Commissioner Of Income-Tax, New Delhi vs Anant Rao B. Kamat on 8 May, 1964

Equivalent citations: 1966 AIR 279, 1964 SCR (8) 263, AIR 1966 SUPREME COURT 279

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah

PETITIONER:
COMMISSIONER OF INCOME-TAX, NEW DELHI

Vs.

RESPONDENT:
ANANT RAO B. KAMAT

DATE OF JUDGMENT:
08/05/1964

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 279 1964 SCR (8) 263

ACT:
Income-tax-Devidend declared and paid in different years-Rate of which year applicable-Meaning of 'rebate'-Is there any distinction between rebate under Finance Act and the rebate under other statutes-Indian Income-tax Act, 1922 (11 of 1922), ss. 16(5), 6OA-Part B States (Taxation Concession) Order, 1950.

HEADNOTE:
The assessee had received in the previous years (1950-51 and 1951-52) dividends from two companies. These companies had been allowed rebate under the Part B States (Taxation Concession) Order, 1950. For the assessment years 1951-52 and 1952-53, the assessee claimed before the Income-tax Officer that the dividend received by him should be "grossed

up" under s. 16(2) of the Act, without taking into consideration the rebate allowed to the said companies under the said concession order. On a construction of s. 16(2) the assessee pleaded that the rate applicable to the total income of the said companies was the rate prescribed by the relevant Indian Finance Act. The Income-tax Officer grossed up at the State rate and not at the rate prescribed by the relevant Finance Act. Before the Tribunal and the High Court the assessee succeeded.

Held: (i) In interpreting s. 16(2) effect must be given to these words occurring in the said section 'without taking into account any rebate

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allowed or additional income-tax charged'. If these words are ignored, it will be rewriting s. 16(2). Section 16(2) applies the rate of the year in which the dividend is paid, etc., and not of the year when the profits were made by the company. On the fact of this case it was held that the rates prescribed by the relevant Finance Act apply.

Rajputana Agencies Ltd. v. Commissioner of Income-tax, [1959] Supp. 1 S.C.R. 142, distinguished.

(ii) The word 'rebate' in s. 16(2) not only relates to rebate granted under the Indian Finance Act but is wide enough to include any rebate which may be granted by other statutory orders.

The form of the certificate prescribed under the Income-tax Rules cannot change the meaning of the word 'rebate'. The word 'rebate' is an apt word to use in respect of remission.

M/s. Maganlal Sankalchand v. Commissioner of Income-tax, New Delhi, C.A. No. 703 of 1963. Judgment, dated May 8, 1964 distinguished.

(iii) The words 'exemption' or 'other modification' in s. 60A are wide enough to enable the Central Government to give rebate such as been allowed under the Concession Order.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 687-688 of 1963.

Appeals from the judgment and order dated February 3, 1962 of the Rajasthan High Court in D. B. Civil Reference No. 13 of 1958.

S. K. Kapur and R. N. Sachthey, for the appellant. N. S. Palkhivala, S. P. Mehta, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondents. May 8, 1964. The Judgment of the Court was delivered by SIKRI, J.These are appeals by the Commissioner of Income Tax on certificates granted by the Rajasthan High Court under S. 66A(2) of the Indian Income Tax Act, 1922 (11 of 1922), hereinafter referred to as the Act, against the judgment of the High Court in a consolidated reference under s. 66(1) of the Act. The High Court answered the question,reproduced below, in the affirmative. The reference was made by the Income Tax Appellate Tribunal in the following

circumstances The respondent, Anant Rao B. Kamat, hereinafter referred to as the assessee, had received in the previous years (1950-51 and 1951-52) dividends from two companies, Associated Stone Industries (Kotah) Ltd. and Rajputana Mining Agencies Ltd. For assessment years 1951-52, and 1952-53, the assessee claimed before the Income Tax Officer that the dividends received by him should he grossed up' under s. 16(2,) of the Act, without taking into consideration the rebate allowed to the said companies under the Part, B States (Taxation Concessions) Order, 1950, hereinafter called the Concession Order. According to the assessee, on a true of S. 16(2) of the Act, the rate applicabl, to the total income of the said companies was the rateby the relevant Indian Finance Acts. TheTax Officer disallowed the grossing up at the Indianbut allowed at the State rate, defined by paragraph 3 (v)of the Conclusion Order.The Appellate Assistant Commissioner upheld the order of, the Income Tax Officer, but the assesse succeeded before the Income Tax Appellate Tribunal. On the application of the Commissioner of Income Tax, the tribunalreferred the following question to the High Court.

> "Whether the appropriate portion ofdividend received by the assessee fromof the said two companies in the financialyear 1950- 51/1951-52 is to he increased at the rate applicable to the total income of the respective companies for the financial year 1950-51/195152 and without regard to and benefit conferred by the T. C. 07-order 1950 that the companies would get in the matter of payment of tax by them on their profit-, ,accruing or arising to then, in a r)art 'B' State and assessable for the assessment year 1950-51/1951-52?"

The High Court, after asking for a supplementary statement of the case. answered, as we have already said in favour of the ass The learned counsel for the appellant has contended before us that the rate applicable to total income of the said companies was the rate as finally applied after taking into consideration the effect of the Concession Order. He has further urged that the word 'rebate' occurring in s. 16(2) does not include the relief given to the said companies under the Concession Order for the Concession Order is not concerned with granting rebate but is concerned with the determination of the tax payable. In this connection, he relied on s. 60A of the Act under which the Concession Order was made, and said that this section enabled the Central Government to make an exemption, reduction in rate or other modification in respect of income tax but not to grant a rebate. The learned counsel for the respondent controverted these arguments and supported the judgment of the High Court.

Before addressing ourselves to the contentions at the Bar, it is necessary to reproduce the relevant statutory provi- sions. These read thus:

> S. 16(2)-For the purposes of inclusion in the total income of an assessee any dividend &hall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would, if income tax (but not supertax) at the rate applicable to the total income of the company (without taking into account any rebate allowed or additional income-tax charged) for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or

distributed, were deducted therefrom, be equal to the amount of the dividend:

Provided that when the sum out of which the dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed includes-

(i) any profits and gains of the company not included in its total income, or

(ii) any income of the company on which income-tax was not payable, or

(iii) any amount attributable to any allowance made in computing the profits and gains of the company, the increase to be made under this section shall be calculated only upon such proportion of the dividend as the said sum after deduction of the inclusions enumerated above bears to the whole of that sum.

S. 18(5)-Any deduction made and paid to the account of the Central Government in accord- ance with the provisions of this section and any sum by which a dividend has been increased under sub-section (2) of section 16 shall be treated as a payment of income-tax or supertax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor on the production of the certificate furnished under sub-section (9) or section 20, as the case may be, in the assessment, if any, made for the following year under this Act:

Provided.....

S. 60A. Power to make exemption, etc., in relation to merged territories or to the territories which immediately before the 1st November, 1956. were comprised in any Part B State.

If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty, that may arise as a result of the extension of this Act to the merged territories or to the territories which immediately before the 1st November. 1956, were comprised in any Part B State, the Central Government may , by general or special order, make an exemption, reduction in rate or other modification in respect of Income-tax in favour of any class of income, or in regard to the whole or any part of the income of any person or class of persons:

Provided that the power conferred by this section shall not be exercisable in the case of merged territories and the territories which immediately before the 1st November. 1956, were comprised in Part B States other than the State of Jammu and Kashmir, after the 31st day of March, 1955, and, in the case. of the State of 'Jammu and Kashmir ,after the 31st day of March, 1959, .except for the purpose of rescinding an exemption, reduction or modification already made.

Para 3(iii) of the Concession Order---The expression "Indian rate of tax" means the rate determined by dividing the amount of i,come-tax and super-tax payable in the taxable territories on the total income for the year in question in accordance, with the rates prescribed by the relevant Finance Act of the Central Government, by the amount of such total income.

Para 3(v) of the Concession Order--The expression 'State rate of tax' means the rate determined by dividing the amount of income-tax and supertax and payable on the total income according to the rates of tax in force in the State immediately before the appointed .day, or for the year in question, as the case may be, by the amount of such total income and where under any State law, the' rates of tax in force in the State are prescribed with reference to the total income including agricultural income, the State rate of tax shall be. the rate determined by dividing the amount of income-tax and supertax on the total income including the agricultural income without taking into account any reduction of tax allowed on the agricultural income by the State' law by the amount of such total 'income; Explanation. Where there was no State law relating to charge of income-tax.and super-tax the rates of income-tax and super-tax in force in that State immediately before the appointed day shall, for the purposes of this clause, be deemed to be the rates specified in the Schedule.

Para 6 of the Concession Order Income of a previous year which does not fall under paragraph 5.

The income, profits and gains of any previous year ending after the 31st day of March, 1949. which does not fail within paragraph 5 of this Order shall be assessed under the Act for the year ending on the 31st day of March, 1951, or on/he 31st day of March, 1952, as the ease may be, and the tax payable thereon shall be determined as hereunder:

In respect of 'so much of the income. profits and gains included in the total income, as accrue or arise in any State other than the States of Patiala and East Punjab States Union and Travancore-Cochin-

(i) the tax shall be computed (a) at the Indian rate of tax and (b) at the State rate of tax in force immediately before the appointed day;

(ii) where the amount of tax computed under subclause (a) of clause (i) is less than or is equal to the amount of tax computed under subclause (b) of clause (i), the amount of the first-mentioned tax shall be the tax payable;

(iii) where the amount of tax computed under subclause (a) of clause (i) exceeds the tax computed under sub-clause (b) of clause (i), the excess shall be allowed as a rebate from the first-mentioned tax and the amount of the first-

mentioned tax as so reduced shall be the tax payable ..... Para 6A of the Concession Order--Income, profits and gains chargeable to tax in the assessment year 1952-53, 1953-54 and 1954-55--

The income, profits and gains of any previous year which is a previous year for the assessment for the year end-

ing on the 31st day of March, 1953, 1954 and 1955, shall be charged to tax at the Indian rates of tax, provided that from the tax so computed, there shall be allowed in each year, rebate at the percentage thereof specified thereunder:

> in respect of so much of the income, profits and gains as accrue or arise-
>
> (a) in the States of Saurashtra, Madhya Bharat or Rajasthan, to any assessee at the rate of 40per cent and 10 per cent, respectively, for the assessment for the year ending on the 31st day of March, 1953, 1954 and 1955. . . .".

The scheme underlying s. 16(2) and s. 18(5) seems to be this. Under s. 16 (2) the dividends are grossed up and under s. 18(5) any sum by which a dividend is increased under s. 16(2) is treated as payment of income-tax on behalf of the shareholder. In this setting, let us examine what is the true construction of s. 16(2) of the Act. It is common ground that 'grossing up' has to be effected in this case. The real point of controversy between the parties is regarding the rate at which it is to be done. The learned counsel for the appellant relying on the decision of this Court in Rajputana Agencies Ltd., v. Commissioner of Income Tax(1) urged that the same meaning should be attributed to the expression "rate applicable to the total income of the company" in s. 16(2), as was attributed bv this Court to the same expression occurring in sub-clause(b) of clause (ii) to the second explanation to proviso to paragraph B of Part I of the First Schedule to the Indian Finance Act, 1951. We are unable to accept this argument. It is true that the same expression occurs in s. 16(2) and the sub-clause above referred to, but as pointed out by the High Court, the words 'without taking into account any rebate allowed or additional income-tax charged' occur in s. 16(2) and not in the said sub-clause, and effect must be given to these words. If we ignore these words, we would be rewriting s. 16(2). It will be noticed that s. 16(2) applies the rate of the year in which the dividend is paid, etc., and (1) [1959] Supp. 1 S.C.R. 142 not of the year when the profits were made by the company. The legislature has devised a mechanical test which has to be -Applied regardless of the hardship or the benefit which may accrue to an assessee. Therefore, we agree with the High Court that though the rate applicable is the rate which is actually applied, rebate if any allowed to a company, has not to be, as directed by s. 16(2), taken into account. This takes us next to the point that benefit given by the Concession Order is not a rebate at all. We cannot accept this contention. The Concession Order itself uses the word 'rebate' in paras 5, 6, and 6A. Indeed, though it may be possible to urge something while dealing with para 6. no argument is possible regarding para 6A, for it expressely says that 'there shall be allowed in each year rebate at the percentage thereof specified hereunder'. The learned coun- sel for the appellant laid great stress on the language of para 6 of the Concession Order. He said that clause (i) directed the computation of tax and clause (iii) was equally directing computation of tax, and that in this context the word 'rebate' has been loosely used. We are unable to say that the word 'rebate' has been loosely used. In para 6A the meaning is clear and the word

'rebate' must have the same meaning in both paras. Further. but for the provisions of the Concession Order. the said companies would 'have been taxed at the rates prescribed bv the relevant Finance Act. The Concession Order remits 'what would otherwise be the proper tax leviable under the Finance Act. read with Indian Income Tax Act. The word 'rebate' is an apt word to use in respect of a remission-

That a rebate as such can be directed to be allowed under s. 60A of the Act seems clear to us. 'Me words 'exemption' or other modification are wide enough to enable the Central Government to give rebate such as has been allowed under the Concession Order.

During the course of the hearing of the connected Civil Appeal in M/s. Maganlal Sankalchand v. The Commissioner of Income Tax, New Delhi(1), the learned counsel (1) Civil Appeal NO. 703 of 1963-judgment delivered on May 8, 1964.

for the Commissioner of Income Tax raised two additional arguments. First, he urged that the word 'rebate' in s. 16(2) only related to rebate granted under the Indian Finance Act,and not any rebate granted under the Conces- sion Order. He further referred us to r. 14 of the Indian Income TaxRules, which prescribes the certificate to be furnished bythe principal officer of a company under s. 20 of the Act. The relevant portion of the certificate is as follows :

> I/We certify:---
>
> (A) (1) that the Company estimates that out of the profits of the said period--
>
> (a) .... per cent., is chargeable a, full Indian rate;
>
> (b) per cent.. is chargeable at the reduced rate of . . .

(Name of Part B State). and ....

Regarding his first contention. we are unable to limit the meaning of the word 'rebate' to rebate granted under the Indian Finance Act. The word 'rebate' is not qualified and is wide enough to include any rebate which may be granted by other statutory orders. The form of the certificate refer-, red to us which mentions reduction of rate cannot change the meaning of the word In the result, we agree with the High Court that answer to the question referred should be in the affirmative. The appeals accordingly, fail and are dismissed with costs. One set of hearing fees.

Appeals dismissed.