

K.P. Bhargava vs Commissioner Of Income-Tax, C.P. And ... on 9 May, 1950

Equivalent citations: AIR1950ALL613, [1951]19ITR254(ALL), AIR 1950 ALLAHABAD 613

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66 (l), Income-tax Act read with Section 21, Excess Profits Tax Act. The question referred to us runs as follows:

"Whether, in the circumstances of the case, and on a true interpretation of the various provisions of the Excess Profits Tax Act, specially 26 (1), the direction of the Board, dated 7th September, 1943, under Section 26 (1), in relation to the third chargeable accounting period has to be given effect to in respect of the first and second chargeable accounting periods also ? "

2. The assessee had selected the year 1934-35 with reference to which the standard profits had to be ascertained.

3. We are concerned with three chargeable accounting periods, the first period from the 1st September 1939 to 10th November 1939, the second period from the 11th November 1939 to 30th October 1940 and the third period from 31st October 1940 to 20th October 1941.

4. The Excess Profits Tax Officer issued notices with respect to the first and second chargeable accounting periods under Section 13 (l), Excess Profits Tax Act, requiring the assessee to submit his returns. The assessee sent a reply that he had not made any excess profits during the first and second chargeable accounting periods. A third notice was also issued under Section 13 (l) of the Act to the assessee with reference to the third chargeable accounting period. The assessee then made an application under Section 26 (l), Excess Profits Tax Act to the Central Board of Revenue through the Excess Profits Tax Officer that, by reason of certain special circumstances, it was inequitable that the standard profits of the business in relation to the third chargeable accounting period should be computed in accordance with the provisions of Sub-section (l) of Section 6 and requested the Central Board of Revenue to direct the Excess Profits Tax Officer to compute the standard profits at

the figure fixed by the Central Board of Revenue, which it was claimed would be greater than the amount of profits actually earned in the year 1934-35.

5. On 7th September 1943, the Central Board of Revenue granted this application and fixed the standard profits at Rs. 36,000/- during the standard period, 6th November 1934 to 26th October 1935. The Excess Profits Tax Officer wanted to compute the excess profits with reference to the amount fixed by the Central Board of Revenue in relation to the third chargeable accounting period only. The assessee claimed that the standard profits fixed by the Central Board of Revenue by its order, dated 7th September 1943, should be treated as the standard profits for the first and second chargeable accounting periods also,

6. In view of certain provisions of the Excess Profits Tax Act, the Excess Profits Tax Officer held that the standard profits fixed by the Central Board of Revenue could be taken into account with respect to the third chargeable accounting period only and not with respect to the first and second chargeable accounting periods. The Appellate Assistant Commissioner and the Income-tax Appellate Tribunal agreed with this decision. The assessee then applied for reference to be made to us for our reply to the question mentioned above.

7. Section 6 deals with the mode in which the standard profits have to be fixed and Sub-section (3) of Section 6 provides for an application to the Board of Referees to revise the standard profits if it is of the opinion that the profits earned during that period were less than what might have been reasonably expected on account of certain special circumstances. This application has to be filed within a certain period after the service of the notice under Sub-section (1) of Section 13, Excess Profits Tax Act, 1940.

8. Section 26, which is the relevant section then provides for an application to the Central Board of Revenue. There is a period of limitation for this also and the application has to be filed within a certain period after notice under Sub-section (1) of Section 13, Excess Profits Tax Act, or if there has already been a reference to the Board of Referees, then within 45 days from the date on which the order of the Board of Referees was passed. The relevant portion of Section 26 (1), Excess Profits Tax Act runs as follows:

"If, on an application made to it through the Excess Profits Tax Officer, the Central Board of Revenue is satisfied" in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of Sub-section (1) of Section 6 and that no relief or insufficient relief has been granted under the provisions of Sub-section (3) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just."

Proviso 1 is not important for our purposes but proviso 2 to Section 26 (1), Excess Profits Tax Act, is as follows:

"Provided further that a determination on an application under this Sub-section (a) shall have effect with respect to all subsequent chargeable accounting periods; (b) shall exclude any further application under this sub-section."

(that is, an application has to be made in relation to a particular chargeable accounting period and when a decision is given by the Central Board of Revenue, then the standard profits as fixed by the Central Board of Revenue are deemed to be the standard profits with respect to all subsequent chargeable accounting periods).

9. It is clear, therefore, that if no application was made with respect to the first and second chargeable accounting periods, no relief can be claimed in accordance with the language of the section.

10. It is, however, urged by Mr. Banerji that where a period of limitation has not expired for making an application under Section 26 (1), Excess Profits Tax Act and where, as in this case, the Excess Profits Tax Officer has not determined the profits for the first and second chargeable accounting periods, it gives rise to an anomaly if, after the Central Board of Revenue had fixed the profits at Rs. 36,000/-, the Excess Profits Tax Officer is allowed to say that with reference to the same period 1934-35 the standard profits were different. He has urged that where the assessment has been made before the decision by the Central Board of Revenue, the matter may be different.

11. It must, however, be borne in mind that the Central Board of Revenue, though it had fixed the profits for the standard period, 6th November 1934 to 26th October 1935, it was called upon to do so only in relation to the third chargeable accounting period and it must, therefore be deemed to have done so with reference to the third chargeable accounting period only. On the language of Section 26, it is not open to us to hold that the standard profits fixed by the Central Board of Revenue shall have the effect not only with respect to all subsequent chargeable accounting periods but with respect to all previous chargeable accounting period also. It may be that the object behind this section was that the assessment already made was not to be re-opened but if that was the intention, then the section could easily have been worded to make that clear. There appears to be no reason why a person who has already been assessed should be put in a worse position than a person whose assessment has been delayed and is pending. It is open to the assessee to claim a variation in the standard profits within a certain period after receipt of notice under Section 13 (1), Excess Profits Tax Act. If he chooses to claim this relief with respect to one period only and not with respect to any earlier period, he is himself to blame and he cannot claim that the language of the section should be stretched to give him a relief which he has disentitled himself from claiming by not having claimed that relief for the earlier period.

12. In our view, therefore, the answer to the question is that the direction of the Central Board of Revenue, dated 7th September 1943, under Section 26 (1), Excess Profits Tax Act in relation to the third chargeable accounting period cannot be given effect to in respect of the first and second chargeable accounting periods. The assessee must pay costs of the Department which we assess at Rs. 300 /-only.