

Supreme Court of India

Commissioner Of Income Tax vs Dalmia Magnesite Corpn., Salem on 20 March, 1997

Equivalent citations: 1999 96 CompCas 792 SC, 1999 236 ITR 46 SC, JT 1998 (8) SC 13, (1998) 9 SCC 166

Bench: S Agrawal, G Pattanaik

ORDER

1. The Revenue has filed these appeals against the judgment of the Madras High Court dated 2-11-1997 in TCs Nos. 147, 146, 171 and 240 of 1974. The appeals have been filed on the basis of certificate of fitness granted by the High Court under Section 261 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The High Court has, however, granted certificate to the Revenue only in respect of the judgment in TC No. 147 of 1974 because the questions referred to in that case alone were answered against the Revenue. In the other three tax cases the questions referred to were answered in favour of the Revenue and certificate of fitness was granted to the assessee. Under a misapprehension appeals have also been filed by the Revenue against the judgment in Tax Cases Nos. 146, 171 and 240 of 1974. The said appeals are dismissed as not maintainable. We would confine ourselves to the appeal against the judgment in Tax Case No. 147 of 1974 wherein the following two questions were referred to the High Court for its opinion by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal").

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that there was no mistake apparent from record in the grant of development rebates and that the Income Tax Officer had no jurisdiction to pass a rectification order under Section 155(5) of the Income Tax Act, 1961 to withdraw the Development Rebate allowed therein?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Income Tax Officer's rectification order was really one under Section 155(5) of the Income Tax Act, 1961 and that therefore the assessee's appeal against such order was competent and maintainable in law? The questions relate to Assessment Years 1960-61 and 1961-62.

2. M/s. Dalmia Magnesite Corporation, Salem, the assessee herein, was a partnership firm having been constituted on 7-11-1956. Originally it was having three partners, namely (7) M/s. Orissa Cement Ltd., (2) M/s. Dalmia Cement Ltd., and (3) M/s. Magnesite Corporation of India Ltd. Each partner had one-third share. The firm was established as an industrial undertaking for prospecting magnesite ores and manufacture of lead burnt magnesite. Production commenced on 1-1-1959. The previous year for the Assessment Year 1960-61 was the period from 1-7-1958 to 30-6-1959. On 16-6-1959 there was a change in the Constitution of the firm and two of the partners, viz., M/s. Orissa Cement Ltd. and M/s. Dalmia Cement Ltd. retired from the firm and M/s. Dalmia Cement (Bharat) Ltd., became a partner. In the reconstituted firm, the share of the M/s. Magnesite Corporation of India Ltd., continued to be one-third while that of M/s. Dalmia Cement (Bharat) Ltd. was two-thirds. Under a scheme framed by the Madras High Court by order dated 16-11-1962 in Company Petition No. 46 of 1962 the assets of M/s. Magnesite Corporation of India Ltd., came to be vested in M/s. Dalmia Cement (Bharat) Ltd., and the Magnesite Corporation of India Ltd., became a wholly owned subsidiary of M/s. Dalmia Cement (Bharat) Ltd., with effect from 1-1-1963. As a result

the shareholding of the partners in the assessee firm changed and the share of Magnesite Corporation of India Ltd. was reduced to one-tenth while that of M/s. Dalmia Cement (Bharat) Ltd., was increased to nine-tenths. A scheme for amalgamation of the two companies (partners in the assessee firm) was submitted before the Madras High Court in Company Petition No. 27 of 1964 filed under Section 394 of the Companies Act, 1956. The said scheme was approved by the High Court by order dated 10-7-1964 with effect from 1-1-1964. Under the said scheme the undertaking of M/s. Magnesite Corporation of India Ltd. vested in and became the property of M/s. Dalmia Cement (Bharat) Ltd., as on and from 1-1-1964 and M/s. Magnesite Corporation of India Ltd. without winding up, stood dissolved on 1-1-1964. The assessee had obtained the benefit of development rebate during the Assessment Years 1960-61 and 1961-62 under Section 10(2)(vi-b) of the Income Tax Act, 1922. On 23-12-1967, the Income Tax Officer in exercise of his powers under Section 155(5) of the Act passed orders withdrawing the development rebate that was allowed to the assessee in respect of Assessment Years 1960-61 and 1961-62. The said order was affirmed by the Appellate Assistant Commissioner on appeal. On further appeal the Tribunal decided in favour of the assessee on the view that there was no mistake apparent from record in the grant of development rebate and that the Income Tax Officer had no jurisdiction to pass a rectification order under Section 155(5) of the Act to withdraw the development rebate allowed therein. At the instance of the assessee the two questions mentioned above were referred by the Tribunal to the High Court for its opinion. While dealing with the first question the High Court has held that in order that Clause (i) of Sub-section (5) of Section 155 of the Act may be attracted there must be a sale or a transfer of the plant installed by the assessee and that such transfer must be by the assessee and that in the present case it could not be said that there has been a transfer by the assessee of the plant or machinery and that any change in the ownership of the assets had been effectuated by virtue of an order passed by the High Court in the company petition whereby the rights of one of his partners in the assets were vested in the other partner. According to the High Court this could, by no stretch of imagination, be treated as a transfer by the assessee of the plant and machinery and, therefore, Section 155(5) could not be attracted and the order passed by the Income Tax Officer rectifying the original assessment order under Section 155(5) was not sustainable. On the second question the High Court has held that in view of the specific provision made in Section 155(5) for rectification of assessment orders, the said provision alone could be invoked and the general provision in Section 154 of the Act was not applicable.

3. Dr Gauri Shankar, learned Senior Counsel appearing for the Revenue in support of the appeal, has urged that in the absence of the winding up of M/s. Magnesite Corporation of India Ltd., the said company had continued to exist and, therefore, it could not be said that the assessee had ceased to exist on 1-1-1964. The said contention of the learned counsel, however, runs against paragraph 8 of the Scheme, approved by the Madras High Court in Company Petition No. 27 of 1964, whereunder it is stated thus: "The Magnesite Corporation of India Ltd., will without winding up stand dissolved on the effective date."

4. The effective date was 1-1-1964. In view of the said provision in the scheme M/s. Magnesite Corporation of India Ltd., stood dissolved on 1-1-1964. This provision in the scheme is not open to challenge in these proceedings. It must, therefore, be held that on 1-1-1964 only one partner of the assessee firm viz. Dalmia Cement (Bharat) Ltd. was left and since a partnership could not continue

with one partner the assessee firm should be treated to have stood dissolved on 1-1-1964.

5. In the facts and circumstances of this case we do not find any infirmity in the impugned judgment of the High Court whereby the two questions referred to it for opinion have been answered against the Revenue on the basis that in view of the special provision for rectification of an assessment order contained in Section 155(5) the general power of rectification contained in Section 154 was not applicable and that the power under Section 155(5) could not be invoked in the facts of the present case because there was no transfer of plant by the assessee firm. The appeal, therefore, fails and is accordingly dismissed. No order as to costs.