Commissioner Of Income-Tax/Excess ... vs Shamsher Printing on 8 March, 1960

Equivalent citations: AIR1961SC98, [1960]39ITR90(SC), AIR 1961 SUPREME COURT 98

Bench: A.K. Sarkar, J.L. Kapur, M. Hidayatullah

JUDGMENT

Sarkar, J.

1. The question raised is whether a certain sum received by the respondent was a capital receipt or a revenue receipt.

2. The respondent was a firm carrying on a business of purchasing and selling paper, stationery and other things and manufacturing books, exercise books, diaries etc. and for the purpose of its business it had a printing press. The business was carried on and the press housed in a building belonging to its partners where the latter also resided. This building was requisitioned by the Government in September, 1943, for the duration of the war. The respondent had thereupon to shift its business to another place where it was restarted sometime later. The respondent claimed compensation for the respondent claimed compensation for the requisition on various accounts and was paid various sums. One of the claims was made in these words : "On account of the compulsory vacation of the premises disturbance and loss of business on the basis of two years at Rs. 2,29,450 per annum..... Rs. 4,58,900." On this head the Government paid Rs. 57,435.

3. The question is whether this sum of Rs. 57,435 was liable to income- tax and excess profits tax. It would be liable if it was a revenue receipt and not, if it was a capital receipt. It was, no doubt, paid in respect of some injury suffered by the respondent on account of the requisition. If that injury was to the respondent's capital assets then the receipt would be a capital receipt. If, on the other hand, the injury was to the respondent's trading, then it would be a revenue receipt.

4. It is clear that the requisition did not cause any injury to any of the tangible capital assets of the respondent's business. Indeed, it is not contended that there was any injury to any of them. What is said on behalf of the respondent is that there was injury to its profit making apparatus. By that it is not suggested that the respondent's business had a profit making apparatus apart from its tangible capital assets, of the kind found to have been in existence in Van den Berghs Ltd. v. Clark. What is said is that there was a loss to the goodwill, that is to say, the benefit that the respondent's business derived from its connection with the building where it was carried on. It is said that this benefit was lost as the business had to be shifted from the old premises to a new one as a result of the requisition. This is the contention that we have to examine in this case.

5. It is not disputed on behalf of the Department that such a goodwill would be a capital asset. The Department contends that there was no claim for injury to any such goodwill. It says, we thing rightly, that goodwill is a question of fact, it may exist, it may not exist : see Hill v. Fearis. The Department does not contend that the existence of the goodwill had to be proved. What it says is that since it does not follow that every business has a goodwill, a loss to such goodwill has at least to be claimed and in the absence of such a claim it would follow that there was no such goodwill and nothing could therefore have been paid in respect of it. This seems to us to be an argument of substance and we did not understand learned counsel for the respondent to contend to the contrary. What he said was that there was a claim for a loss to the goodwill.

6. We turn now to the words in which the claim was made which we have earlier set out. There is no mention of any loss to goodwill there. It is said behalf of the respondent that the claim was for "compulsory vacation of the premises" and also for "disturbance and loss of business" and that the claim for "compulsory vacation of the premises" was for the injury to the goodwill. That indeed would be a strange way of making a claim for loss of goodwill. There is a claim for loss of business in express terms and this was computed at two years' loss of profits. Why was loss of business claimed ? Clearly, because the business would be stopped or disturbed for some time by the compulsory vacation of the premises. That would make the claim as framed sensible. It would then be a claim for one thing only, namely, for loss of profits. The Department says that that is all that was claimed. It is difficult to hold that the claim so framed was, as the respondent contends, for three things, namely, (a) compulsory vacation of premises, (b) disturbance of business and (c) loss of business. If three things were claimed all could not have been together computed by one measure of two years' loss of profit as was done. The claim for loss of business would have been without any particulars as to how the loss was said to have been occasioned and this could hardly have been intended. It is reasonable to think that the compulsory vacation of the premises was mentioned as explaining how the disturbance and loss of business had been occasioned for which a claim had admittedly been made.

7. The matter is put beyond doubt when one turns to the letter which accompanied and explained the respondent's claim. Referring to the claim under consideration, the letter stated :

> "If we take a fresh construction of our factory on temporary basis, this means time and therefore one of the biggest items in the 'Details of Claim' has got to be included."

8. Now the biggest item of claim is the item under consideration. It was further stated in that letter :

> "As a result of the evacuation and in the absence of any premises we have been forced to warehouse our machines which are now idle and unproductive..... unless we are reinstated immediately in some temporary place and given electric connection and given the other facilities, we estimate that our business will suffer at least for a period of two years and we have gauged that item on that basis."

9. There is no hint whatsoever anywhere in this letter that the respondent intended to make any claim for any loss of goodwill. It is perfectly plain that it was only claiming loss of profit for two years during which it did not expect to be able to restart its business.

10. We do not think that the Tribunal came to any contrary finding. It, no doubt, said "Really speaking the payment is on account of the compulsory vacation of the premises". That does not show that the Tribunal thought that the payment was on account of loss of goodwill. This observation was made because the Tribunal found that it had not been proved that the respondent had actually suffered any loss. No question of actual proof of loss arose for making the claim. That is why the Tribunal said that the payment was on account of compulsory vacation of premises; from such vacation a loss of profit might reasonably be presumed. The Tribunal does not mention any loss of goodwill at all and no question of any such loss appears to have been raised either in the Tribunal or the High Court.

11. We think we ought to refer to another part of the respondent's letter earlier mentioned, to which our attention was drawn. There it is stated :

> "When we think of our competitors in the open market who would go far ahead on account of our absence we feel we shall have a strong uphill struggle whilst re-establishing ourselves when we have reached the normal stage of business."

12. It is said that this shows that the respondent was claiming for loss of goodwill. That seems to us quite untenable a contention. No goodwill is referred to. All that is said here is that competitors would go ahead while the respondent's business remained stopped. Now that has nothing to do with loss of goodwill. It is only concerned with the stoppage of the respondent's business irrespective of its removal from one premises to another. Further, this statement was not in connection with any claim actually made. It could only, if at all, be taken as referring to the claim for loss of profits. We, therefore, do not think that this portion of the respondent's letter helps it.

13. It seems to us for the reasons aforesaid that the sum of Rs. 57,435 had not been received by the respondent for any injury to any of its capital assets. In our view, the sum was received a compensation for loss of profits for the period during which, it was imagined, the respondent's business would remain stopped before it could be re- started at a new premises. That being so, it was clearly a revenue receipt; it has not been disputed that if the amount in question was paid as compensation for loss of profit, it would be a revenue receipt an liable to tax. As it was a trading receipt, it cannot be held exempt from tax under section 4(3)(vii) of the Income-tax Act either. In the result we answer both the questions framed in this case in the negative.

14. This appeal is therefore allowed with costs.

15. Appeal allowed.