Commissioner Of Income-Tax, Madhya ... vs M/S. Straw Products Ltd., Bhopal on 3 December, 1965

Equivalent citations: 1966 AIR 1113, 1966 SCR (2) 881, AIR 1966 SUPREME COURT 1113

Author: S.M. Sikri

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

PETITIONER:
COMMISSIONER OF INCOME-TAX, MADHYA PRADESH ETC.

Vs.

RESPONDENT:
M/S. STRAW PRODUCTS LTD., BHOPAL

DATE OF JUDGMENT:
03/12/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 1113 1966 SCR (2) 881
CITATOR INFO :
R 1966 SC1117 (5)
OPN 1967 SC1552 (6)
R 1968 SC 579 (1,11,12)
E 1969 SC 78 (18)
RF 1973 SC2117 (5)
R 1975 SC 797 (30,35)

ACT:
Taxation Laws (Merged States Removal of Difficulties) Order, 1949 Paragraph 2 as amended by Taxation Laws (Merged States) (Removal of Difficulties) (Amendment) Order 1962--Explanation added to Paragraph 2--Meaning of term "depreciation actually allowed" retrospectively amended by Explanation--Effect and validity of 1962 Order.

HEADNOTE:

The respondent company, incorporated in 1939 in the erstwhile State of Bhopal, was exempted under an agreement with the Ruler from taxation under the Bhopal Income-tax Act for a period of ten years which ended on October 31, 1948. After the merger of the State with India in 1949 the company became liable to assessment under the Indian Income-tax Act, 1922. The Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949 provided in Paragraph 2 that in computing depreciation allowance all depreciation "actually allowed" under the relevant law of a merged State shall be taken into account. Accordingly the Income-tax Officer in making assessments for the years 1952-53 and 1953-54 on the respondent company allowed depreciation on the original cost of the assets. However on the decision of the Bombay High Court in Dharangdhara Chemical Works Ltd. (IT. Reference No. 60 of 1956) coming to his notice he recomputed the depreciation allowable to The company for the, said years 4952-53 and 1953-54 by taking into account the depreciation that would have been allowed to the company under the Bhopal Income-tax Act if it had not been exempted from the 'assessment under the said Act. The order of the Income-tax Officer was reversed by the Appellate Assistant Commissioner who held that depreciation which had never been allowed could not be taken into consideration. The Tribunal in appeal, and the High Court in reference took the same view. Subsequent to the High Court's judgment the Taxation Laws (Merged States) (Removal of Difficulties) (Amendment) Order, 1962 was passed which added an Explanation to Paragraph 2 of the 1949 Order By this Explanation it was said that the expression "all depreciation actually allowed under any laws or rule& of a merged State" meant and shall be deemed always to have meant that in cases where income had been exempted from tax under any laws or rules in force in a merged State or under any agreement with a Ruler, the depreciation that Would have been allowed had the income not been so exempted. In appeal to this Court against the High Court's judgment the Revenue contended : (1) The expression 'actually allowed under any laws or rules of a merged State' occurring in paragraph 2 of the 1949 Order meant depreciation allowable under the provisions of the said laws or rules. (2) The 1962 Order which explained the expression 'actually allowed' to mean the depreciation that would have been allowed had the income not been exempted by the Ruler was retrospective because it contained the words 'shall be deemed always to have meant', and in view of this Explanation the Income-tax Offier's order was right. Because the

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1962 Order came up for consideration for the first time in this Court the respondent was allowed to challenge it on various grounds.

HELD : (i) The High Court was right in its view that the expression actually allowed' in the 1949 Order is

unambiguous and connotes the idea that the allowance was actually given effect to. [887 E]

(ii)The Explanation added by the 1962 Order however retrospectively changed the meaning of the expression 'actually allowed' and the Revenue was entitled to rely on it. Applying the 1962 Order to the facts of the present case it was clear that the correct basis for computing the written down value of the depreciable assets for the relevant period was the one adopted by the Income-tax Officer. [890G]

(iii)The 1962 Order could be taken into consideration by this Court although it was not in existence when the High Court answered the reference. The question referred to the High Court was of sufficient amplitude to include a discussion of the amendments made retrospectively in the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949.[890 F]

Commissioner of Sales-tax, U.P. v. Bijli Cotton Mills Hathras, [1964] 7 S.C.R. 383; A.I.R. 1964 S.C. 1594, applied.

(iv)The respondent could not be allowed to raise the question whether the 1962 Order was ultra vires because of the, decision of this Court in Venkataraman's case. [889 A]

K. S. Venkataraman v. State of Madras, [1966] 2 S.C.R. 229.

(v)The respondent could not claim that the 1962 Order did not apply to it on the ground that no income-tax being payable by it, it was not an assessee. The definition of 'assessee' must mean a person by whom income-tax is payable under the Bhopal Act. If it had not been for the agreement with the Ruler the respondent would have been liable to pay tax. [889 H]

(vi)There was no force in the respondent's contention that the 1962 Order was not retrospective and did not apply to assessments made before it came into force. The terms of the Order are plain and if it is deemed as directed by the Order, that the expression 'actually allowed under the laws or rules of a merged State' should have the meaning ascribed to it by the Explanation, as from December 3, 1949, when the Taxation Laws (Merged States). (Removal of Difficulties) Order, 1949 came into force, the Explanation must apply to the assessments for the years 1952-53 and 1943-54. [890 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 893 and 894 of 1964.

Appeals by special leave from the judgment and order dated the August 22, 1961 of the Madhya Pradesh High Court in Misc. Civil Case No. 304 of 1960.

A.V. Viswanatha Sastri, N. D. Karkhanis, B. R. G. K. Achar and R.N. Sachthey, for the appellant.

S.T. Desai, Mahinder Narain, Rameshwar Nath, S. N. Andley and P.L. Vohra, for the respondent.

The Judgment of the Court was delivered by Sikri, J. These appeals by special leave are directed against the judgment of the High Court of Madhya Pradesh in a reference made to it by the Income Tax Appellate Tribunal, under S. 66(1) of the Indian Income Tax Act, 1929, hereinafter referred to as the Act. The Tribunal referred the following question to the High Court :

> "Whether, on the facts of the case and having regard to the provisions of paragraph 2 of the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, and clause 8 of the Agreement made on 20th September, 1938, between the assessee and the State of Bhopal, the correct basis for computing the written down value of the depreciable assets as at 1- 11-1948 is the one which is adopted by the Income Tax Officer or the one adopted by the Appellate Assistant Commissioner?"

The relevant facts are these. The respondent, M/s Straw Products Ltd., Bhopal, hereinafter called the assessee, is a public limited company. It was incorporated in the erstwhile State of Bhopal in 1939 and was given the certificate of commencement of business on May 30, 1939. On September 20, 1938, the assessee entered into an agreement with the Government of Bhopal. Under the agreement the assessee obtained certain concessions and facilities. The assessee not only got exclusive licence to manufacture card- board articles of all kinds but also got land on lease on favourable terms. It was also exempted from payment of customs and other duties payable to the municipality. Clause 8 of the agreement is relevant for the purpose of these appeals and is in the following terms:

> "8. Subject to and so far as the State shall not become or become obliged by any Instrument of Accession or Supplementary Instrument under the Government of India Act, 1935, in respect of any Federal Taxation, it is hereby agreed as follows:-
>
> (a)During the period of I 0 years from the date on which the said Company takes over the land for its business purposes the said Company shall not be liable to pay any sum by way of taxation to the State.

It is common ground that this agreement was acted upon and for a period of 10 years the assessee was not called upon to submit any returns of income and no assessment was made on the assessee under the Bhopal Income Tax Act. This period of ten years expired on October 31, 1948. On August 1, 1949, Bhopal merged in India and was formed into a Chief Commissioner's Province.

For the assessment year 1949-50, the assessee was assessed under the Indian Income Tax Act, 1922, on the total income of the period November 1, 1948 to December 12, 1948, as the assessee made up its accounts on the 31st December each year. For the assessment years 1952-53 and 1953-54, the assessment years which are the subject matter of this reference (previous years Calendar years 1951 and 1952, respectively), the Income Tax Officer, by orders dated November 27, 1952 and September

30, 1953, allowed depreciation on the machinery, buildings and other assets owned by the assessee on the basis of the original cost, i.e., the cost paid in 1939. Subsequently noticing a report in the Times of India, dated March 15, 1957, giving the view taken by the Bombay High Court in the case of Dhrangadhara Chemical Works Limited(1), the Income Tax Officer initiated action under S. 34(1) of the Act in respect of these two assessment years. In the Dhrangadhara Chemical Works(1) case the Bombay High Court had held that the written down value on the opening day of the account period for which assessment is to be made under the Indian Income Tax Act should be taken at the actual cost, less the depreciation which could have been claimed under the Indian Income Tax Act, 1922. After hearing the assessees objections, the Income Tax Officer by his order dated March 4, 1958, held that "the written down value of the assets of the company will have to be redetermined as on 1-1-1951. This would be done by first determining the written down value of assets as on 1-11-1948 under the Bhopal Income Tax Act. From the written down values so ascertained, all depreciation actually allowed till 31-12-1950 would be deducted. The net figures thus arrived at would show the written down value of the assets in the beginning of the assessment year 1952-53." Consequently, the depreciation of Rs. 2,71,961 allowed in the original assessment for 1952-53 was reduced to Rs. 1,29,883 and for the assessment year 1953-54 the original depreciation allowance of Rs. 2,87,285 was reduced to Rs. 1,72,673.

The Appellate Assistant Commissioner, disagreeing with the Income Tax Officer, held on appeal that the assessee had not been allowed excess depreciation allowance as per the original assessment and there was no basis for initiating proceedings under s. 34. He was of the view. that the expression "actually allowed" could (1) Income Tax Reference No. 60 of 1956; judgement dated February 14, 1957.

not imply depreciation allowed by a mental phenomenon. The Appellate Tribunal upheld the order of the Appellate Assistant Commissioner and directed the computation of the allowance on that basis. On a reference the High Court by its judgment dated August 22, 1961, answered the question as follows :

> "In the circumstances of this case the correct basis for computing written down value of depreciable assets of the company is the one adopted by the Appellate Assistant Commissioner."

On August 20, 1962, in exercise of the powers conferred by s. 6 of the Taxation Laws (Extension to Merged States and Amendment) Act, 1949 (LXVII of 1949) the Central Government made the following order to amend the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949. The order was called the Taxation Laws (Merged States) (Removal of Difficulties) (Amendment) Order, 1962 (hereinafter referred to as the 1962 Order). The relevant part of part 2 is in the following terms :

> .lm15 " 2. In the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, after the proviso to paragraph 2, the following Explanation shall be inserted, namely:

> the "Explanation.-For the purpose of this paragraph, expression 'all depreciation actually allowed tinder any laws or rules of a Merged State' means and shall be deemed always to have meant(a).....
>
> (b)in cases where income had been exempted from tax under any laws or rules in force in a Merged State or under any agreement with a Ruler, the depreciation that would have been allowed had the income not been so exempted."

Paragraph 2 of the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, reads as follows :

> "2. Computation of aggregate depreciation allowance and the written-down value.- In making any assessment under the Indian Incometax Act, 1922, all depreciation actually allowed under any laws or rules of a merged State relating to incometax and super-tax, shall be taken into account in computing the aggregate depreciation allowance referred to in sub-clause (c) of the proviso to clause
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> (vi) of subsection (2), and the written-down value under clause (b) of sub-section (5) of section 10 of the said Act Provided that where in respect of any asset, depreciation has been allowed for any year both in the assessment made in the merged State and in British India, the greater of the two sums allowed shall only be taken into account."

This order was made in exercise of the powers conferred by :S. 8 of Taxation Laws (Extension to Merged States) Ordinance, 1949 (XXI of 1949). The Ordinance, which applied to Bhopal, by S. 3(1) extended inter alia the Indian Income Tax Act, 1922, and all rules and orders made thereunder to all the merged States, and by S. 3 (2) the Indian Income Tax Act, 1922 and the rules and orders made thereunder were extended and brought in force in all the merged States on April 1, 1949. Section 8 of the Ordinance provided as follows :

> "If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may by order make such provisions, or give such directions, as appear to it to be necessary for removal of the difficulty."

The Taxation Laws Amendment (Second) Ordinance, 1949 (No. XXXIII of 1949) inter alia made various amendments in the Indian Income Tax Act, 1922.

These Ordinances were replaced by the Taxation Laws (Exten- sion to Merged States and Amendment) Act, 1949 (LXVII of 1949). Section 3 of this Act is similar to s. 3 of the First Ordinance. Section 6, which took the place of S. 8 of the First Ordinance, reads as follows:

> "If any difficulty arises in giving effect to the provisions of any Act, rule or order extended by section 3 to the merged States, the Central Government may, by order, make such provision or give such directions as appear to it to be necessary for removal of the difficulty."

Section 34 repealed Ordinance XXI of 1949 and Ordinance XXXIII of 1949, but by sub-s (2) inter alia provides as follows " ... anything done or any action taken in the exercise of any power conferred by any of the Ordinances referred to in this section shall for all purposes be deemed to have been done or taken in the exercise of the powers conferred by this Act as if this Act were in force on the day on which such thing was done or action was taken."

Mr. A. V. Viswanatha Sastri, the learned counsel for the Revenue, urges before us that the High Court was wrong in answering the question in favour of the assessee. He urges that the expression "actually allowed under any laws or rules of a merged State" occurring in para 2 of the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, meant allowable under the provisions of the said laws or rules. He says that if the income of an assessee is exempted from taxation for a certain number of years, the assessee must be deemed to have claimed depreciation and deemed to have been allowed depreciation according to the provisions of the said laws or rules. He further says it does not matter whether the assessee made a claim or not because it is fair that when the Indian Income Tax Act is applied the assessee should be brought at par with the assessees who had suffered taxation under the Act. We are unable to give such an artificial meaning to the expression "all depreciation actually allowed under any laws or rules", and we agree with the High Court that the expression "actually allowed" is unambiguous and connotes the idea that the allowance was actually given effect to. If it was intended to include any allowances which are not actually allowed then the Central Government would have added a deeming provision as the Legislature did in the Explanation to s. 10(5) of the Act.

In the alternative, he relies on the 1962 Order set out above. He says that the order has explained the expression "actually allowed" to mean the depreciation that would have been allowed had the income not been exempted under an agreement with a Ruler. He further says that this order is retrospective because it expressly says that the expression "all depreciation actually allowed under any laws or rules of a merged State shall be deemed always to have meant." Mr. Desai, the learned counsel for the respondent, objects to this order being relied on by Mr. Sastri on various grounds. He further says that on a true interpretation of the order it does not apply to the case of the assessee. The question then arises whether we are entitled to take into consideration the 1962 order. The learned counsel had cited various cases and has argued that this being an Appeal by special leave from a reference, we should not take the order into consideration. It is unnecessary to refer to the cases because the point is concluded by a judgment of this 8Sup C 1166-10 Court in Commissioner of Sales Tax, U.P. v. Bijli Cotton Mills, Hathras(1). Shah, J., speaking for the Court observed as follows:

> "Undoubtedly the Tribunal called upon to decide a taxing dispute must apply the relevant law applicable to a particular transaction to which the problem relates, and that law normally is the law applicable as on the date on which the transaction in dispute has taken place. If the law which the Tribunal seeks to apply to the dispute is amended, so as to make the law applicable to the transaction in dispute, it would be bound to decide the question in the light of the law so amended. Similarly, when the question has been referred to the High Court and in the meanwhile the law has been amended with retrospective operation, it would be the duty of the High Court to apply the law so amended if it applies. By taking notice of the law which has been

> substituted for the original provision, the High Court is giving effect to legislative intent and does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts. If the question is not so couched as to invite the High Court to decide the question in the light, of the law as amended or if it necessitates investigation of facts which have not been investigated, the High Court may refuse to answer the question. Application of the relevant law to a problem raised by the reference before the High Court is not normally excluded merely because at the date when the Tribunal decided the question the relevant law was not or could not be brought to its notice."

Therefore, following this judgment, we must hold that Mr. Sastri is entitled to rely on the 1962 order and it is our duty to answer the reference in accordance with the amendment made by the order, unless the question referred is not couched in terms of ,sufficient amplitude to cover an enquiry into the question in the light of the amended law. Mr. Desai then raises two questions in respect of the order. First he says that it is the first time that the order is being relied on in these proceedings and he is entitled to urge before us that (1) [1964]7 S.C.R. 383. A.I.R. 1964 S.C. 1594.

the order is bad. He has given a number of reasons in support of his plea that the order is ultra vires, but in view of the decision of this Court in K. S. Venkataraman v. State of Madras(1), we refused to allow him to develop these objections. We may mention that he seeks to distinguish Venkataraman's(1) case on the ground that the Supreme Court and the High Court are not creatures of the order which he was impugning. He further says that the Appellate Tribunal would also have been entitled to go into the question of the validity because the order is not part of the Income Tax Act, and it is not the creature of the order in the sense mentioned in Venkataraman's(1) case. We are not able to sustain the distinction sought to be made by Mr. Desai. The order is in effect an amendment of the Indian Income Tax Act insofar as it is applicable to the merged States. If it had not been for the order, only the provisions of s. 10(5) of the Act would have been applied for the purpose of working out depreciation. Now, in view of the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, as explained by the 1962 order, a different rule has been directed to be applied and the Income Tax Officer is bound to follow this statutory direction. We are unable to see how the judgment in Venkataraman's case does not apply.

Mr. Desai then contends that the 1962 order did not apply to this case because income of the assessee had not been exempted under the agreement with the ruler. He says that the words "exempted from tax" in the 1962 order mean that the assessee must have been liable to pay tax and then exemption granted. He points to the definition of the word "assessee" in the Bhopal Income Tax Act, 1936 (VIII of 1936), which has been defined as "a person by whom income tax is payable." Then he refers to the charging section the relevant part of which reads as follows :

> "3. Whereby a notification in the jarida the Government declares that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax .... "

He says that the respondent was not an assessee because under the agreement no income tax was payable by it and for this reason no notice or assessment had been made under the Bhopal Income Tax Act. We are unable to sustain this contention. The definition of 'assessee' must mean a person by whom income tax is payable under the Bhopal Act. If it had not been for the agree-

(1) [1966] 2 S.C.R. 229.

ment, the respondent would have been liable to pay tax and it is the agreement alone which exempted it from taxation. Mr. Desai then contends that the 1962 order is not retrospective and does not apply to assessments made before the order came into force. We see no force in this contention because the terms of the order are plain and if it is deemed, as directed by the order, that the expression "actually allowed under any laws or rules of a merged State"

> should have the meaning ascribed to it by the Explanation, as from December 3, 1949, when the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, came into force, the Explanation must apply to the assessments for the year 1952-53 and 1953-54.
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> Lastly, Mr. Desai contends that the question referred to the High Court in this case is not couched in terms of sufficient amplitude to cover the points he has tried to make, namely, whether the order dated August 22, 1962, is retrospective and whether the assessee is covered by the terms of cl. (b) of the Explanation. Looking at the question it seems to us that the substance of the question which was referred was whether the view held by the Income Tax Officer or the Appellate Assistant Commissioner was right, and the words "having regard to" occurring in the question did not have the effect of restricting the laws that could be considered for answering the question. It may also be said that when paragraph 2 of the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949, is referred to, it would include paragraph 2 as amended retrospectively. We must, therefore, overrule Mr. Desai's objection and hold that the question framed by the Appellate Tribunal is wide enough to include a discussion of the amendments made retrospectively in the Taxation Laws (Merged States) (Removal of Difficulties) Order, 1949. In conclusion, applying the 1962 order to the facts of this ,case it is clear that the answer to the question referred must be that the correct basis for computing the written down value of the depreciable assets as on November 1, 1948, is the one which was adopted by the Income Tax Officer. In the result, the appeals are accepted, the judgment of the High Court set aside and the question answered as indicated above. In the circumstances of the ,case the parties will bear their own costs.
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> Appeals allowed.