Supreme Court of India
Commissioner Of Income-Tax, ... vs Ajax Products Ltd. Through Its ... on 8 October, 1964
Equivalent citations: 1965 AIR 1358, 1965 SCR (1) 700
Author: K Subbarao
Bench: Subbarao, K.

PETITIONER:
COMMISSIONER OF INCOME-TAX, MADRAS

Vs.

RESPONDENT:
AJAX PRODUCTS LTD. THROUGH ITS LIQUIDATOR

DATE OF JUDGMENT:
08/10/1964

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

CITATION:
1965 AIR 1358 1965 SCR (1) 700
CITATOR INFO :
RF 1966 SC 870 (8)
RF 1967 SC 193 (18)
R 1968 SC 623 (29)
RF 1969 SC 812 (9)
RF 1969 SC 869 (6)
R 1971 SC 57 (7)
R 1973 SC1016 (13)
RF 1975 SC 67 (7)
F 1976 SC 313 (27)

ACT:
Indian Income Tax Act, 1922, s. 10(2) (vii), 2nd proviso and section 66-No business activity in year of sale of assets-Excess of sale-price over written down values whether can be treated as profits under proviso-Appellate Tribunal making its own estimate of sale-value of buildings-No material for finding--Jurisdiction of High Court to interfere in Reference.

HEADNOTE:
The respondent company went into voluntary liquidation in October 1954. The company had the calendar year as its accounting year and the business of the company was finally

closed before the end of the calendar year 1954. The liquidator sold the company's assets including buildings, plant and the machinery in March 1955 at a price higher than the written down value. The Income-tax Officer taxed the surplus in the assessment year 1956-57invoking the proviso to s. 10(2)(vii) of the Indian Income-tax Act. His order in this respect was upheld by the Appellate Assistant Commissioners well as by the Appellate Tribunal. However the High ,Court held that since there was no business in the accounting year 1955, the proviso was not attracted. It further held that the estimate of the sale value of the buildings made by the Tribunal could not stand as it was based only on surmises. The Commissioner of Income-tax appealed to the Supreme Court.

HELD : (i) The High Court rightly interfered with the Tribunal's estimate of the sale-value of the buildings because the Tribunal's finding was not based on any material. [704 D]

(ii)The legal fiction in the second proviso to s. 10(2) (vii) is a limited fiction for a specific purpose. What are not regarded as profits in commercial practice are under the proviso treated as profits of the previous year. This fiction adequately serves the purpose of the section. The fiction must not be stretched beyond the purpose for which it was enacted. [710 F-G]

Additional Income Tax Officer, Circle I Salem v. E. Alfred, [1962] Supp. 1 S.C.R. 143 and C.I.T. Bombay City v. Amarchand N. Shroff [1963] Supp. 1 S.C.R. 699, referred to.

(iii)If the words of a statute are precise and unambiguous they must be taken as declaring the express intention of the legislature. By giving the natural meaning to every expression used in the proviso in question, the proviso serves the purpose intended by the legislature. To sustain the argument of the Revenue many words have to be read in it which are not there. [706 F; 710 G]

Cape Brandy Syndicate v. I.R.L. [1921] 1 K.B. 64, referred to.

(iv)The expression 'previous year' does not have a different meaning in the proviso from what it bears under the definition in s. 2 (11) (b).

[711 C-D]

Dandhania Kedia & Co. v. C.I.T. [1959] Supp. 1 S.C.R. 204 and Commissioner of Income-tax v. K. Srinivasan and K. Gopalan, [1953] S.C.R. 486, referred to.

(v) Even if a proviso is construed as a substantive clause it must be construed harmoniously with the main enactment. [709 B-C]

701

Commissioner of Income-tax, Mysore, Travancore-Cochin and Coorg v. Indo Mercantile Bank Ltd. [1959] Supp. 2 S.C.R. 256, referred to.

(vi)Before the amendment of 1949 the proviso in question was interpreted by this Court as laying down three conditions

for its applicability, namely, that business should have been carried on by the assessee for the whole or at least a part of the previous year, that the machinery etc. should have been used in the business and that the machinery should have been sold while the business was being carried on and not for the purpose of closing it down or winding it up. The amendment removed only the last condition for the eligibility of the tax. [706 B; 711 F-G]

The Liquidators of Pursa Ltd. v. Commissioner of Income-tax, Bihar [1954] S.C.R. 767 and Commissioner of Income-tax, Madras v. Express Newspapers Ltd. [1964] 53 I.T.R. 250, relied on.

The expressed intention of the legislature is that the surplus mentioned in the proviso is not exigible to tax unless the assessee did business during the accounting year and unless such buildings or machinery were used for the purpose of the business in the said year or at any rate a part of the year, though they were sold after the cessation of the business. If the argument of the Revenue were accepted there would be no time limit for the assessment of the surplus. [708 A-B; 711 E]

In the present case the sale took place in the accounting year 1955 during no part of which business was carried on by the assessee. The proviso was therefore not applicable to the surplus realised on sale.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1098 of 1963.

Appeal by special leave from the judgment dated December 7, 1960, of the Madras High Court in T.C. No. 74 of 1959. C. K. Daphtary, Attorney-General, S. C. Gupte, Solicitor- General, K. N. Rajagopala Sastri, R. H. Dhebar and R. N. Sachthey, for the appellant.

R. Venkataram and R. Gopalakrishnan, for the respondent. R. Gopalakrishnan, for the intervener.

The Judgment of the Court was delivered by Subba Rao J. This appeal by special leave is directed against the judgment of the High Court of Judicature at Madras in Tax Case No. 74 of 1959.

The facts may briefly be stated. The respondent-assessee. The Ajax Products Ltd.-now under liquidation was a public limited company incorporated in 1939 to carry on business in the manufacture and sale of steel and abrasives products. On October 30, 1954, the company, at an extraordinary general body meeting, made a resolution to go into voluntary liquidation and the Liquidator appointed by the said resolution carried on the business till the middle of December 1954 when the business was completely closed down. On March 10, 1955, the Liqui- dator executed a sale deed to Garborundum Universal Limited transferring to the latter the plant, machinery and buildings for a sum of Rs. 10,00,000. The said amount was made up of : (1) Rs. 1,00,000 being the

value of the land, (2) Rs. 1,31,732 being the value of the buildings and (3) Rs. 7,68,268 being the value of plant and machinery. The books of the assessee-company showed that the original cost of the buildings was Rs. 3,46,034. that its written down value was Rs. 1,08,321, that the cost of the machinery was Rs. 3,90,148 and its written down value Rs. 90,098. The total amount of the depreciation allowed in the past for both the buildings and machinery amounted to Rs. 5,36,034. The sale resulted in the excess realisation of Rs. 23,411 over the written down value of the buildings. In the case of the machinery the sale price exceeded the difference between the cost and the written down value and that excess was Rs. 3,00,050.

The relevant assessment year is 1956-57 and the correspond- ing accounting year is the calendar year 1955. The Income- tax Officer held that the sale was the result of collusion between the vendor and the vendee. He came to the conclusion that the assessee had realised the full original cost of the buildings and machinery and on that basis, he treated the sum of Rs. 5,36,034 which was allowed as depreciation in respect of buildings and machinery in the previous years as profits within the meaning of the second proviso to S. 10(2)(vii) of the Indian Income-tax Act, 1922. On appeal, the Appellate Assistant Commissioner held that the valuation fixed in the sale deed executed by the assessee in favour of Carborandum Universal Limited was gen- uine and on that basis, determined the profits liable to tax at a sum of Rs. 3,23,461. He rejected the contention of the assesses that the second proviso to S. 10(2) (vii) was not applicable to his case. Against the order of the Appellate Assistant Commissioner, both the assessee and the Income-tax Officer preferred appeal& to the Income-tax Tribunal. The Tribunal estimated the value of the buildings at a sum of Rs. 2,32,963 which gave a profit on sale of Rs. 1,25,000 instead of Rs. 23,41,1 showed by the assessee. Agreeing with the Appellate Assistant Commissioner, it accepted the figure of Rs. 3,00.050 shown by the assessee as profit on the sale of plant and machinery. In the result, it held that a sum of Rs. 4,25,050 was liable to tax under the second proviso to S. 10 (2) (vii). It also rejected the contention of the assessee that the said proviso was not applicable to its case. On the application filed by the assessee, the Tribunal referred to the High Court the following two questions :

> (1) Whether the assessee was properly assessed on Rs. 4,25,050 as profits under the proviso s. 10(2) (vii) of the Act; and (2) Whether there were materials for the Tribunal estimating the sale value of the buildings at Rs. 2,32,963.

The Divisional Bench of the High Court held that the estimate of the sale value of the buildings by the Tribunal was not based upon any material and therefore could not stand. On that finding, it substituted the figure of Rs. 3,23,461 for the figure of Rs. 4,25,050 in question (1). It further held that as the said machinery and buildings were not used for the purpose of the business of the assessee during any part of the accounting year, the said profits were not liable to tax under the second proviso to s. 10(2)

(vii) of the Act. In the result, it answered the two questions in favour of the assessee. Hence the present appeal has been filed.

Mr. Rajagopala Sastri learned counsel for the Revenue raised before us two points; (1) that/the High Court had no jurisdiction to set aside the finding of fact arrived at by the Tribunal to the effect that

the profit on sale of the buildings was Rs. 1,25,000; and (2) that the second proviso to S. 10(2)(vii) after its amendment by Act 67 of 1949 brings to charge the said deemed profits irrespective of the fact whether the buildings and the machinery were used for the business in the Previous year or not.

To appreciate the first contention, it would be necessary to notice the reasons given by the Appellate Tribunal for differing from the findings of the Appellate Assistant Commissioner and coming to the conclusion which it did in respect of the sale price of the buildings. The Appellate Assistant Commissioner accepted the valuation of the buildings given by the Chartered Engineer. The Tribunal rejected that estimate on the following grounds': (1) the valuation certificate of the buildings and machinery must have been obtained by the vendee company in connection with its flotation for the purpose of its prospectus or statement in lieu of Prospectus; (2) some of the buildings found useless for the vendee's purpose had been left out in the valuation. After rejecting the certificate on the said grounds it assumed that the building cost had gone up steadily since 1939 and on that basis it surmised that the value of the buildings in 1955 would be Rs. 2,32,963.

it would at once be noticed that both the reasons given and the conclusion arrived at by the Tribunal were based on surmises. There is nothing on the record to disclose that the valuation certificate was issued in connection with the flotation of the company; nor is there any material to suggest that any particular building was omitted from the estimate and that those omitted had any marketable value at all What is more, the estimate of the value given by the Tribunal was a pure guess unrelated to the material placed before it. The High Court in dealing with this matter observed :

> "There was however no basis for the finding of the Tribunal, that the assessee should have made a profit of Rs. 1,25,000 by the sale of the buildings. The position was that the Tribunal did not reject the genuineness of the valuation made by the experts and it had no material either for the estimates it purported to make, the estimate either of the sale value or of the profits realised by the sale of the buildings."
>
> As the finding of the Tribunal was not based upon any evidence, the High court was certainly entitled to go behind that finding and answer the question referred to it in the negative.
>
> The second question raised before us turns upon the relevant provisions of the Income-tax Act. The relevant provisions read: "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. (2) Such profits or gains shall be computed after making the following allowances.
>
> (vii)in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, as the case may be, is actually sold or its scrap value:

Provided Provided further that where the amount for which any such building, machinery or plant is sold, (whether during the continuance of the business or after the cessation thereof,) exceeds the written down value, so-much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the Sale took place It may be noticed that in the second proviso, the words "whether during the continuance of the business or after the cessation thereof" were introduced by Act 67 of 1949. The argument of Mr. Rajagopala Sastri may be summarised as follows : File second proviso to S. 10(2) (vii) is a substantive charging section though couched in the form of a proviso and under the said proviso as amended, whenever a sale takes place after the cessation of the business, the surplus must be deemed to be the profits of the year previous to the year in which the sale took place; and for the purpose of the proviso, the business must also be deemed to have been conducted by the assessee during the said previous year. By fiction, the argument proceeded that all the necessary conditions to the exigibility of tax are introduced though in fact none exists. For the assessee, Mr. Venkatram contended that the amendment only released one of the conditions of taxability, namely, that the sale shall not have been held after the cessation of the business. The respondent in Special Leave Petitions (Civil) Nos. 916- 918 of 1964 have filed an application for intervention in this appeal on the ground that the High Court has decided his case following the judgment under appeal. We allowed him to intervene. Mr. Gopalakrishnan appeared for the intervener and supported the arguments advanced on behalf of the respondent in this appeal.

Before we advert to the arguments of the learned counsel for ,the Revenue, it would be convenient to notice the scope of the decisions of this Court dealing with the construction of the said proviso before its amendment. The leading case on this subject is The Liquidators of Pursa Limited v. Commissioner of Income-tax, Bihar(1). There, the question was whether the surplus made by the company on the sale of plant and machinery could be brought into charge as profits under the second proviso to s. 10 (2) (vii) of the Act before the said amendment. This Court held that the said surplus was not taxable as the plant or machinery was not used in the accounting year and also for the reason that the said assets were sold in the process of gradual winding up of the company, i.e., after the cessation of the business. The same question again fell to be considered in a recent decision of this Court in Commissioner of Income-tax, Madras v. Express Newspapers, Ltd. This Court after considering the earlier (1) [1954] S.C.R. 767. (2) (1964) 53 I.T.R. 250 decisions laid down at p. 255 the following three conditions for the applicability of the second proviso :

> "(1) During the entire previous year or a part of it the business shall have been carried on by the assessee;
>
> (2) the machinery shall have been used in the business; and (3) the machinery shall have been sold when the business was being carried on and not for the purpose of closing it down or winding it up;"

It is therefore clear that if the amendment was not there, the present case is directly covered by the said two decisions as the plant and machinery were not used during the accounting year and were sold only after the cessation of the business.

Would the amendment make any difference in the application of the proviso? The rule of construction of a taxing statute has been pithily stated by Rowlatt J. in Cape Brandy Syndicate v. I.R.C.(1) thus:

> "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is 'no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation. Equally important the rule of construction is that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of the legislature. Giving a close scrutiny to the second proviso, it will be clear that by giving the natural meaning to every word used therein, it clearly fits in within the scheme of the entire section. The key expressions in the proviso are : (1) such building, (2) whether during the continuance of the business or after the cessation thereof and (3) 'deemed to be the profits of the previous year'. The words 'such building' have already been given an authoritative interpretation by this Court in the aforesaid two decisions. In the latter decision (Express Newspaper's case) at p. 254, it is observed thus :

> "The adjective "such" refers back to clauses
>
> (iv), (V) (vi) and (vii) of S. 10 (2). Under clause (iv) an allowance is allowed in regard to any premium paid in respect of insurance against risk of damage or destruc-

(1) [1921] 1 K.B. 64 at p. 71.

tion of buildings, machinery, plant, etc. used for the purpose of the business, profession or vocation. Under this clause allowance is allowed only in respect of the machinery used for the purpose of the business. Clauses (v), (vi) and

(vii) refer to such buildings, machinery, plant, etc. used for the purpose of the business. The result is that the second proviso will only apply to the sale of such machinery which used for the purpose of the business during the accounting year."

The words "whether during the continuance of the business after the cessation thereof" were not present in the unamendproviso. In the two decisions cited earlier, in the absence of words, this Court held that to attract the said proviso the chinery shall have been sold before the business was closed . This clause omits that condition for the exigibility of tax.

The third expression 'shall be deemed to be profits of the previous year' in its ordinary connotation, carries a natural meaning with it. Though the surplus contemplated by the proviso is not in the technical sense of the term profits of the previous, year ,it is deemed to be the profits of the previous year. It is a limited fiction for a specific purpose. What are not profits in commercial practice are treated as profits for the purpose of the provisio. This fiction was in existence even before the

amendment .The two decisions of this Court cited earlier laid down the scope of the fiction. In the Express Newspaper's case('), it was held that having regard to s. 10(l) of the Act, the main condition which attracts all the other sub-sections and clauses of the section is at the tax shall be payable by an assessee in respect of profit or gains of the business carried on by him. If the business was carried on by him during the accounting year, this court held that the said surplus, if the other conditions laid down by the provisio were complied with, would be deemed to be the profits of the previous year. One of the important expressions in the provisio is 'previous year'. (Previous Year is defined in s. 2 (I I) (b) to mean in the case of any person, business or company or class of person . business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf.) In the present case, the. previous year is the calender preceding the assessment year deemed profit must therefore relate to the calender year proceding the assessment year .By giving the natural meaning to every (1) (1964) 53 I.T.R 250.

expression used in the proviso, we reach the result namely that the surplus mentioned in the said proviso is not exigible to tax unless the assessee did business during the accounting year preceding the assessment year and unless such buildings or machinery yielding surplus were used for the business in the said year or at any rate part of the year, though they were sold after the lion of the business. To illustrate, an assessee did business during some part of the accounting year 1955 but closed it in October of that year. He used the machinery during some part of the year for the business. He sold it in December. The price realised yielded a surplus within the meaning of the proviso. During the assessment year 1956-57, the said surplus could be brought into charge notwithstanding the fact that the machinery was sold after the cessation of the business. Before the amendment, the said surplus could not be taxed as the sale was subsequent to the cessation of the business. By giving the natural meaning to every expression in the proviso, the proviso serves the purpose intended by the legislature.

Now, let us consider the argument advanced by the learned counsel for the Revenue. In support of the contention that after the amendment the proviso conferred a power on the taxing ,authorities to tax the said surplus even though the assessee did not in fact conduct business during the previous year and though in fact the machinery was not used in the said business during a part of whole of the accounting year, it is said that the proviso is a charging section, that though it is couched in the form of a proviso, it is really a substantive section imposing a charge on the as in respect of the said surplus.

The function of a proviso has been considered by this court in 'Commissioner of Income-tax. Mysore, Travancore-Cochin and Coorg v. Indo-Mercantile Bank Ltd.'(1) It is neatly summarised in the Head Note thus :

> "The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. 'It is a fundamental rule of construction that a proviso

(1) (1959) 36 I.T.R. 1: [1959] Supp. 2 S.C.R. 256.

must be considered with relation to the principal matter to which it stands as a proviso.' Therefore, it is to be construed harmoniously with the main enactment."

There may be cases in which the language of the statute may be so clear that a proviso may be construed as a substantive clause. But whether a proviso is construed as restricting the main provision or as a substantive clause, it cannot be divorced from the provision to which it stands as a Proviso. It must be construed harmoniously with the main enactment. So construed, we have already stated earlier the result that flows from such a construction.

The second contention is that the fiction introduced in the proviso is wide in its scope and if fully worked out, all the conditions laid down in the proviso would be satisfied. If by invoking the fiction, the argument proceeded, there must be deemed to have been a business during the year preceding to the assessment year, by the same fiction, the buildings must be deemed to have been used in that business during that year. For enlarging the scope of the fiction, reliance is placed upon the decision of this Court in 'Additional Income- Officer, Circle 1, Salem and another v. E. Alfred.(1) There, the legal representative of an assessee was assessed to tax after notice under S. 24-B(2) of the Act. As he made a default in the payment of the tax, penalties were imposed upon him under S. 46 (1) of the Act. Under S. 24-B, the Income-tax Officer may proceed to assess the total income of the deceased person as if such legal representative was the assessee. It was argued that after the assessment was made on the legal representative, the fiction came to an end and thereafter, he remained a mere debtor to the department, and therefore, S. 46(1) could not be applied to him. Dealing with that argument, Hidayatullah J. speaking for the Court said :

.lm15 " When a thing is deemed to be something else, it is to be treated as if it is that thing, though, in fact, it is not .... It is in this sense that the legal representative becomes an assessee by the fiction, and it is this fiction, which has to be fully worked out, without allowing the mind 'to boggle'. . . . "

The above decision is of no help to the appellant. There, the statute treated him as an assessee and as he made a default as an assessee, he became liable for the penalty under S. 46(1). The statutory fiction was given full effect.

(1) [1962] Supp. 1 S.C.R. 143.

This Court in Commissioner of Income-tax Bombay City 1, v. Amarchand N. Shroff(1) rightly administered a caution that fictions should not be stretched beyond the purpose for which they were enacted. In that case, the question arose whether under S. 24-B of the Act the Income-tax Officer could levy tax on receipts by the legal representative of the deceased person in the years of assessment succeeding the year of account being the previous year in which such person died. Under s. 24-B the legal personality of the deceased assessee was extended for the duration of the entire previous year in the course of which he died and therefore the income received by him before his death and that received by his heirs and legal representatives after his death but in that previous year became assessable in the relevant assessment year. The Court held that the section was enacted

to bring to tax after the death, income received during his life time. In that context, Kapur J. speaking for the Court observed thus :

> "By section 24-B the legal representatives have, by fiction of law, become assessees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this court in Bengal Immunity Co. Ltd. v. State of Bihar, legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided -in the three sub-sections of s. 24-B and cannot be extended further than the liability for the income received in the previous year."

The fiction in the second proviso is a limited one. The surplus is deemed to be the profits of the previous year. As we have pointed out earlier, it adequately serves the purpose of the section. It was given a limited meaning under the earlier decisions. To sustain the argument of the Revenue, it has to be enlarged in its scope. Many words have to be read into it which are not there. We cannot accept this argument.

It is said that the words 'previous year' need not necessarily be an accounting year wedded to the assessment year and it can be given a different meaning if the context demands it. This Court in Dhandhania Kedia & Co. v. C.I.T.(2) approved of the (1) [1963] Supp. 1 S.C.R. 699.

(2) [1959] Supp. 1 S.C.R. 204, observations of Mahajan J. in Commissioner of Income-tax v. K.Srinivasan and K. Gapalan. (1) The observations of Mahajan are to the following effect :

> ".. . . . For purposes of the charging sections of the Act unless otherwise provided for it is co-related to a year of assessment immediately following it, but it is not necessarily wedded to an assessment year in all cases and it cannot be said that the expression ` previous year' has no meaning unless it is used in relation to a financial year. In a certain context, it may well mean a completed accounting year immediately preceding the happening of a contingency."

Be that as it may, in the present case, in the context, as we have already indicated, there is no reason to give the expression a meaning different from that bears under the definition.

If the argument advanced on behalf of the Revenue were accepted it would lead to some anomalies. By the fiction, if the business must be deemed to be in existence during the previous year and that the buildings sold must be deemed to have been used for the business during that year, the amendment was not necessary. If it existed there could not have been a cessation of it during the previous year. On that reasoning judgment in Pursa's case would have been the other way. If the argument was correct, there would be no time limit for the assessment of the surplus. Whenever a building was sold, whatever might be the time lag, by fiction, the business, as well as the user of the building in that business would be in the -previous year by the year of assessment. We cannot accept a contention yielding such a result unless it is so clearly expressed. Indeed, the expressed intention

of the legislature is the other way. We therefore hold that the amendment only removed one of the conditions for the exigibility of the said surplus to tax namely the cessation of the business and in other respects, the construction put upon the proviso by the earlier decisions of this Court is still good law. In our view, the answers given by. the High Court to the questions propounded are correct.

In the result, the appeal fails and is dismissed with costs. Appeal dismissed.

(1) [1953] S.C.R. 486.