

## Commissioner Of Income-Tax (Central), ... vs Moon Mills Ltd. on 17 March, 1967

**Equivalent citations: [1967]65ITR630(SC)**

**Bench: J.C. Shah, S.M. Sikri**

### JUDGMENT

Sikri, J.

1. The Income-tax Appellate Tribunal, Calcutta Bench "A", referred the following question under section 66(1) of the Indian Income-tax Act, 1922, to the High Court at Calcutta :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 19,81,899 received by the assessee in 1950, being the surplus of the compensation money over the written down value of the assets destroyed by fire in the year 1948, is taxable under the 4th proviso to section 10(2)(vii) as the income of the assessee for the year 1950 ?"

2. The facts and circumstances out of which the question arose are as follows : The relevant assessment year 1951-52 and the corresponding accounting year is the calendar year 1950. The Moon Mills Ltd., Bombay, respondent, hereinafter referred to as "the assessee", carried on the manufacture and sale of cotton yarn and cotton piece-goods in Bombay. On June 6, 1948, a devastating fire broke out in the premises of the mills of the assessee destroying the building and partially destroying and damaging the machinery and plant. The amount of compensation was settled between the insurers and the assessee at Rs. 62,41,177. Although the settlement took place in 1948, the amount was received by the assessee in 1950. The manufacturing operations of the mills ceased after the fire, though the other trading activities were continued throughout the years 1948, 1949 and 1950, on a restricted scale. The fixed assets of the business in respect of which compensation was claimed from the insurers having been destroyed and put out of order by the fire were not used for the purpose of business in the year 1950 in which the compensation was received but they had been so used in the year 1948 before they were destroyed by fire.

3. The Income-tax Officer for the assessment year 1951-52 held that a sum of Rs. 22,35,181 was profit assessable under the fourth proviso the section 10(2) (vii), and included this in the total income of the assessee. Before the Appellate Assistant Commissioner it was argued by the assessee that the fourth proviso was not applicable to the case in view of the fact that the fixed assets for which compensation was received were not used for the purposes of business during the accounting year. The Appellate Assistant Commissioner rejected this contention, but reduced the amount chargeable under the fourth proviso to Rs. 19,81,899.

4. The Appellate Tribunal, Calcutta Bench "A", sustained the order of the Appellate Assistant Commissioner but on different considerations. The High Court answered the question in the negative and in favour of the assessee. The Commissioner of Income-tax having obtained special leave, the appeal is now before us.

5. The learned counsel for the revenue contended that the High Court erred in answering the question in favour of the assessee, while Mr. Desai, relying on three recent decision of this court, urged that the point was almost concluded in his favour.

6. The relevant portions of section 10(1) and section 10(2) read as follows :

"10. Business. - (1) The tax shall be payable by an assessee under the head 'profits and gains of business, profession or vocation' in respect of the profits or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely : -....

(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, further, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid;

(v) in respect of current repairs to such buildings, machinery, plant or furniture, the amount paid on account thereof.....

(vii) in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, as the case may be, is actually sold or its scrap value.....

Provided further that where the amount for which any such building, machinery or plant is sold, whether during the continuance of the business or after the cessation thereof, exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the sale took place.....

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant as aforesaid, and the amount of such moneys exceeds the difference between the written down value and the scrap value no amount shall be allowable under this clause and so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be profits of the previous year in which such moneys were received....."

7. This court recently interpreted proviso 2 above in Commissioner of Income-tax v. Express Newspapers Ltd. and Commissioner of Income-tax v. Ajax Products Ltd. In the former case, Subba Rao J., as he then was, held :

"Therefore, to bring the sale proceeds to charge, the following conditions shall be fulfilled : (1) during the entire previous year or a part of it the business shall have been carried on by the assessee; (2) the machinery shall have been used in the business; and (3) the machinery shall have been sold when the business was being carried on and not for the purpose of closing it down or winding it up."

8. In the latter case, after considering the cases of Liquidators of Purga Ltd. v. Commissioner of Income-tax and Commissioner of Income-tax v. Express Newspapers Ltd., Subba Rao J. observed.

"To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation. Equally important is the rule of construction that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of the legislature. Giving a close scrutiny to the second proviso, it will be clear that by giving the natural meaning to every word used therein, it clearly fits in within the scheme of the entire section. The key expressions in the proviso are : (1) 'such building', (2) 'whether during the continuance of the business or after the cessation thereof' and (3) 'deemed to be the profits of the previous year'. The words 'such building' have already been given an authoritative interpretation by this court in the aforesaid two decisions."

9. In view of these decisions the question arises whether the fourth proviso should be interpreted differently. It has to be interpreted as strictly as the second proviso. While the second proviso deals with the receipt of money of the sale of building, machinery or plant, the fourth proviso deals with the receipt of insurance, salvage or compensation in respect of building, machinery or plant discarded, demolished or destroyed. Mr. Mitra relies on this distinction but we are unable to appreciate how this makes any difference. Further, the fourth proviso also brings to charge the "escaped profits under the guise of superfluous allowance."

10. It seems to us that before the excess of insurance money received over the difference between the written down value and scrap value is brought to charge it is essential that :

(1) during the previous year in which moneys are received the business shall have been carried on by the assessee for the part or whole of it; and (2) the machinery shall have been used in the business in that previous year.

11. It is not disputed that on the facts of this case none of these conditions are satisfied. It follows from the above reasoning that the answer returned by the High Court is correct.

12. The appeal accordingly fails and is dismissed with costs.

13. Appeal dismissed.