# Commissioner Of Income Tax, Delhi ... vs Modi Spinning And Weaving Mills Co. Ltd on 26 October, 1990

## Equivalent citations: 1991 AIR 2033, 1990 SCC SUPL. (2) 461, AIR 1991 SUPREME COURT 2033, 1991 AIR SCW 2268, 1991 TAX. L. R. 753, (1990) 53 TAXMAN 584, 1992 (1) SCC(SUPP) 32, (1991) 1 JT 29 (SC), (1991) 187 ITR 51, 1991 (1) JT 29, (1990) 90 CURTAXREP 58

## Author: M.M. Punchhi

## Bench: M.M. Punchhi, S.C. Agrawal

PETITIONER:
COMMISSIONER OF INCOME TAX, DELHI CENTRAL

Vs.

RESPONDENT:
MODI SPINNING AND WEAVING MILLS CO. LTD.

DATE OF JUDGMENT26/10/1990

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
AGRAWAL, S.C. (J)

CITATION:
1991 AIR 2033 1990 SCC Supl. (2) 461
JT 1991 (1) 29

ACT:
Income Tax Act, 1922--Section 10(2)(vib), Proviso (b) and CBDT Circular dated October 14, 1965 Explanations (a), (b) and (c) Allowance of development rebate on plant and machinery--Entitlement to by assessee.

HEADNOTE:
In Commissioner of Income Tax, Madras v. Veeraswami Nainar & 9rs., 55 ITR 35, the Madras High Court took the view that the development rebate reserved should be made at the time of making up the Profits and Loss Account, and this was affirmed by this Court in Indian Overseas Bank's Ltd. v. Commissioner of Income Tax, 77 ITR 512. A distinction was drawn between development rebate reserve and other reserves

createable under the Companies Act and the Income Tax Act and it was required to be separately created.

Consequent to this decision it was noticed that an important circuit of the Central Board of Direct Taxes dated October, 4, 1965 was unwittingly mowed down. This circular gave the Board's Explanation three paragraphs (a), (b) and (c) regarding the position for creation statutory reserve for allowance of development rebate.

A spate of litigation ensued and some of the taxing authorities, relying on the Indian Overseas Bank's case in some cases, took revitional and rectificatory actions, and these reached various High Courts.

The Gujarat High Court in Surat Textiles Mills Ltd. v. Commissioner of Income-tax Gujarat, 80 I.T.R. 1 opted for the narrow view in assuming that all the 3 Explanations contained in the 1965 Circular stood wiped out by Indian Overseas Bank's case.

The Central Board of Direct Taxes, therefore, took the step of withdrawing in the year 1972 the Circular dated October 14, 1965 to the extent it stood superseded by decision in Indian Overseas Bank's case. Other High Courts, however, took a broader view to the effect that Explanation contained in para (a) only was done away with by this Court's decision in Indian Overseas Bank's case and that contained in paras (b) and (c) were still alive.

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On account of the aforesaid difference of opinion, it was represented to the Board that the earlier instructions dated October 14, 1965 represented the correct position of law and that the withdrawal to the extent it was presumed to be overruled by the decision in Indian Overseas Bank's case had created unnecessary hardships to the assessees.

In the instant appeal the question, whether the respondentassessee was entitled to allowance rebate on the plant and machinery after 1.1.1958, after due compliance with the provisions of proviso (b) to section 10(2)(vib) of the Income Tax Act, 1922 was answered by the Division Bench of the Allahabad High Court in favour of the assessee and against the Revenue.

The Revenue appealed to this Court.

Dismissing the appeal, this Court,

HELD: 1. The Board itself had clarified the matter by Circular No. 189 dated 30th January, 1986. It states to have re-examined the issue involved coming to the view that except the clarification contained in Explanation para (a) which stood superseded by the decision of this Court in Indian Overseas Bank's case, the clarification given in paragraphs (b) and (c) hold good. [465D]

2. The Board itself has opted for the broader view expressed in the matter in the,Tata Iron and Steel Companies' case and other cases. There is, therefore, no reason to do the exercise of taking any side of the two views. [465E]

3. It is undisputed that the Board's view is not only valid under the new Income Tax Act of 1961, but to the Indian income-Tax Act, 1922 as well. [465F]

Commissioner of Income Tax, Madras v. Veeraswami Nainar and Ors., 55 I.T.R. 35, affirmed.

Indian Overseas Bank Ltd. v. Commissioner of Income Tax, 77 I.T.R. 512, followed.

Surat Textile Mills Ltd. v. Commissioner of Income-Tax Gujarat, 80 I.T.R. 1, overruled.

Veerabhadra Iron Foundary & Anr. v. Commissioner of Income 463
Tax, 69 I.T.R. 425; Tata Iron and Steel Co. Ltd. v.N. C Upadhyaya, 96 I.T.R. 1 and The Commissioner of Income Tax v. Sardar Singh, 86ITR 387, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 330 of 1976.

From the Judgment and Order dated 13.3.1972 of the Allahabad High Court in ITR No. 457 of 1968.

V. Gauri Shankar, S. Rajappa and Ms. A. Subhashini for the petitioner.

Harish N. Salve, A.T. Patra, Ms. Bina Gupta, Ms. Monika Mohil, Rajiv Shakhdhar and Praveen Kumar for the Respondent. The following Order of the Court was delivered:

> This appeal is directed against the Judgment dated 13.3.1972 made by a Division Bench of the Allahabad High Court in Income Tax Reference No. 457 of 1968 deciding the following question of law in favour of the assessee and against the Revenue.
>
> "Whether on the facts and in the circumstances of the case the assessee can be said to have complied with the provi- sions of proviso (b) to section 10(2)(vib) of the Income Tax Act, 1922 and was, therefore, entitled to allowance of development rebate on the plant and machinery installed after 1.1. 1958."

It would be unnecessary to detail out facts which led to the framing of the question and the answer given. The dis- pute centered around the timing of the creation of the reserve known as the development rebate reserve. In Commis- sioner of Income Tax, Madras v. Veeraswami Nainar & Ors., 55 ITR p. 35, the Madras High Court took the view that develop- ment rebate reserve should be made at the time of making up the Profits and Loss Account. This view was affirmed by this Court in Indian Overseas Bank's Ltd. v. Commissioner of Income Tax, 77 ITR 5 12.. Both cases arose under the Indian Income Tax Act, 1922. Distinction was drawn between develop- ment rebate reserve and other reserves creatable under the Companies Act and the Income Tax Act and it was required to be separately created. On appearance of the Indian Overseas Bank's case on the scene it appears that

an important circular of the Central Board of Direct Taxes was unwittingly mowed down. That circular was of October 4, 1965 and stands reproduced in circular No. 189 dated 30th Janu- ary, 1976 at page 90 in 102 Income Tax Reports (Statutes). The Board's Explanation with regard to the position for creation of statutory reserve for allowance of development rebate was in these terms:

> (a) In the case of certain industrial undertakings, particularly those in which there is Government participa-

tion either by way of capital, loan or guarantee, and where there are certain obligations by law or agreement about the maintenance of reserve for development purposes, the devel- opment rebate reserve may be treated as included in the said reserve though not specifically created as a development rebate reserve.

(b) In a case where the total income computed before allowing the development rebate is a loss there was no legal obligation to create any statutory reserve in that year as no development rebate would actually be allowed in that year.

(c) Where there was no deliberate contravention of the provisions, the Income-tax Officer may condone genuine deficiencies subject to the same being made good by the assessee though operation of adequate additional reserve in the current year books in which the assessment is framed. This led to a spate of litigation, pressing the Indian Overseas Bank's case some taxing authorities in some cases took revisional and rectificatory actions. These reached various High Courts. The Gujarat High Court in Surat Textile Mills Ltd. v. Commissioner of Income-tax Gujarat, 80 I.T.R.P. 1 opted for what may be called a narrow view in assuming that besides Explanation (a) reproduced above explanations (b) and (c) as well too stood wiped out by Indian Overseas Bank's case.. In these circumstances the Central Board of Direct Taxes took the step of withdrawing in the year 1972 the Circular dated October 14, 1965 to the extent it stood superseded by decision in Indian Overseas Bank's case and the judgment of the Gujarat High Court in Surat Textile Mills Ltd. v. Commissioner of Income Tax. Other High Courts took what may be called a broader view. The trend of reasoning in those cases was that expla- nation (a) only was done away with by this Court in Indian Overseas Bank's case but explanations (b) and (c) were still alive. In this connection Veerabha-

dra Iron Foundary & Anr. v. Commissioner of Income Tax, 69 I.T.R. 425; Tata Iron and Steel Co. Ltd. v.N.C. Upadhyaya, 96 I.T.R.p. 1 and The Commissioner of Income Tax v. Sardar Singh, 86 ITR 387 (Punjab) may be seen.

In the face of such difference of opinion, it was repre- sented to the Board that earlier instructions dated October 14, 1965 represented the correct position of law and that the withdrawal to the extent it was presumed to be overruled by this Court in Indian Overseas Bank's case had created unnecessary hardship to the assessees.

It appears that the instant case, out of which this appeal has arisen, was decided by the Allahabad High Court taking the broader view, Special leave was sought by the Revenue from this Court on the question of resolving the conflict between the two views. Leave was granted at a time when the

Board itself had clarified the matter vide Circular No. 189 dated 30th January, 1986 of which hint has been left earlier. The Board states to have re-examined the issue involved coming to the view that except the clarification given in paragraph (a) above, which stood superseded by the decision of this Court in Indian Overseas Bank's case, the clarifications given in paragraphs (b) and (c) quoted above hold good. It can thus legitimately be stated that the Board has itself opted for the view expressed in Tara Iron and Steel Companies' case and other cases of the kind taking the broader view in the matter. When the Board has itself opted for that view and that view is being followed by Income Tax authorities concerned, we see no reason to do the exercise of taking any side of the two views and leave the matter at that. It is undisputed that the Board's view is not only valid under the new Income Tax Act of 1961 but to the Indian Income Tax Act, 1922 as well.

For the foregoing discussions this appeal fails and the judgment of the High Court is left untouched. In the circum- stances of the case there will be no order as to costs.

V.P.R. Appeal dis-
missed.