

Harihar Kesholal vs Commissioner Of Income-Tax on 9 October, 1950

Equivalent citations: AIR1951ALL498, [1951]19ITR52(ALL), AIR 1951 ALLAHABAD 498

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a reference under Section 21, Excess Profits Tax Act read with Section 66, Income-tax Act. The following two questions have been referred to us :

"1. Whether, in the circumstances of the case, the third proviso to Section 5, Excess Profits Tax Act prevents the applicability of the provisions of Section 10A of the Act to the assessment in the fourth chargeable accounting period ?

2. Whether the Tribunal was competent to deal with the question of set off of losses in the cotton business at Wankaner in the appeal arising from an order under Section 10A ? "

2. No one has appeared in this reference to argue on behalf of the assessee. The facts stated by the Tribunal show that the assessee had been carrying on business for a number of years at Kanpur and shifted the business temporarily to Wankaner. This business was shifted, according to the Tribunal, for the specific purpose of avoiding liability to excess profits tax. These are questions of fact on which there is no reference before us. On these findings, the Tribunal has held that the transaction which resulted in shifting the business from Kanpur to Wankaner could be considered for making adjustment by the Excess Profits Tax Officer under Section 10A and, as a result of the adjustment, it could be held that the whole business carried on at Wankaner must be deemed to be business carried on at Kanpur. There is no doubt at all that any transaction which is entered into with the specific purpose of avoiding liability to excess profits tax can be avoided by the Excess Profits Tax Officer under Section 10A of the Act, irrespective of the circumstance whether the effect of that transaction is to make the Act altogether inapplicable to the business or part of the business or whether it merely reduces the liability to the tax or the rate of the tax. In the present case, the transfer of the business to Wankaner had the effect of taking away part of the business from British India and making the income of that business exempt from the operation of the provisions of the

Excess Profits Tax Act. If the transaction is ignored under Section 10A, all the business done in Wankaner and the profits arising there would be subject to the operation of the Act. On the findings of fact given by the Tribunal, the transaction can be avoided and consequently, Proviso 3 to Section 5, Excess Profits Tax Act did not prevent the applicability of the provisions of Section 10A of the Act to the assessment in this particular case. It may also be noticed that the bulk of the business even while the firm was working at Wankaner was actually carried out at Kanpur in British India. Our answer to the first question, therefore, is that Proviso 3 to Section 5, Excess Profits Tax Act, does not prevent the applicability of the provisions of Section 10A of the Act to the assessment in the fourth chargeable accounting period.

3. So far as the second question is concerned, the Income-tax Appellate Tribunal, in their order, dated 4-12-1945, passed on the appeal, have said :

"We have been informed that an appeal under Excess Profits Tax Assessment is now pending before the appellate Assistant Commissioner. We have no doubt that he will give due consideration to this matter when it is raised before him. We, consequently, do not decide the question of these losses, which properly arises in the appeal against the assessment."

It appears to us that, as a result of the direction contained in this part of the order of the Tribunal, this question must have been considered by the Appellate Assistant Commissioner and it is probably for this reason that no one appeared on behalf of the assessee in this reference before us. In these circumstances, we are of the opinion that the second question does not arise and requires no answer. The Department shall get its costs from the assessee which we fix at Rs. 200.