Supreme Court of India
Commissioner Of Income Tax West ... vs Associated Electrical ... on 10 October, 1985
Equivalent citations: 1986 AIR 383, 1985 SCR Supl. (3) 627
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
COMMISSIONER OF INCOME TAX WEST BENGAL - I, CALCUTTA.

Vs.

RESPONDENT:
ASSOCIATED ELECTRICAL INDUSTRIES (INDIA) PRIVATE LIMITED.

DATE OF JUDGMENT10/10/1985

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
TULZAPURKAR, V.D.

CITATION:
1986 AIR 383 1985 SCR Supl. (3) 627
1985 SCC (4) 660 1985 SCALE (2)868

ACT:
Indian Income Tax Act 1922 Sections 10(2) (xv) and 10(4)(C).
Company - Pension and Life Assurance Plan for employees Company contributing to premium - Plan rules amended to make direct payment of policy amount to members - Company having no control over money - Expenditure incurred on contribution by company to Plan - Whether an allowable deduction.

HEADNOTE:
The assessee, is a firm carrying on the business of Electrical Engineers and Contractors. It put into effect a pension and Life Assurance Plan for its European employees about the year 1948 and took out policies with a Life Assurance Society in the name of those employees. Under the Plan, rules were framed and the assessee paid his part of the contribution to the premium and the employees whose lives were insured their portion of the premium. The assessee claimed a deduction every year of the sums paid by it by way of its contribution to the premium and the Income-Tax Department allowed the sum as a deductible expenses. however, for the first time , the Income - tax Officer disallowed the claim in respect of the assessment year 1956-

57.

The assessee's appeal to the Appellate Assistant Commissioner, was dismissed on the ground that the provisions of Clause (c) of sub-s. (4) of s. 10 of the Act barred the allowance claimed by the assessee as no effective arrangements had been made by the assessee to secure that tax would be deducted at source from the amounts paid finally to the employees by the Society in terms of the policies.

In further appeal, the Income-Tax Appellate Tribunal allowed the appeal in part, holding that all the contributions made in the relevant year by the assessee to the premium on the life policies of the Plan Members were not allowable as

628

deductions in the hands of the assessee, and what was allowable were the contributions made by the assessee to the policies of such employees who- had actually been paid pensionary and retirement benefits by the Society.

After completing the assessment for the year 1956-57, the Income Tax Officer reopened the assessments of the assessee for the assessment years 1948-49 to 1955-56 under s. 34 of the Act and disallowed the deductions which had been allowed earlier. On appeal by the assessee, the Appellate Assistant Commissioner allowed the deductions claimed in respect of payments made by the Society to the employees in those years. The relevant rules- under the Plan were amended on December 21, 1957 by the Board of Directors to provide that the amount due under the policies would be paid to the Plan Members entitled thereto, leaving the assessee with no control over the moneys.

For the assessment year 1959-60, the assessee claimed a deduction of all the contributions made by it towards the payments on the policies. The Income Tax Officer, however, only allowed the contribution made in the relevant previous year on the ground that the offending rules had been amended but he did not allow the claim in respect of contributions made in earlier years.

The assessee appealed against the disallowance of the claim respecting contributions made in earlier years and the Appellate Assistant Commissioner, allowed only the total contribution made by the assessee to the Pension Fund and the payment made by the society in the assessment years 1959-60 and 1960-61 and rejected the remaining claim.

The assessee filed a second appeal before the Income Tax Appellate Tribunal which held that the deductions were permissible under Clause (xv) of sub-Section (2) of section 10 of the Act, and that Clause (c) of sub-Section (4) of s. 10 of the Act did not come in the way, and allowed the appeal.

The Appellate Tribunal at the instance of the Revenue, made a reference to the high Court which answered the question of law in favour of the assessee and against the

Revenue.

In the appeal, by the Revenue to this Court it was contended on behalf of the Revenue (1) that the expenditure cannot be said to have been incurred during the accounting year
629
relevant to the assessment year 1959-60 as the assessee had made payments by way of contribution to the premium in earlier years and no part of the amount in question could be said to have been made in the relevant accounting year, and (2) that the bar of Clause (c) of sub-section (4) of section 10 of the Act operated as there was no scope for assuming that tax had been deducted at source by the assessee.

Dismissing the Appeal,

^

HELD: 1.(a) Payments in the instant case were made as contribution to the premium in the earlier years, at a time when the rules permitted the assessee to receive back the amounts contributed by it under the Plan. It cannot be said then that when those payments were made they could be regarded as expenditure laid out or expended within the terms of Clause (xv) of sub-section (2) of section 10 of the Act. [632 H - 633 A]

2.(b) Pursuant to the resolution by the Board of Directors on December 21, 1957 the rules were revised and amended. As a result, payments made earlier over which, under the original rules, the assessee had maintained its control, now passed from that control to the Plan Members. The entire amount must be regarded as having been expended by the assessee during the accounting period relevant to the assessment year 1960-61. [633 - C]

Indian Molasses Co. (P) Ltd. v. Commissioner of Income Tax West Bengal, [1959] 37 I.T.R. 66, Commissioner of Income Tax, Calcutta v. Anderson Wright Ltd., [1962] 46 I.T.R. 715, Commissioner of Income-Tax, West Bengal - I v. Indian Molasses Co. P. Ltd., [1970] 78 I.T.R. 474 and Commissioner of Income-Tax, Kanpur v. Lakshmi Ratan Cotton Mills Co. Ltd., [1976] 104 I.T.R. 319 distinguished.

2. A finding of fact has been recorded in the instant case by the Appellate Assistant Commissioner, and thereafter confirmed in appeal by the Appellate Tribunal, that tax had been deducted at source by the assessee when making payment of its contributions to the premium due on the life policies. That finding of fact was never challenged and this Court cannot permit it to be assailed now. [633 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1404 of 1973.

From the Judgment and Order dated 17.2.1971 of the Calcutta High Court in Income Tax Reference No. 148 of 1965.

S.T. Desai, and Miss A. Subhashini for the Appellant. A.K. Sen, T.A. Ramachandran and D.N. Gupta for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave is directed against the judgment of the Calcutta High Court answering the following question of law against the Revenue on a reference made by the Income-tax Appellate Tribunal :

> "Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the difference between Rs. 2,09,920.88 np. and the amount that had been allowed by the Appellate Assistant Commissioner was a business expenditure incurred by the assessee in the relevant previous year and in allowing the same as a deductible expenditure"?

The assessee, who is the respondent before us, carries on business as Electrical Engineers and Contractors with its Head Office in Calcutta and branches in different parts of the country. The assessee put into effect a Pension and Life Assurance Plan for its European employees in about the year 1948. Pursuant to the Plan it took out policies with the Scottish Widows' Fund and Life Assurance Society in the name of those employees. Under the Plan rules were framed, and the assessee paid his part of the contribution to the premium in respect of the policies taken with the Society. The employees whose lives were insured also paid their portion of the premium and thereupon became Plan Members. The original rules under the Plan enabled the assessee to obtain receipt of the moneys assured in certain circumstances and the assessee had also a right to direct a particular mode of disposal of the funds of the Plan. The assessee claimed a deduction every year of the sums paid by it by way of its contribution to the premium in respect of the said policies. Originally, the amount so contributed by the assessee towards payment of the premium was allowed by the Income-tax Department as a deductible expense. For the first time, however, the Income-tax Officer disallowed the claim in respect of the assessment year 1956-57. On appeal by the assessee against the assessment, the Appellate Assistant Commissioner found that the assessee had treated its contribution to the premium as part of the salary of the respective employees on whose lives the policies had been taken and had also deducted tax at source from the salary, and the contributions made by the assessee constituted a revenue expenditure falling within the terms of cl. (xv) of sub-s. (2) of s.10 of the Indian Income Tax Act 1922. The Appellate Assistant Commissioner, however, dismissed the appeal on the ground that the provisions of cl.(c) of sub-s. (4) of s.10 of the Act barred the allowance claimed by the assessee in as much as no effective arrangements had been made by the assessee to secure that tax would be deducted at source from the amounts paid finally to the employees by the Society in terms of the policies. The Income-tax Appellate Tribunal allowed in part the second appeal preferred by the assessee, holding that all the contributions made in the relevant year by the assessee see to the premium on the life policies of the Plan Members were not allowable a- deductions in the hands of the assessee and what was allowable were the contributions made by the assessee to the policies of such employees who had actually been paid pensionary and retirement benefits by the Society.

After completing the assessment for the year 1956-57, the Income-tax Officer reopened the assessments of the assessee for the assessment years 1948-49 to 1955-56 under s. 34 of the Act and disallowed the deductions which had been allowed earlier. On appeal by the assessee against the several assessment, the Appellate Assistant Commissioner followed the approach adopted by the Appellate Tribunal in the appeal for the assessment year 1956-57, and allowed the deductions claimed in respect of payments made by the assessee on policies respecting which payments had been made by the Society to the employees in those years.

Subsequently, the relevant rules under the Plan which were construed as enabling the assessee to receive the moneys assured or to enjoy the power of control over disposal of the Fund were amended on December 21, 1957 by the Board of Directors of the assessee. In the result, the rules now provided that the amounts due under the policies would be paid to the Plan Members entitled thereto. The assessee was left with no control over the moneys.

For the assessment year 1959-60, with which we are concerned, and for which the relevant previous year is the year November 1, 1957 to October 31, 1958, the assessee claimed a deduction of all the contributions made by it towards the payment on the policies. The Income-tax Officer allowed Rs. 27,069, being the contribution made in the relevant previous year, on the footing that the offending rules had been amended, but he did not allow the claim in respect of contributions made in earlier years. The assessee appealed against the disallowance of the claim respecting contributions made in earlier years. Before the Appellate Assistant Commissioner, a statement was filed by the assessee showing the total contribution made by the assessee to the Pension Fund, and the payment made by the Society in the assessment years 1959-60 and 1960-61 amounting to L8932-7-9 and L3315-8-3d. The Appellate Assistant Commissioner allowed these amounts only and rejected the remaining claim. The assessee filed a second appeal before the Income Tax Appellate Tribunal and restricted the claim to the amount that stood disallowed out of Rs. 2,09,920.88 after deducting therefrom the equivalent of the two sterling payments. The assessee contended that on amendment of the rules the amount representing the balance out of Rs. 2.09,920.88 was liable to be considered as an outgoing from the assessee during this year and should, therefore, be considered as an allowable business expenditure. The appeal was allowed by the Appellate Tribunal, which held that the deductions were permissible under cl. (xv) of sub-s.(2) of s.10 of the Act and cl.(c) of sub-s. (4) of s. 10 of the Act did not come in the way.

At the instance of the Commissioner of Income-tax, the Appellate Tribunal made a reference to the Calcutta High Court for its opinion on the question of law set forth earlier the High Court has answered the question of law in favour of the assessee and against the Commissioner of Income-tax.

In this appeal, learned counsel for the Commissioner of Income-tax contends that the expenditure cannot be said to have been incurred during the accounting year relevant to the assessment year 1959-60 in as much as the assessee had made payments by way of contribution to the premium in earlier years and no part of the amount in question could be said to have been paid in the relevant accounting year. Learned counsel has cited Indian Molesses Co. (P) Ltd. v. Commissioner of Income-Tax, West Bengal, [1959] 37 I.T.R. 66, Commissioner of Income-Tax, Calcutta v. Anderson Wright Ltd., [1962] 46 I.T.R. 715, Commissioner of Income-Tax, West Bengal-I v- Indian Molasses

Co. P. Ltd., [1970] 78 I.T.R. 474 and Commissioner of Income Tax, Kanpur v. Lakshmi Ratan Cotton Mills Co. Ltd., [1976] 104 I.T.R. 319. The contention appears to us to be without substance. It is true that the payments were made as contributions to the premium in the earlier years. But they were made at a time when the rules permitted the assessee to receive back the amounts contributed by it under the Plan. According to the construction put on the rules lt was deemed that the assessee continued to retain its hold on those amounts. It cannot be said then that when those payments were made they could be regarded as expenditure laid out or expended within the terms of cl. (xv) of subs.(2) of s.10 of the Act. The control over the moneys passed on December 21, 1957 when pursuant to a resolution by the Board of Directors the rules were revised and amended. On that day, payments made earlier over which, under the original rules, the assessee had maintained its control, now passed from that control to the Plan Members. The entire amount must be regarded as having been expended by the assessee during the accounting period relevant to the assessment year 1959-60. In the circumstances, the cases relied on by learned counsel for the Commissioner of Income- tax can be of no assistance to the Revenue.

It was further contended by learned counsel for the Commissioner of Income-tax that the bar of cl.(c) of sub- s.(4) of S.10 of the Act operated in the instant case as there was no scope for assuming that tax had been deducted at source by the assessee. It appears to be too late in the day for such a contention, because a finding of fact has been recorded by the Appellate Assistant Commissioner, and thereafter confirmed in appeal by the Appellate Tribunal, that tax had been deducted at source by the assessee when making payment of its contributions to the premium due on the life policies. That finding of fact was never challenged, and we cannot permit lt to be availed now.

In the result, we hold that the High Court is right in answering the question referred to it in the affirmative, in favour of the assessee and against the Commissioner of Income-tax.

The appeal is dismissed with costs.

N.V.K. Appeal dismissed.