

The Commissioner Of Income-Tax, West ... vs M/S. Naga Hills Tea Co. Ltd on 8 February, 1973

Equivalent citations: 1973 AIR 2524, 1973 SCR (3) 510, AIR 1973 SUPREME COURT 2524, 1973 4 SCC 200, 1973 TAX. L. R. 1565, 1973 SCC (TAX) 431, 1973 3 SCR 510, 89 ITR 236

Author: K.S. Hegde

Bench: K.S. Hegde, P. Jaganmohan Reddy, Hans Raj Khanna

PETITIONER:

THE COMMISSIONER OF INCOME-TAX, WEST BENGAL, II CALCUTTA

Vs.

RESPONDENT:

M/S. NAGA HILLS TEA CO. LTD.

DATE OF JUDGMENT 08/02/1973

BENCH:

HEGDE, K.S.

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HEGDE, K.S.

REDDY, P. JAGANMOHAN

KHANNA, HANS RAJ

CITATION:

1973 AIR 2524

1973 SCR (3) 510

1973 SCC (4) 200

ACT:

Finance Act, 1959, First Schedule, Part II, Paragraph D-Carry over of unabsorbed rebate-Scope of.

HEADNOTE:

For the assessment year 1959-60 the total income of the assessee company was utilised and a rebate was allowed, on the corporation tax payable by it, under the provisions of Finance Act, 1959. Thereafter, that rebate was withdrawn on the ground that there was an unabsorbed reduction of rebate in the assessment year 1957-58. For the assessment year 1958-59 the assessee's assessment disclosed a loss and no corporation tax was legal for that year. It was contended by the assessee that the unabsorbed reduction in rebate for

the year 1957-58 could only be carried forward and set off against the rebate for the assessment year 1958-1959 under the provisions of Finance Act, 1958, and as there was no rebate available for the assessment year 1958-59 the unabsorbed reduction in rebate exhausted itself and could not be 'further set off against the rebate available in' the assessment year 1959-60. The contention was rejected by the Income-tax Officer and the Appellate Assistant Commissioner. The Tribunal and the High Court in reference, however, held in favour of the assessee.

Dismissing the appeal to this Court,

HELD : It is a clear from paragraph D of Part II of the First Schedule to the Finance Act, 1959, that it does not provide for carry over of any unabsorbed rebate from year to year. All that the provision provides for is that if there is any unabsorbed reduction of rebate in the assessment year 1958-59, then that can be taken into consideration while allowing rebate in the assessment year 1959-60. A power in favour of the revenue to take into consideration any unabsorbed reduction in rebate for any year prior to 1958-59 cannot be read into the provision. At any rate the view taken by the High Court appears to-be a reasonable one, and, it a provision of taxing statute can be reasonably interpreted in two ways that interpretation which is favourable to the assessee must be accepted [513F-H; 514D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 496 of 970. Appeal by Certificate from the Judgment and order dated August 13, 1964 of the Calcutta High Court at Calcutta in Income tax Reference No. 148 of 1966.

T. A. Ramachandran, S. P. Nayar and R. N. Sachthey, for the appellant.

B. Sen, Lellu Seth, O. P. Khaitan and B. P. Maheshwari, for the respondent.

The Judgment of the Court was delivered by HEGDE, J. This. appeal by certificate arises from the decision of the Calcutta High Court in a reference under section 66(1) of the Indian Income-tax Act 1922 (to be hereinafter referred to as the 'Act'). The question referred to the High Court for its opinion reads :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee, having not been assessed to super-tax for the assessment year 1958-59, the unabsorbed reduction in rebate under clause (i) (a) of the second proviso to Paragraph D of Part II of the First Schedule to the Finance Act, 1957, could not be set off against the rebate available to the assessee under the Finance Act 1959, and that accordingly the Income-tax Officer was not justified in reducing the rebate

of Rs. 16,114/available to the assessee for the assessment year 1959-60 ?"

Following its earlier decision in Commissioner of Income Tax, West Bengal-I v. Deoria Sugar Mills Ltd., (1) the high Court answered that question in favour of the assessee. Aggrieved by that decision the Commissioner of Income Tax for West Bengal has brought this appeal. The facts material for the purpose of deciding this question as could be gathered from, the case stated by the Tribunal may now be set out. The assessment year with which we are concerned in this case is 1959-60; the relevant accounting year being the calendar year 1958. The assessee is a Tea Company. For the assessment year 1959-60 it was assessed to a total income of Rs. 55,257/-. The Corporation tax payable by the assessee on that amount was computed at Rs. 26,357/-. On that a rebate of Rs. 16,114/- was allowed under the provisions of the Finance Act 1959. Thereafter that rebate was withdrawn by the Income Tax Officer on the ground that there was an unabsorbed reduction of rebate amounting to Rs. 27,144/- in the assessment year 1957-58. While making assessment for the assessment year 1959-60 the Income Tax Officer reduced the rebate to nil by taking into consideration the unabsorbed reduction of rebate in the assessment year 1957-58. At this stage it may be noted that in the assessee's assessment for the assessment year 1958-59 the loss of Rs. 73,920/- was determined and no corporation tax was levied for that year.

It was contended before the Income-tax Officer that the un- absorbed reduction in rebate for the year 1957-58 could only be (1) 80 I.T.R. 408.

carried forward and set off against the rebate for the assessment year 1958-59 under the provision of the Finance Act, 1958, and as there was no rebate available for the assessment year 1958-59, the unabsorbed reduction in rebate exhausted itself and could not be further set off against the rebate available for the assessment year 1959-60. This contention 'Was rejected by the Income-tax Officer. In appeal, the Appellate Assistant Commissioner confined the decision of the Income-tax Officer but an a further appeal being taken to the Tribunal the Tribunal accepted the contention of the assessee and thereafter, at the instance of the Commissioner, the question formulated above was referred to the High Court. As mentioned earlier, the High Court has answered that question in favour of the assessee. We may now read the relevant provisions of the Finance Act, 1959. They are found in Paragraph D of Part II of the First Schedule to the Finance Act, 1959 and are as under

"In the case of the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (XXXI of 1956),-

RATE OF SUPER-TAX On the whole of its profits and gains . 11% from life insurance business.

In the case of every other company,-

RATE OF SUPER-TAX	
On the whole of the total income	50%
Provided that,-	

(i) a rebate at the rate of 40 per centon so much of the total income as consists of dividendsfrom a subsidiary Indian company and a rebate at the rate of 35 per cent on the balance of the total,income shall be allowed in the case of any company which-

(a)in respect of its profits liable to tax under the Income-tax Act for the year ending on the 3 1st day of March, 1960, has made the prescribed arrangements for the declaration and payment within India of the dividends payable out of such profits and for the deduc-

tion of super-tax from dividends in.

accordance with the provisions of sub-section (3D) of section 18 of that Act; and

(b)is such a company as is referred to in subsection (9) of section 23A of the Income- tax Act with a total income not exceeding Rs. 25,000;

(ii)a rebate at the rate of 40 per cent on so much of the total income as consists of dividends from a subsidiary Indian company and a rebate at the rate of 30% on the balance of the total income shall be allowed in the case of any company which satisfied condition (a) but not condition (b) of the preceding clause-

(iii)a rebate at the rate of 40% on so much of the total income as consists of dividends from a subsidiary Indian company and a rebate at the rate of 20% on the balance of the total income shall be allowed in the case of any company not entitled to a rebate under either of the preceding clauses Provided further that,-

(1)the amount of the rebate under clause

(i) or clause (ii) shall be reduced by the sum, if any, equal to the amount or the aggregate of the amounts, as the case may be, computed as. hereunder

(a)on that part of the aggregate of the sums arrivedat in accordance with clause

(i) of the second provisoto paragraph D of Part II of the First Schedule to the Finance Act, 1958 (XI of 1958), as has not been deemed to have been taken into account, in accordance with clause (ii) of the said-proviso, for the purpose of reducing the rebate mentioned in clause (i) of the said proviso to nil;

(b).....

At the outset we may mention that the provision of law is extremely confusing. It required more than one reading on our part to understand what it means. One thing is clear from the provision, namely, it does not provide for carryover of any unabsorbed rebate from year to year. Mr. Ramachandran contended that when the Finance Act says "on that part of the aggregate of the sums

arrived at in accordance with clause (i) of the second proviso to Paragraph D of Part 11 of the First Schedule to the Finance Act 1958 (Act XI of 1958) as has not been deemed to have been taken into account, in accordance with clause (ii) of the said proviso, for the purpose of reducing the rebate mentioned-in clause (i) of the said proviso to nil" it means that the unabsorbed deduction of rebate can be carried forward until it is reduced to nil. We are unable to accept this contention as correct. In our opinion, all that provision provides for is that if there is any unabsorbed reduction of rebate in the assessment year 1958-59, then that can be taken into consideration while allowing rebate in the assessment year 1959-60. We are unable to read into the provision in question a power to the Revenue to take into consideration any unabsorbed reduction in rebate for any year prior to 1958-59. That is the view taken by the Calcutta High Court in the case mentioned earlier. The Calcutta High Court opined in that case that the second proviso to Paragraph D of Part 11 of the First Schedule to the Finance Act, 1959 provides that the amount of rebate to be allowed under clauses (i) and

(ii) of the first proviso thereto has to be reduced to the sum, if any, equal to the amount or, the aggregate of the amount, as the case may be, computed in the manner set out in the second proviso. It further observed :

"Now clause (i) (a) of the second proviso refers to the aggregate of the sums arrived at in accordance with clause

(i) of the second proviso to Paragraph D of Part 11 of the First Schedule to the Finance Act of 1958" The aforesaid proviso in 1958 Act, therefore, can apply only when there was a total income in terms of 1958 Act and certain reduction from that total income remained unabsorbed. in 1958. If a particular assessee had suffered loss in 1958, there was no income to which a rate of super-tax prescribed in the 1958 Act could be applied and if no rate of super-tax was applicable, there was no question of rebate or reduction in rebate to be allowed under the 1958 Act." We are in entire agreement with the view expressed therein. At any rate the view taken by the High Court appears to be a reasonable view. If a provision of a Taxing Statute can be reasonably interpreted in two ways, that interpretation which is favourable to the assessee, has got to be accepted.

This is a well accepted view of law.

In the result this appeal fails and the same is dismissed with costs.

V.P.S.

Appeals dismissed.