

New Victoria Mills Co. Ltd., Kanpur vs Commr. Of Income-Tax, U.P., Lucknow on 10 April, 1953

Equivalent citations: AIR1954ALL110, [1953]24ITR388(ALL), AIR 1954 ALLAHABAD 110

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik C.J.

1. There were two applications for reference before the Income-tax Appellate Tribunal, one arising out of income-tax proceedings and the other arising out of Excess Profits Tax proceedings. The Tribunal has made one combined reference under Section 66(1), Income-tax Act and Section 66(1)," Income-tax Act read with Section 21, Excess Profits Tax Act. The question arising in both was identical and has been framed as follows:

"Whether, in the circumstances of the case, and on the facts stated, the order of the Tribunal dated 21-2-1945, passed in the appeal of Kanpur Dyeing and Cloth Printing Co. Ltd, constituted a definite piece of information which came into the possession of the Income-tax Officer in consequence of which he discovered that the appellant's income had escaped assessment within the meaning of Section 34, I. T. Act and justified the revision of the original assessment which had been completed on 15-7-1943?"

2. The facts of the case, as they appear from the statement, are as follows. The assessee in its return for the assessment year 1942-43 included a sum of Rs. 2,06,695/- as an item of income received by the assessee company from the Kanpur Dyeing and Cloth Printing Co. Ltd. towards the deferred price of 'dusuti' cloth. The Income-tax Officer, however, held that this was not income of the assessee and made the assessment on the balance of the income returned after deducting this amount. The reason given by him for excluding this amount from the return was that during the course of assessment of the Kanpur Dyeing and Cloth Printing Co. Ltd. this item had been claimed as an expenditure but it was disallowed by the Income-tax Officer. The assessment became final as no party appealed against it. Against the assessment order of the Income-tax Officer in the case of the Kanpur Dyeing and Cloth Printing Co. Ltd. there was an appeal and the case ultimately reached the Income-tax Appellate Tribunal which disagreed with the Income-tax Officer and allowed the sum of Rs. 2,06,695/- as expenditure incurred by the Kanpur Dyeing and Cloth Printing Co. Ltd., and gave them credit for it under Section 10(2)(XV), Income-tax Act.

After the decision of the Tribunal in the case of the Kanpur Dyeing and Cloth Printing Co. Ltd., on 21-2-1945, the Income-tax Officer on 16-5-1945, issued a notice to the assessee under Section 34, Income-tax Act. The Income-tax Officer claimed that the definite information that he had received was the order of the Tribunal dated 21-2-1945, that it was an expenditure of the Kanpur Dyeing and Cloth Printing Co. Ltd., and consequently must be the income of the assessee.

It is not denied that all the facts were known to the income-tax Officer. If the Income-tax Officer had made a mistake in deducting the sum of Rs. 2,06,695/- from the assessable income of the assessee, it was open to the Department to take the matter up in appeal before the Appellate Assistant Commissioner and the Appellate Tribunal. It cannot be said that as a result of the order of the Appellate Tribunal any new facts came to the knowledge of the Income-tax Officer which were not in his possession at the time when he made the assessment. If the Income-tax Officer had made a mistake with full knowledge of the facts, the mistake could not be rectified by him by issuing a notice under Section 34, Income-tax Act. The fact that the Appellate Tribunal had held that the sum of Rs. 2,06,695/- was allowable expenditure of the Kanpur Dyeing and Cloth Printing Co. Ltd., under Section 10(2)(xv), Income-tax Act could not be said to be a definite information which led to the discovery that the assessee's income had escaped assessment. The facts were fully known to the Income-tax Officer and if he had made a mistake at the time of the assessment there were other methods of correcting that error.

3. We, therefore, answer the reference in the negative. The assessee is entitled to its costs which we assess at Rs. 500/—.