings as an exporter, the acquisition of the right itself envisaged the right to import goods as well as the right to part with the same and since the import entitlements had been acquired in the course of carrying on the business and in dealing with the import entitlements the assessee made profits, the profits were revenue profits, which were liable to tax. These views also find support from the ruling of the Honble Bombay High Court in the case of Metal Rolling Works (P.) Ltd. (supra) wherein their Lordships laid down that the import entitlements were obtained by the assessee directly in the course of business and the value of the same constituted profits and gains of business within the meaning of section 28(iv) and consequently the amount realised on sale or transfer of import entitlements were business income liable to tax. No ruling of any other High Court, which has taken a contrary view was cited before us by the assessee's learned counsel, Shri Dastur. We, therefore, follow, with respect, the rulings of the Honble Allahabad High Court, the Honble Calcutta High Court and the Honble Bombay High Court and hold that the profit on sale of import entitlements obtained by the assessee directly in the course of business constituted profits and gains of business and these profits were liable to tax. It is not the assessee's case that the addition on this account made by the ITO and upheld in appeal by the Commissioner (Appeals) for both the assessment years has not been correctly worked out. We, therefore, uphold the order of the Commissioner (Appeals) on this issue.

8. The appeals filed by the assessee-company fail and are hereby dismissed. hereby dismissed.