

Sithoolal Chhoteylal vs Commr. Of Income Tax/Excess Profits ... on 21 October, 1952

**Equivalent citations: AIR1953ALL437, [1953]23ITR10(ALL), AIR 1953
ALLAHABAD 437**

Author: V. Bhargava

Bench: V. Bhargava

ORDER

1. The facts are set out in the statement of the case.

2. In the year 1936 one Sitthoo Lal started a partnership business with his two sons, Banarsi Das and Chhotey Lal, as partners each having an equal share in the profits and losses of the firm which was styled as firm Sitthoo Lal Chhotey Lal. This firm was carrying on wholesale business in cloth at Kanpur. On 6-12-1941, Sitthoo Lal purported to start a new firm known as Anandi Prasad Sitthoo Lal. The partners of this new firm were Sitthoo Lal and one Lal Behari, the former having a fourteen anna share and the latter a two anna share in the profits and losses of the firm. This new firm did part of the business that was being done previously by the old firm Sitthoo Lal Chhotey Lal. On 4-7-1942, Banarsi Das, another partner of the parent firm Sitthoo Lal Chhotey Lal, purported to start a new business in cloth under the name and style of firm Banarsi Das Radhey Shyam. The partners of this firm were Banarsi Das, Chhotey Lal and four outsiders, Banarsi Das having a six anna share and each of the others having a two anna share. On 19-10-1942, the third partner Chhotey Lal started a new firm known as Chhotey Lal Mehrotra in partnership with one Ganesh Narain, each having an equal share. The Income-Tax Appellate Tribunal has held that all these three firms were started with the main purpose of avoiding excess profits tax. Shri Gopal Ji Mehrotra on behalf of the assessee wanted us to direct the Tribunal to refer the question whether the finding that these three firms were started with the main object of avoiding excess profits tax was based on any evidence. This is a belated prayer, the case having been decided by the Tribunal in the year 1949. Moreover, after having read the appellate order of 6-2-1948, when the case was remanded to the Excess Profits Tax Officer, we are satisfied that there were materials on which the finding could be arrived at by the Income-Tax Appellate Tribunal. We, therefore, do not propose to ask the Tribunal to refer any further questions to us.

3. It appears, however, that, while the firms Anandi Prasad Sitthoo Lal and Banarsi Das Radhey Shyam made profits, the third firm Chhotey Lal Mehrotra incurred losses and the question arose before the Tribunal whether the losses incurred by the firm Chhotey Lal Mehrotra could be taken into account in assessing excess profits. The Tribunal relied on the language of Section 10A, Excess Profits Tax Act, 1940, and came to the conclusion that while the profits should be taken into account, the losses should be ignored. The relevant portion of Section 10-A reads as follows :

"10-A. Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected..... was the avoidance or reduction of liability to excess profits tax, he may..... make such adjustments as respect liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions."

The Tribunal relied on the words "avoidance or reduction of liability to excess profits tax" and came to the conclusion that the Excess Profits Tax Officer could only avoid those transactions which resulted in the avoidance or reduction of liability to pay excess profits tax. That if the transaction did not, in any way, result in the avoidance or reduction of liability to excess profits tax, the Excess Profits Tax Officer was not bound to avoid that transaction to give, so to say, relief to the assessee. The Tribunal considered that this raised a question of law and referred the following question to this Court for its opinion :

"Whether, on the true construction of Section 10-A (1), Excess Profits Tax Act, could the loss of the firm Chhotey Lal Mehrotra be taken in account in determining the excess profits tax liability of the firm Chhotey Lal Mehrotra for the chargeable accounting period 4-7-1943 to 21-6-1944?"

4. We may mention that the question raised is a question of first impression. There is no authority either way. Before, however, going into the language of the sub-section, we may mention that it appears to us to be extremely inequitable that the Excess Profits Tax Officer should be able to avoid a transaction which results in profit and, in a similar transaction which results in loss, he should refuse to the assessee credit for the loss in computing the profits of the business. The Excess Profits Tax Act, as has been repeatedly pointed out, was a war measure for the purpose of bringing back, for national purposes, the extra profits made during the war years which were due to the extraordinary conditions created by the war. The amount was to be taken out of the business, leaving only the normal profit which was known as the standard profit. It was for that reason that while Section 10-A of the Excess Profits Tax Act gave the Excess Profits Tax Officer the right to ignore the artificial reductions in excess profits, that section gave extra power to the Excess Profits Tax Officer to go behind transactions which, though genuine, were mainly effected with the object of evading payment of the tax. In making the computation, therefore, it appears to be inequitable that the Excess Profits Tax Officer, when he finds that the circumstances are exactly the same, should add profits resulting from a transaction while ignoring the losses incurred either in the same transaction or in similar transactions forming part of the same scheme. In the case before us, the finding of the Tribunal is that, behind the starting of these three new firms, there was a common scheme which the Tribunal has expressed in the following words :

"The whole idea in starting these three new firms was to avoid or reduce the liability of the business of the firm Sithoo Lal Chhotey Lal to excess profits tax."

If these three firms were started as a result of the same scheme and more or less form part of the same transaction, the Excess Profits Tax Officer could not ignore the third transaction which had

resulted in loss while taking into account the first two which had resulted in profits.

5. Sri Gopal Ji Mehrotra, learned counsel for the assessee, has urged that the words 'so as to counteract the avoidance or reduction of liability' do not apply to the power or the jurisdiction of the Excess Profits Tax Officer and merely set out the object behind his action. Learned counsel has urged that the Tribunal has understood this section in the same sense. It is not necessary for us to consider the language of the section in view of the finding that the three new firms were part of the same scheme and must, therefore, be more or less part of the same transaction. The Excess Profits Tax Officer was, therefore, bound to take the profits and losses in all the three new businesses into account.

6. Our answer to the question is, therefore, in the affirmative. In view of the special circumstances, we make no orders as to costs.