Bhagwan Dass & Sons, Cawnpore vs Commissioner Of Income-Tax, U. P., C. P. ... on 3 May, 1950

Equivalent citations: [1950]18ITR524(ALL)

JUDGMENT

MALIK, C.J. - This is a reference by the Income-tax Appellate Tribunal under section 66(1) of the Income-tax Act read with section 21 of the Excess Profit Tax Act. The assessee is a registered firm. Messrs. Bhagwan Dass and Sons, Kanpur. One Pandit Ratan Chand Kalia, who was formerly a manager of the firm, was taken in as a partner in the Kanpur and Lucknow branches of the firm under a partnership deed dated the 27th November, 1940. The principal business of the assessee firm during the relevant chargeable accounting period was the agency for the sale of the product of Muir Mills Co., Limited. In addition to that business the firm secured a tent-making contract from the Muir Mills Co., Limited, on the 1st of April, 1940. This proved a profitable undertaking. It was said that on the 1st of April, 1941, the firm gave up its interest in the tent-making contract to Mr. Kalia. The name under which the tent-making business was carried on was Sohrat Textiles Company. For the purpose of assessment of income-tax for 1944-45 the profit from the tent-making contract was assessed as belonging to Mr. Kalia and was not added to the assessable income of the applicant-firm. The Excess Profit Tax Officer, however, considered that the assignment of the tent-making contract by the applicant-firm to one or its partners, Mr. Kalia, was a transaction designed to avoid or reduce the liability to excess profit tax.

The Appellate Tribunal came to the conclusion that the probabilities of the case justified the finding that the main purpose was to avoid or reduce the liability for the excess profit tax. The grounds on which they based their finding wer : (a) that the business was yielding substantial profits, (b) that the transfer was made without valuable consideration, (c) that the transfer was made voluntarily, and (d) that the transfer was made to a person intimately connected with the assessee firm as its manager and later as its partner. It cannot be said that on these facts and circumstances of the case it was not possible to arrive at the conclusion that the main purpose of the transfer was to defeat or delay the payment of the excess profits tax.

The two question referred to us are as follows :-

> "(1) Whether in the particular circumstances of the case the Income-tax Officer was justified in law in applying the provision of Section 10A of the Excess Profits Tax Act ?

2. Whether in the particular circumstances of the case the transfer by the assessee of the tent-making business amount to a transaction within the meaning of Section 10 A of the Act ?"

> Learned counsel has urged that a gift of the assessees share in a particular business is not a transaction. He has suggested that a transaction in section 10A means a

business deal and the transfer itself. The word "transaction" is derived from the word "transact" which means "to manage"; "to perform," and "transaction" means "act of transacting; management of any affair". Any business deal can be transaction, there is no reason to hold that a gift or a sale of the business itself is not a transaction.

Learned counsel has urged that there must be a liability to pay the excess profits tax and something must have been done the with object of avoiding or reducing that liability and, as the assessee had transferred the business and under Section 8 of the Excess Profits Tax Act it must after the transfer be held to be a new business in the hand of the transferee, the original assessee can no longer be made liable to pay the excess profits tax. This makes the provision of section 10A applicable only in a case where there has been a partial transfer of liability for payment of the tax and not a transfer of the total liability. Section 10A, as I read it, lays down that for the purpose of assessment of the excess profits tax a transaction, the main purpose of which is the evasion of the tax, can be ignored by the Excess Profit Tax Officer in computing the profits.

My answer to the two question, therefore, is :-

(1) that the Excess Profits Tax Officer was justified in applying the provision of section 10A; and (2) that the transfer was a transaction within the meaning of section 10A of the Act.

The assessee is to pay the cost of the department which is assessed at Rs. 350.

BHARGAVA, J. - I concur.

Reference answered accordingly.