M/S Oxford University Press vs Commissioner Of Income-Tax on 24 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 886, 2001 AIR SCW 469, 2001 TAX. L. R. 551, (2001) 2 JT 203 (SC), 2001 (1) SCALE 390, 2001 (1) LRI 439, (2001) 115 TAXMAN 69, 2001 (2) JT 203, 2001 (2) SRJ 445, 2001 (3) SCC 359, (2001) 247 ITR 658, (2001) 2 SCJ 141, (2001) 161 TAXATION 324, (2001) 1 SUPREME 357, (2001) 1 SCALE 390, (2001) 165 CURTAXREP 629

Author: S.P.Bharucha

Bench: S.P.Bharucha

CASE NO.:
Appeal (civil) 533 of 1997
Appeal (civil) 534 of 1997
Appeal (civil) 4406 of 1997
Appeal (civil) 7275 of 1999

PETITIONER:
M/S OXFORD UNIVERSITY PRESS

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX

DATE OF JUDGMENT: 24/01/2001

BENCH:
S.P.Bharucha

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J J U D G M E N T Bharucha, J.

These appeals by special leave are filed by the assessee. They impugn the correctness of the judgment and order of the High Court at Bombay dated 21st December, 1995 in respect of the Assessment Year 1976-77 and subsequent orders of the High Court following the aforestated judgment for the Assessment Years 1972-73, 1973-74, 1974-75, 1977-78, 1979-80 & 1983-84. The question that arose for consideration in references to the High Court under Section 256(1) of the

Income Tax Act, 1961 read :

Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that Oxford University Press, Bombay, which is part of Oxford University, is exempt under section 10(22) of the Income Tax Act, 1961 ?

The question was answered by the High Court in the negative and in favour of the Revenue.

The assessee is a branch of the Oxford University Press, which, as the question itself notes, is a part of the University of Oxford in the United Kingdom. The assessee publishes books and carries on similar business in India. It was treated as a non resident company under the terms of a Notification issued by the Central Board of Revenue on 31st July, 1954 at its request from the Assessment Year 1952-53 onwards. For the Assessment Year 1976-77 the assessee returned an income of Rs. 19.94 lakhs, but, in the course of the assessment proceedings before the Income-tax Officer, it claimed that, as it was a branch of the University of Oxford, the same was exempt from the payment of income tax by virtue of the provisions of Section 10, clause (22) of the Income Tax Act, 1961. The Income- tax Officer rejected the contention and brought the income to tax. The Commissioner (Appeals), in the appeal filed by the assessee, overturned the assessment by the Income-tax Officer. Aggrieved by the order of the Commissioner (Appeals), the Revenue approached the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal. Arising out of the judgment and order of the Tribunal, the question aforestated was referred to the High Court.

The High Court stated in the judgment and order under challenge that, admittedly, the assessee was the Oxford University Press and not the University of Oxford, but there was a finding of the Tribunal to the effect that the assessee was a part of the University of Oxford. In its view, what was necessary for availing the benefit of the exemption under Section 10(22) was that the income should be the income of an University or an educational institution existing solely for educational purposes and not for the purposes of profit. In the context and setting of clause (22), the word existing in the expression existing solely for educational purposes and not for the purposes of profit meant and referred to the existence of such University or institution solely for educational purposes in India. In other words, a University or an educational institution, whether established in India or abroad, had to retain the character of a University or an educational institution in India, and the income in respect of which the exemption was claimed had to be income derived by it in its capacity as a University or an educational institution. If it did not carry on its activities as a University or educational institution in India, it could not be regarded as a University or educational institution existing solely for educational purposes and, hence, the income derived by it from any other activities would not qualify for exemption under Section 10(22). The assessee was the Oxford University Press and not the University of Oxford. The University of Oxford did not exist in India nor did it

> carry on the activities of a University in India. What existed in India was the Oxford University Press. The only activity carried on by the Press, which was the assessee, in India was the activity of printing and publishing books and selling them as well as publications of other publishers to earn profit. This activity amounted to carrying on the business of selling or supplying books for profit. Income made therefrom could not be regarded as the income of a University existing solely for educational purposes merely because the assessee claimed to be a part of the University of Oxford, which did not exist in India. The High Court added, If it does not exist as a University or an educational institution solely for such purposes and does not carry on the primary activities of a University or educational institution but merely runs the business of press in India for printing and publishing books and selling and supplying the same as well as books published by other publishers for the purpose of profit, it cannot be held to be a University within the meaning of section 10(22) of the Act merely by reason of the fact that it is run by a University existing outside India for educational purposes or that it is a part of such University. If the case of the assessee is that in the true sense of the term it is a part and parcel of the Oxford University and has no independent existence of its own and all its income is the income of the said University, the assessee for the purpose of the Income-tax Act would have been the Oxford University and not the Press. The Press, as an assessee might have been entitled to claim exemption in respect of its income under Section 10(22) of the Act if it could establish that the income is the income of the Oxford University which existed solely for educational purposes.

On this basis, the High Court held against the assessee. Section 10, clause (22) reads thus:

> 10. Income not included in total income In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

(22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit.

By reason of Section 10(22), any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit, is not includible in its total income. A University is the creation of a Charter or a statute. It is created exclusively for educational purposes, and not for profit. An educational institution, while it may impart education, may yet have a profit motive. Strictly speaking, therefore, the phrase existing solely for educational purposes and not for the purposes of profit in clause (22) qualifies only the words other educational institution and not the words a University. But this strict interpretation is of no great account for the purposes of this case, and the expression may be read to qualify both a University and other educational institution. For the purposes of obtaining the exemption under clause (22) the University must be existing solely for educational purposes and not for the purposes of profit. What this means is that the sole purpose of a University must be to impart education and not at all to make profit. The word existing in the context means being. It has no locational sense. The clause does not say existing in India and the

words in India cannot be read into it. The clause does not require that the University must impart education in India before it can qualify for exemption thereunder. The High Court was in error in interpreting the clause differently.

The High Court failed to appreciate that the assessee was a part of the University of Oxford, as the Tribunal had found and the question before it indicated, and that the income that was under consideration for assessment was, therefore, the income of the University of Oxford. The person that was being taxed was not and could not be a branch of the University of Oxford; it could only be the University of Oxford. That the University of Oxford is a hallowed institution of learning that exists, or is, solely for educational purposes is not, and cannot reasonably be, in dispute. That the income is derived by the printing, publishing and selling of books has no relevance because it is still the income of an University that exists for educational purposes.

It is trite law and now needs no authority that a taxing statute must be read as it stands: no words may be added, no words subtracted. Further, learned counsel for the assessee was right in pointing out that where Parliament had intended the exemption under Section 10 to be limited in any way to the territory of India it had been assiduous in so stating; (see, for example, clauses 20A, 22B, 23, 24, 26 and 29 thereof).

It was submitted by learned counsel for the Revenue that the word University used in Section 10(22) should be read in the manner in which it was defined in Section 2(f) of the University Grants Commission Act, 1956, that is to say, to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act; in other words, to mean an Indian University. It is not permissible to read the definition of a word in one Act into another Act unless the latter Act so requires. It is all the more difficult when the University Grants Commission Act can by its very purpose, namely, to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission, apply only to Universities in India. Further, a clause identical to clause (22) was inserted into Indian Income Tax Act, 1922 by a notification dated 21st March, 1922 and that clause in the 1922 Act was in terms brought into the 1962 Act. A definition in an Act of 1956 cannot be read to limit the scope of a word first used in an Act of 1922 and then incorporated in an Act of 1962.

Learned counsel for the Revenue then drew attention to Section 10(22A), which reads thus : (22A) - any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.

In the submission of learned counsel for the Revenue clauses (22) and (22A) could not have been intended to grant the exemption for the benefit of children and the sick and infirm outside India. Parliament, in his submission, would not forego tax revenue for the benefit of educating people in the University of Oxford in the United Kingdom. A construction that would enable this to happen was, he contended, manifestly unreasonable and absurd and could never have been intended. It was, therefore, necessary to read clause (22) as applying only to Universities and educational institutions

which existed in India or, at least, imparted education in India. Our attention was drawn by learned counsel for the Revenue to the judgments of this Court in K.P. Varghese vs. Income Tax Officer, Ernakulam & Anr., [1981(4) SCC 173] and Commissioner of Income Tax, Bangalore vs. J.H. Gotla, Yadagiri, [1985(4) SCC 343] in support of the contention.

In Vargheses case, the assessee owned a house which he had purchased in 1958 for the price of Rs.16,500. In 1965 he sold the house for the same price of Rs.16,500 to his daughter-in-law and five children. It was not disputed that this sale was an honest and bona fide transaction and that the consideration was in fact Rs.16,500. However, after completion of the assessment for the year 1966-67 in the normal course in this manner, the I.T.O. issued a notice to re-open the assessment on the basis that Section 52(2) of the 1962 Act was attracted because the fair market value of the property as on the date of the transfer exceeded the consideration of Rs.16,500 by not less than 15%. The I.T.O. proposed, accordingly, to fix the fair market value of the house at Rs.65,000 and assess the difference of Rs.48,500 as capital gains in the hands of the assessee. The assessee filed a writ petition. It was allowed, but, in appeal, the Full Bench of the Kerala High Court accepted as correct the ITOs view. This Court reversed the Full Bench decision, and it said that if sub-section (2) of Section 52 was literally construed, as applying to cases where the consideration in respect of the transfer was correctly declared and there was no understatement of consideration, it would result in amounts being taxed which had neither accrued to the assessee nor were received by him and which from no view point can be rationally construed as capital gains or any other type of income. It is a well settled rule of construction that the Court should as far as possible avoid that construction which attributes irrationality to the legislature. It was also found that, so construed, sub-section (2) was violative of the Constitution and the Court must obviously prefer a construction which renders the statutory provision constitutionally valid rather than that makes it void. The Court said in the course of the judgment, It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction. Accordingly, the Court read into Section 52(2) the condition that it would apply only where the consideration for transfer was understated and it would have no application in the case of a bona fide transaction when the full value of the consideration was correctly declared by the assessee.

In Gotlas case, a strict and literal construction of Section 16(3) read with Section 24(2) of the 1962 Act led to the conclusion that where the wife or minor child were carrying on a business, while the right to carry forward the loss in the business would be available to the wife or the minor child if they themselves were assessed, the right would be lost if the individual in whose total income the loss was to be included was not permitted to carry forward the loss under Section 24(2). The Court held that this could not have been the intention of Parliament. If a strict literal construction led to an absurd result, i.e., a result not intended to be subserved by the object of the legislation, and if another construction was possible apart from the strict literal construction, then that construction should be preferred to the strict literal construction. The Court, therefore, held, on a consideration of the scheme of the Act and the relevant provisions, that the income of the wife and the minor children included in the assessees total income under Section 16(3) should be regarded as business

income derived from business carried on by the assessee and, in that view, the assessee was entitled to set off his loss carried forward from the previous years.

Now, learned counsels submission is that Parliament could never have intended to forego tax revenue for the purpose of educating people outside India; this was manifestly unreasonable and absurd and, therefore, clause (22) should be so read as applying to Universities established in India, or at least providing educational facilities in India. I find no unjustness, unreasonableness, irrationality or absurdity in the provisions of clause (22). It does not strike me as being beyond the bounds of possibility that Parliament should be willing to forego a very small percentage of tax revenue for the purposes of education, even though it might mean the education of people outside India, if that education was being provided by a University or other educational institution whose sole purpose was to provide education and not at all to make a profit. I do not think Parliament could not possibly have meant what clause (22) so plainly says. I see, therefore, no reason to read clause (22) in a fashion that is not literal.

It should be noticed that clause (22A), which also gives an exemption without any limitation as to location, was introduced into Section 10 in 1970. It cannot be that Parliament yet again failed to express its true intendment. If Parliament had meant to provide an exemption with a locational limitation in clause (22A) it would have made it clear, and it would have amended clause (22).

The judgment and order under challenge cannot stand, and the question quoted above must be answered in the affirmative and in favour of the assessee. The appeals are allowed accordingly. No order as to costs.