Supreme Court of India
Commissioner Of Income Tax, ... vs M/S. Banque Nationale De-Paris on 21 March, 1997
Author: Pattanaik
Bench: S.C. Agrawal, G.B. Pattanaik

PETITIONER:
COMMISSIONER OF INCOME TAX, BOMBAY

Vs.

RESPONDENT:
M/S. BANQUE NATIONALE DE-PARIS

DATE OF JUDGMENT: 21/03/1997

BENCH:
S.C. AGRAWAL, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E NT PATTANAIK, J.

This appeal by special leave is against the judgment of the Bombay High Court in Income Tax Reference No. 86 of 1970. At the instance of the Revenue on an application being filed under Section 256(1) of the Income Tax Act, 1961, the Tribunal referred the following two questions to the High court for being answered and the High Court answered both the questions in the affirmative in favour of the assessee and against the Revenue.

The two questions are:-

> "(1) Whether, on the facts and in the circumstances of the case, Income by way of any "interest on securities" received from Government could be excluded in the computation of chargeable profits in terms of Clause (x) of Rule 1 of the First schedule too the super profits Tax Act, 1963.
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> (2) Whether , on the fact and in the Circumstances of the case , the Tribunal was right in holding that only the proportionate interest of Rs. 5,19,804/- on borrowings should be deducted from the interest amount of Rs. 12,93,828/- received by the

assessee from the Indian concerns, and not the whole of the interest amount of Rs. 10,12,252/-

paid by the assessee to various parties, in order to determine the net interest income for the purposes of exclusion from the chargeable profits in terms of Clause(X) of Rule 1 of the First Schedule to the super profits Tax Act, 1963."

The short facts leading to the questions being referred are that the assessee M/s. Banque Nationale De-Paris is a non-resident company and admittedly it had not made any arrangement for declaration of payment of dividends in India during the calendar year 1961. A sum of Rs. 2,18,802/- which the assessee had received towards interest on securities had been included in the assessee's total income for the purpose of assessment. The assessee's contention was that the super profits Tax assessment made by the Departmental Authority is erroneous as the assessee was entitled to exclusion of the aforesaid interest amount in computing the chargeable profits in accordance with Clause(X) Rule I of the First Schedule of the super Profits Tax Act, 1963, as the entire interest amount had been received from the Government. Since the super profits Tax officer did not exclude the aforesaid amount as contended by the assessee the matter was carried in appeal to the Appellate Assistant Commissioner. The said Appellate Authority was of the opinion that the interest on security received from the Government was to be excluded from the chargeable profits for the purpose of super profits Tax assessment in accordance with clause X Of Rule I of the First Schedule of the super profits Tax Act but the said Assistant Commissioner Came to the Conclusion that the figure of income from interest on security which the assessee claimed to be deducted in computing the chargeable profits is not correct and it accordingly reduced the same to Rs. 18,904/- in respect of interest on borrowings and Rs. 19,333/- in respect of other expenses. According to the Appellate Authority the net amount of interest on securities is Rs. 37,683/- which should be excluded from the chargeable profits. The Department filed the appeal before the Tribunal against the aforesaid order to the Authority contending that the interest on security can not be excluded in computing chargeable profits for super Profits Tax purposes as Clause X of Rule I of the First Schedule does not apply to the interest on government securities. According to Revenue the interest in securities to be excluded from the Chargeable profits has been dealt with under Clause VI of Rule I of First Schedule and, there fore, the decision of the Appellate Authority is incorrect. The Tribunal , however, rejected the contention of the revenue and held that interest received by non-resident company from whatever source and from the Government or Local Authority or any Indian concern would be deductable under Clause X of Rule I of First schedule and, therefore, the Appellate Authority came to the correct conclusion law. It, therefore , dismissed the appeal filed by the Revenue and on these facts the first question was referred to the High Court which the High Court also answered in favour of the assessee and against the Revenue.

The assessee during the relevant period had also received a sum of Rs. 12,93,822/- by way of interest on advances given to Indian concerns. The total amount of interest which the assessee received from various sources was Rs. 25,19,560/- The assessee before the super profits Tax officer had claimed the deduction of entire Rs. 12,93,822/- which it had received by way of interest on advances given to Indian concerns. The super profits Tax officer in computing the income the income by way of income from Indian concerns arrived at the figure of Rs. 1,16,617/- . The super

profits Tax officer was of the view that the interest to be excluded from the chargeable profits is the net amount of interest after deducting the interest which the assessee paid to its depositors and creditors as well as after deducting other proportionate expanses and thus the said super profits Tax officer determined that the net income by way of interest to be excluded from the chargeable profits on this head is Rs. 1,61,617/-. The assessee then carried the matter in appeal to the Appellate Assistant Commissioner who came to the conclusion that the interest which the asessee received from Indian concerns to the extent of Rs. 12,93,828/- should be reduced by that proportion of the interest which the assessee himself had received from Indian concerns bears to the total interest receipt of the assessee. According to the Appellate Authority such proportion would work out at Rs. 5,19,804/- and the proportionate expenses is Rs. 5,51,207/- which together would work out at Rs. 10,71,011 /- and this amount should be deducted from the gross interest receipts of Rs. 12,93,828/- and therefore , the Appellate Authority worked out the net amount of interest received by the assessee from Indian concerns at Rs. 2,22,817/- which amount should be excluded from the chargeable profits. Against the aforesaid decision the Revenue felt aggrieved and carried the matter the second appeal. The Tribunal came to the conclusion that the formula adopted by the Appellate Assistant Commissioner was extremely fair and no exception could b taken to it and ultimately did not interfere with the order of the Tribunal and on these set of facts and conclusions the second question was referred by the Tribunal and on these set of facts and conclusions the second questions was referred by the Tribunal.

After arguing for considerable period Dr. Gauri Shanker, Learned senior counsel appearing for the appellant did not press the second question and, therefore we are not required to deal with the said question in this appeal. Dr. Gauri shanker, learned senior counsel appearing for the Revenue, however, so far as the first question is concerned, contended that under section 4 of the super profits Tax Act, a super profit Tax is to be charged on every company on the amount on which the chargeable profits of the previous Year exceeds the standard deduction at the rate specified in the IIIrd schedule. The Chargeable profit has been defined under section 2(5) to mean the total income of an assessee computed under the Income Tax Act. 1961 for any Previous year and adjusted in accordance with the provisions of the First Schedule. First Schedule Provides the rules for computing the chargeable profits and in making such computation it stipulates that while computing the total income for the year in question under Income Tax Act certain amount as indicated in different clauses of Rule I are to be Excluded. Rule I therefore provides :

> "Income, profits and gains and other sums falling within the following clauses shall be excluded from such total income".....

Since Clause VI indicates that the income chargeable under the Income Tax Act Under the head "interest on Security" it is that clause which is applicable and not clause X as has been applied by the Appellate Authority and confirmed by the Tribunal and even the High court has answered the question framed in favour of the assessee.

Mr. Ganesh. learned counsel appearing for the assessee on the other hand contended that the assessee being a non- resident company and clause X having made it clear that income by way of any interest which the company and clause X having made it clear that income by way of any interest

which the company receives from any Government or local authority or Indian concern, it is Clause X that would apply and , therefore, the High court has not committed any error in answering the question posed in favour of the assessee. For better appreciation of point in issue it will be appropriate to extract Clauses VI and X in extenso;-

> "(VI) income chargeable under the Income -Tax Act under the head "interest on securities" derived from any security of the Central Government issued or declared to be income-Tax free or from any security of a state Government issued income-tax free, the income
>
> -tax whereon is payable by the state Government issued income-tax free, the income-tax whereon is payable by the state Government:
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> (X) in the case of a non-resident company which has not made the prescribed arrangements for the declaration and payment of dividends within India, its income by way of any interest or fees for rendering technical services received from Government or a local authority or any Indian concern;"

The question that arises for consideration, therefore , is that in computing the chargeable profits of the assessee of a previous year from the total income computed for the year under the Income Tax Act the adjustment would be made in the case of the assessee in accordance with Clause VI or Clause X. According to Mr. Ganesh, the learned counsel appearing for the respondent the expression "any interest" in clause X is of widest ambit and cover every type of income by way of interest of a non-resident company and in that view of the matter there is no justification to give a restrictive meaning to the aforesaid expression "any Interest" to mean interest other than those covered under Clause VI. The learned counsel also urged that the court in interpreting a particular provisions of a statute need not add or subtract words into it if the meaning of the Provision is clear and it is only when there is any ambiguity or absurdity in giving plain meaning of a word of statute it will be Permissible for a court to add words into it. This being the principle of interpretation and there being no ambiguity in clause X it would not be permissible for the court to interpret the said Clause X by inserting the words "other than the interest " on securities derived from any security of the central Government or state Government after the expression "any interest" in Clause X. According to Mr. Ganesh, learned counsel Clause X being a specific clause dealing with the case of a non-resident company the said Clause should apply and not the general clause in clause VI. Dr. Gauri Shanker , Learned senior counsel appearing for the Revenue on the other hand contended, that the rule Of schedule II of super Profits Tax Act provides the method of computing the chargeable profits of an assessee of a previous year an while the total income for the previous year under the Income Tax Act is taken into account for determining the chargeable profits certain sums falling within different clauses of Rule I are to be excluded. When Clause VI specifically provides that the income chargeable under the head "Interest on security" derived from any security of the Central Government or state Government then even in case of a Non-resident Company the Computation has to be made in accordance with the said Clause , so far as the interest received on Government securities are concerned and Clause X would apply only in respect of other income by way of interest for the non resident company not covered under Clause VI . According to Dr. Gauri

Shanker, the learned senior counsel appearing for the appellant, the emphasis is on the head from which the income is derived and not on the status of the assessee.

Having considered the rival submissions we find considerable force in the argument advanced by the learned counsel appearing for the Revenue. Under Chapter IV of the Income Tax Act the total income of an assessee is computed and under section 14 there are only five heads of income , namely:-

> A. Salaries B. Interest on securities; C. Income from house property; D. Profits and gains of Business or Profession;

E. Capital gains ;and F. Income from other sources Head B has been omitted by Finance Act 1988 with effect from 1.4.89 but was there during the relevant period with which we are concerned in the present case . Section 18, as it stood , deals with "interest on securities" and it provided that the amounts due to assessee in the previous year shall be chargeable to income-tax under the head "interest on securities" are :

> (i) interest on a security of a Central or State Government;
>
> (ii) interest on debentures or other securities for money issued by or on behalf of the local authority or company or corporation established by the Central, State or Provincial Act.

When Clause VI of Rule I of the First Schedule of super Profits Tax Act Stipulates that the Income Chargeable Under the Income Tax Act under the Head "Interest on securities" derived from any Security of the central Government or a State Government , it is therefore , Necessarily referable to section 14(b) so far as the head of income is concerned, and section 18 so far as the type of securities , interest from which has to be computed in arriving at the income of the assessee. It does not make any distinction between a non-resident company or any other individual assessee. That being the position in allowing adjustment in computing the chargeable profits of a previous year of an assessee from the total income computed for the year under the Income Tax Act what would be deducted so far as interest on security derived from the Central Government or state Government is concerned in accordance with Clause VI of Rule I of First Schedule has no application . Clause X Provides for an additional deduction to be made in case of a non-resident company if the said company has derived any income by way of interest which it received from government or local authority or any Indian concern which is not covered by Clause VI. In the case of United Commercial Bank Ltd. Vs. Commissioner of Income-Tax, West Bengal 32 Income Tax Reports 1957 page 688, the question for consideration before this court was whether income from interest on security Would fall under section 8 or under section 10 of the Income Tax Act, 1922? This court construed sections 8, 10 and 24(2)of versa, and therefore no question of the applicability of the principle generalia speciialibus non derogant arises. This finds support from the decided cases which have been discussed above. Thus both the precedent and on a proper construction , the source of income "Interest on Securities" would fall under section 8 and not under section 10 as it is specifically made chargeable under the distinct head "interest on securities"

falling under section 8 of the Act and cannot be brought under a different head even though the securities are held as a trading asset in the Course of its business by a banker."

Though this case is not a direct authority on the question of interpretation of Rule I of the First schedule to the super profits Tax Act, 1963 , but the principles there would apply with full force and, therefore, the income under the head "interest on security" derived from security of the Central or State Government having fallen under the head under section 14(B) of the Income Tax Act as it stood then , as well as under section 18(B) of the said Income Tax Act as it stood at the relevant point of time, when the question of Computation of Chargeable profits of a previous year under the super profits Tax Act crops up, then the adjustment as provided under clause VI of Rule I of the said First Schedule has to be made from the total income Computed for the said year under the Income Tax Act for the purpose of levy of super tax. The Appellate Assistant Commissioner, the Tribunal and the High Court have committed error in holding that Clause X of Rule I of the First Schedule to the super profits Tax Act would apply. The income which is derived by the assessee as interest from the government securities being an income liable for tax under the head "income from the interest on securities" under section 14 of the Indian Income Tax Act, the Character and incidence of that income is not altered merely because it is earned By a Non-resident company.

In the aforesaid premises we are of the considered opinion that in the matter of computation of the chargeable profits of the assessee for the purpose of levy of super profits tax under provisions of the super profits Tax Act, 1963 from the total income of the assessee computed for the year in question under the Income Tax Act he would be entitled to the adjustment of the amount received as interest on securities derived from any security of the Central Government or the State Government as per Clause VI of Rule I of the First schedule inasmuch the said amount is chargeable under the Income Tax Act under the head "interest on securities" which was in force at the relevant period and not under Clause X of Rule I of the First Schedule of the super profits Tax Act as held by the High Court. The impugned Judgment of the High Court is accordingly set aside and the first question posed by the Tribunal is answered in favour of the Revenue and against the assessee. The appeal is accordingly allowed.