Supreme Court of India
Commissioner Of Income-Tax, West ... vs Indian Molasses (P) Ltd on 12 August, 1970
Equivalent citations: 1970 AIR 2067, 1971 SCR (1) 773
Author: S C.
Bench: Shah, J.C.

PETITIONER:
COMMISSIONER OF INCOME-TAX, WEST BENGAL

Vs.

RESPONDENT:
INDIAN MOLASSES (P) LTD.

DATE OF JUDGMENT:
12/08/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 2067 1971 SCR (1) 773
1970 SCC (2) 834
CITATOR INFO :
D 1986 SC 383 (7)

ACT:
Income-tax Act (11 of 1922), ss. 10(2)(xv), 10(4A), 66(1) and 66(5)-Ingredients of s.10(2)(xv)-Amounts paid to trustees for use on the happening of a future event-When deemed to be expenditure under s. 10 (2) (xv) .
Question of law arising out of its order' in s.66(1), scope of-Aspect not expressly raised before the Tribunal-When could be urged before High Court on reference.
High Court wrongfully refusing plea to be urged-Procedure to be followed by Supreme Court.

HEADNOTE:
The respondent-company appointed a managing director who was to retire at the age of 55. The company arranged to provide a pension to him on retirement, or a pension to his widow if he died before attaining the age of 55. It executed a trust deed on September 16, 1948, and paid to the trustees certain amounts to enable the trustees to take out an annuity policy to cover the pension. On October 29, 1954, the company arranged to give enhanced pension to the director or his

wife and set apart an ,additional sum on the same terms.
The director died in 1955 before attaining the age of 55, and the company claimed, in the return of its taxable income for the assessment year 1956-57, the total amount paid by it to the trustees as a permissible expenditure in the computation of the company's business profits in the previous year.
The Appellate Tribunal, held; (i) that the setting apart of the funds amounted to expenditure Within the meaning of s.10(2)(xv), and (ii) that it amounted to revenue expenditure and not capital expenditure. The Tribunal did not however consider whether the outgoing represented expen-diture laid out or expended wholly and exclusively for the purpose of the business and whether it was authorised under s.10(4A). The Tribunal referred to the High Court two questions, namely : (1) whether the amounts constituted expenditure during the relevant accounting year 1955 within the meaning of the section and (2) whether it represented a revenue expenditure. The High Court held in favour of the company. When the Department sought to urge the plea that before the section could be called in aid, it had also to be established that the expenditure was wholly and exclusively for the purpose of the business and that it was authorised by s.10(4A), the High Court did not permit the plea to be raised as it was not expressly raised before the Tribunal.
In appeal to this Court,
HELD : (1) The amounts set apart became subject to the obligation to pay the pension arranged to be given, only when the director died, and since he died in May 1955, they must be deemed to have been expended only then, that is during the accounting year 1955. [776 H; 777 A-B]
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Indian Molasses Co. (P) Ltd. v. Commissioner of Income-tax, West Bengal, 37 I.T.R. 66, referred to. I I
(2) An amount proved to be expended by a tax-payer carrying on business is a permissible allowance under s.10(2) (iv) in the computation of the taxable income of the business if it is established; (i) that the allowance claimed is expenditure which, is not of the nature described in cls. (i) to (xiv) of s. 10(2); (ii) that it is not of the nature of capital expenditure or personal expenses of the assessee; (iii) that the expenditure was laid out or expended wholly and exclusively for the purposes of such business; and (iv) that it was authorised under s. 10 (4A). [778 C-F]
(3) The expression 'question of law arising out of such order' in s.66(1), is not restricted to take in only those questions which have been expressly argued before and decided by the Tribunal. If a question of law is raised before the Tribunal, even if an aspect of the question was not raised, that aspect may be urged before the High Court. In the present case, the second question as framed and referred, does not exclude an enquirY whether the expenditure was wholly and exclusively laid out or expended

for the purpose of the business of the company. It cannot be held that, because before the Tribunal, stress was not pointedly laid upon the ingredients which enable an expenditure to be claimed and allowed, the question did not arise out of the order of the Tribunal. Therefore the High Court was in error in refusing to allow the argument to be raised that the requirements of s. 10(2) (xv) were not satisfied. [779 H; 780 A; 781 B-F]
Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd. 42 I.T.R. 589, explained and followed.
(4) Since the Tribunal gave no finding on that part of the case, a supplementary statement could be called from it, but such a supplementary statement would be restricted to the evidence on record and may result in injustice to the parties. [781 F]
New Jahangir Vakil Mills Ltd. v. Commissioner of Income-tax, 'Bombay North, Kutch & Saurashtra, 37 I.T.R. 11 Petlad Turkey Red Dye Works Co. Ltd. v. Commissioner of Income-tax 48 T.T.R. 92(S.C.) and Keshav Mills Co. Ltd. v. Commissioner of Income-tax, Bombay North. Ahmedabad, 56 I.T.R. 365, referred to.
(5) Therefore. it is appropriate to decline to answer the second question on the ground that the Tribunal bad failed to consider and decide the question whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the company and that it had not considered all appropriate statutory provisions. and to leave it to the Tribunal to dispose-of the appeal under s. 66(5) of the Act [782 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2555 of 1966. Appeal from the judgment 'and order dated March 16, 1966 of the Calcutta High Court in Income Tax Reference No. 76 of 1962.

S. C. Manchanda. G. C. Sharma, R. N. Sachthey and B. D. Sharma, for the appellant.

A. K. Sen, T. A. Ramachandran and D. N. Gupta, for the respondent.

The Judgment of the Court was delivered by Shah, J. The respondent Company appointed one Harvey its Managing Director. Under the terms of agreement, Harvey was to retire on attaining the age of 55 years. The Company arranged to provide a pension to Harvey on retirement, and executed a deed of trust on September 16, 1948 appointing three trustees to carry out that object. The respondent Company set apart in 1948 Rs. 1,09,643/- and in each of the six subsequent years Rs. 4,364/-, and delivered the various amounts to the trustees who were authorised to take out a deferred annuity policy to secure an annuity of pound 720 per annum payable to Harvey for life. from the date he attained the age of 55 years, and in the event of his death before that date an annuity of pound 611.12 annually to his widow.

In its return for the -assessment year 1949-50 the Company claimed that in the computation of its taxable income Rs. 1,09,643/- paid in 1948 to the trustees under the deed of trust were allowable as an amount wholly and exclusively,expended for the purpose of its business. In the subsequent years of assessment the Company claimed allowance of the annual payment of Rs. 4,364/-. The Income-tax Officer disallowed the claim. The Company disputed the decision and carried it to the Income-tax Appellate Tribunal. The Tribunal submitted a statement of case to the High Court of Calcutta on the question whether the payments .'constituted 'expenditure' within the meaning of that word in S. 10(2)(xv) of the Indian Income-tax Act, 1922, in respect of which a claim for deduction can be made subject to the other conditions mentioned in that clause being satisfied". The High Court answered the question in the negative. The view taken by the High Court was confirmed by this Court in appeal: Indian Molasses Co. (P) Ltd. v. Commissioner of Income-tax, West Bengal(1). This Court held that the expenditure deductible for income-tax purposes is one towards a liability actually existing at the time, but a sum of money set apart which may be deemed appropriated to a purpose for which it was intended on the happening of a future event was not expended within the meaning of s. 10(2)(xv) of the Act, until the event occurs, and since the Company had dominion through the trustees over the funds and there was a possibility of a trust resulting in its favour, by setting apart. the funds no "expenditure" within the meaning of s. 10(2)(xv) of the Indian Income-tax Act, 1922, may be deemed incurred.

During the pendency of those proceedings the Company ar- ranged to give an "enhanced pension" to Harvey and executed a supplementary deed of trust on October 29, 1954 -and set apart an additional sum of Rs. 47,607/- to enable the trustees to take out an annuity policy in the names of the trustees in favour of Harvey (1) 37 I. T. R. 66, and his wife to cover the "enhanced pension". The terms of the original trust deed were made applicable to the supplementary deed.

Harvey died in May 1955 (before he was due to retire) and in the return of its taxable income for the assessment year 1956-57 the Company claimed that Rs. 1,83,434/- being the total amount paid by the Company to the trustees in terms of the original trust deed dated September 'I 6, 1 94 8 and the supplementary deed dated October 29, 1954, be allowed as a permissible expenditure in the computation of the Company's business profits in the previous year ending December 31, 1955. The Income-tax Officer disallowed the claim without assigning any reasons. In appeal the Appellate Assistant Commissioner confirmed the order observing that the amount paid long before the commencement of the previous year were not admissible under s. 10(2)(xv) of the Income-tax Act, 1922. The Income-tax Appellate Tribunal in appeal reversed the order and allowed the claim of the Company holding that the amount of Rs. 1,83,434/- was "effectively disbursed during the accounting year" and was on that account an admissible allowance in the computation of the Company's business profits.

At the instance of the Commissioner of Income-tax, the Tri- bunal submitted a statement of the case to the High Court of Calcutta on the following two questions :-

> "(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 1,83,434/- was an expenditure effectively laid out or expended during the accounting year 1955 within the meaning of s. 10(2)(xv) of the Income-tax Act ?

(2) If the answer to Question No. (1) is in the affirmative, then whether the said expenditure of Rs. 1,83,434/- represented a revenue expenditure ?"

The High Court of Calcutta recorded answers in the affirmative on both the questions. With certificate granted by the High Court under s. 66A(2) of the Indian Income-tax Act, 1922, this appeal is preferred by the Commissioner of Income-tax.

Answer recorded by the, High Court on the first question was, in our judgment, correct. This Court had in the earlier decision Indian Molasses Co. (Private) Ltd. v. The Commissioner of Income-tax(') held that the Company had not parted with control over the amounts set apart between the years 1948 and 1954 for securing the 'pension benefit to Harvey, and on that account no amount was appropriated to make it expenditure within the meaning of s. 10(2)(xv) of the Act. At the date when different sums of money were set apart there was no existing liability and the sums (1) 37 I.T.R. 66.

of money set apart to meet an obligation which may or may not arise on the happening of a future event, the Company did not lay out or expend the sums within the meaning of S. 10(2)(xv). The amounts set apart became subject to the obligation to pay the pension arranged to be given only when Harvey died, and must be deemed expended then within the meaning of s. 10(2)(xv) of the Indian Income-tax Act, 1922. But on the materials before us we are unable to answer the second question, for the Tribunal has found no facts on which the admissibility of the allowance may be determined, and the High Court has declined to allow the argument to be raised by the Commissioner that in the circumstances of the case the amounts expended were not admissible under s. 10(2)(xv) of the Act.

Sections 10(1) and 10(2)(xv) of the Act, insofar as they are relevant, provide :

S. 10(1)-"The tax shall be payable by an assessee under the head "profits -and gains of business, profession or vocation, in respect of the profit or gains of any business, profession or vocation carried on by him." S. 10(2)-"Such profits or gains shall be computed after making the following allowances, namely

(xv) any expenditure (not being an allowance of the nature described in any of the clauses

(i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

Sub-section (4A) of S. IO which was added by the Finance Act of 1956 with effect from April 1, 1956, may also be read :

"Nothing in sub-section (2) shall, in the computation of the profits and gains of a Company be deemed to authorise the making of-

(a) any allowance in respect of any expenditure which results directly or indirectly in the provision of any remuneration or-benefit or amenity to a- director or a person who has a substantial interest in the company within the meaning of sub-clause (iii) of clause (6C) of section, 2, or

(b) any allowance in respect of any assets of the company used by any person referred to in clause (a) either wholly or partly for his own purposes or benefit.

if in the opinion of the Income-tax Officer any such allowance is excessive or unreasonable having regard to the legitimate business needs of, the company and the benefit derived by or accruing to it therefrom. Explanation.The provisions of this sub-section shall apply notwithstanding that any amount disallowed under this sub-section is included in the total income of any person referred to in clause (-a)."

An amount proved to be expended by a tax-payer carrying on business is (subject to sub-s. (4A) of s. 10), a permissible allowance in the computation of taxable income of the business, if it be established that the allowance claimed is

(a) expenditure which is not of the nature described in cls.

(i) to (xiv) of s. 10(2); (b) that it is not of the nature of capital expenditure or personal expenses of the assessee; and (c) that the expenditure was laid out or expended wholly and exclusively for the purpose of such business, profession or vocation. The expenditure incurred by the Company is not allowance of the nature described in any of the clauses (i) to (xiv) inclusive of S. 10(2), nor is it of the nature of capital expenditure or personal expenses of I the assessee. In our judgment, the argument advanced before the High Court that the expenditure resulting from the setting apart of the money for securing an annuity to provide pensionary benefit to Harvey and his wife was of a capital expenditure was rightly negatived by the High Court.

To attract the exemption under s. 10(2) (xv)it had still to beestablished that the amount set apart was laid out or expended wholly and exclusively for the purpose of the business of the Company. On this part of the case there is no discussion in the orders of the taxing authorities and the Tribunal. To recall, the Income-tax Officer recorded no reasons for, disallowing the expenditure. The Appellate Assistant Commissioner disallowed it on the, ground that it was not debited in the profit and loss account of the Company in the previous year. The Tribunal assumed, and in our judgment erroneously, that this Court had in the earlier judgment pronounced upon the applicability of all the conditions of S. 10(2)(xv) of the Act to the amount set apart when it became expenditure. This Court did not express any opinion on that question., The language in which the question was framed in the earlier case clearly indicated that the enquiry contemplated was only whether the amounts set apart were expended and no other.

The judgment of this Court also does not imply that in the view of the Court if the setting apart of the amount was expenditure, the other conditions for the expenditure to be a permissible allowance under s. 10(2) (xv) were satisfied. It cannot be, assumed that because on the death of Harvey the

amounts previously set apart were deemed expended, the outgoing was admissible as expenditure under s. 10(2)(xv) read with S. 10(4A). The Tribunal considered two questions only : (1) whether the setting apart of the amounts amounted to expenditure within the meaning of S. 10(2) (xv); and (2) if it was expenditure, whether it could be regarded as capital expenditure and not revenue expenditure. On both the contentions the Tribunal decided in favour of the Company. But before s. 10(2)(xv) could be called in aid to support the claim of the company it had to be established that it represented expenditure laid out or expended wholly and exclusively for the purpose of the business, and that it was authorised under s. 10(4A).

The High Court was of the view that because before the Tri- bunal the question was not expressly raised that "the other conditions inviting the application of S. 10(2)(xv) were not satisfied, the allowance was not admissible", the Commissioner was incompetent to urge that plea before the High Court. In support of that view they relied upon the judgment of this Court in Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd(1). The High Court observed that before the Tribunal the plea that the expenditure was not laid out or expended wholly and exclu- sively for the purpose of the business of the Company was not argued, and since the question raised and referred "was not wide enough to include that submission", the Commissioner could not urge it before them. 'We are unable to hold that the decision in Scindia Steam Navigation Company's case(') supports the opinion of the High Court. The plea that the amount claimed to have been expended was not admissible as an allowance was raised by the Department. The Appellate Assistant Commissioner had decided in favour of the Department and the order was sought to be supported before the Tribunal by the Departmental representative. Granting that an aspect of the question was not argued before the Tribunal, the question was on that account not one which did not ,arise out of the order of the Tribunal. In our judgment, the expression "question of law arising out of such order" in s. 66(1) is not restricted to take in only those questions which have been expressly argued and decided by the Tribunal. If a question of law is raised before the Tribunal, even if an 'aspect of that question is not raised, in our judgment, that aspect may be urged before the High Court. The judgment of this Court in Scindia Steam Naviga- tion Co. Ltd.'s case(') does not only not lend any assistance to the (1) 42 I.T.R. 589 view taken by the High Court, but negatives that view. In that case certain steamships belonging to the assessee Company were lost during the World War 11 by enemy action. The Government of India paid to the Company compensation which exceeded the written down value of the steamships. The Department sought to charge the excess amount to tax under the fourth proviso of S. 10(2)(vii) of the Income-tax Act, 1922 inserted by the Income-tax (Amendment) Act, 1946, which came into force in the yea of assessment. The Income- tax Officer held that the material date for the purpose of the fourth proviso to s. 10(2)(vii) was the date when the compensation was in fact received and therefore the' amount was assessable in the assessment year 1946-47. At the instance of the Company the Tribunal referred the question whether the difference between the written down value and compensation was properly included in the total income for the assessment year 194647. Before the High Court the Company for the first time raised the contention that the fourth proviso to s. 10(2)(vii) did not apply to-the assessment as it was not in force on April 1, 1946 and the liability of the Company had to be determined as on April 1, 1946, when the Finance Act, 1946 was brought into force. The Commissioner of Income-tax contended that the question did not arise out of the order of the Tribunal within' the meaning of s. 66 as it was not raised before nor dealt with by the Tribunal, and it was not referred to the Court. The High Court overruled the

objection. This Court held that the High Court had jurisdiction to entertain the Company's contention raised for the first time before it, that the fourth proviso to s. 10(2)(vii) did not apply to the as- sessment as the contention was within the scone of the question as framed by the Appellate Tribunal and was really implicit therein. The Court in that case held that the question as framed was comprehensive enough to cover the question of the applicability. of the fourth proviso to s. 10(2)(vii) of the Income-tax Act. Venkatarama Aiyar, J., observed at p. 612 " Section 66 (I ) speaks of a question of law that arises out of the order of the Tribunal. Now a question of law might be a simple one, having its impact at one point, or it may be a complex one. trenching over an area with approaches leading to different points therein. Such a question might involve more than one aspect, requiring to be tackled from different standpoints. All that section 66(1) requires is that the question of law which is referred to the Court for decision and which the Court is to decide must be the question which was in issue before the Tribunal. Where the question itself was under issue, there is no further limitation imposed by the section that the reference should be limited to those aspects (1) 42 I. T. R. 589.

of the question which had been argued before the Tribunal. it will be an over-refinement of the position to hold that each aspect of a question is itself a distinct question for the purpose of section 66 (1) of the Act."

The second question raised in the present case, in our judg- ment, permits an enquiry whether the amount claimed is an admissible allowance under S. 10(2)(xv). We are unable to hold that it is restricted to an enquiry whether the expenditure is of a capital nature. The Tribunal did not consider whether the amount was laid out or expended wholly and exclusively for the purpose of the business of the Company. Expenditure is admissible as an allowance under s. 10(2)(xv). if all the conditions prescribed thereby are satisfied and is authorised by s. 10(4A). We are unable to hold that the question framed and referred excluded an enquiry Whether the expenditure was wholly and exclusively laid out or expended for the purpose of the business of the Company. Nor are we able to hold that because before the Tribunal stress was not pointedly laid upon the ingredients which enable an expenditure to be claimed and allowed, the question does not arise out of the order of the Tribunal. The matter in dispute before the Tribunal was whether the Company was entitled to the allowance under s. 10(2)(xv)

-,of the Indian Income-tax Act 1922. The Tribunal considered whether the amount claimed to have been laid out or expended became expenditure within the meaning of s. 10(2)(xv) on the death of Harvey, and whether it was capital expenditure. They did not consider whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the Company. Since the Tribunal gave no finding on this part of the case, we are unable to answer the question on the materials placed before US. The High Court was, in our judgment, in error in refusing to allow the argument to be raised that the requirements of s. 10(2)(xv) were not satisfied, and the expenditure on that account was inadmissible.

Two courses are now open to us : to call for a supplementary statement of the case from the Tribunal; or to decline to answer the question raised by the Tribunal and to leave the Tribunal to take appropriate steps to adjust its decision under s. 66(5) in the light of the answer of this Court. If

we direct the Tribunal to submit a supplementary statement of the case, the Tribunal will, according to the decisions of this Court, (New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra('); Petlad Turkey Red Dye Works Co, Ltd. v. Com- missioner of Income-tax('); and Keshav Mills Co. Ltd. v. Commissioner of Income-tax, Bombay North, Ahmedabad('), be res-

(1) 37 I. T. R. 11 (48 I. T. R. 92(S. C.) (3) 46 I. T. R. 365.

tricted to the evidence on the record and may not be entitled to take additional evidence. That may result in injustice. In the circumstances we think it appropriate to decline to answer the question on the ground that the- Tribunal has failed to consider and decide the question whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the Company and has not considered all appropriate provisions of the statute applicable thereto. It will be open to the Tribunal to dispose of the appeal under s. 66(5) of the Income-tax Act, 1922, in light of the observations made by this Court after determining the questions which ought to have been decided.

There will be no order as to costs in this appeal. V.P.S.