NANDLAL BHANDARI MILLS LTD. Vs COMMISSIONER OF Income Tax, MADHYA PRADESH.

Court: Madhya Pradesh High Court

Date of Decision: Sept. 22, 1961

Acts Referred: Finance Act, 1950 â€" Section 12
Income Tax Act, 1922 â€" Section 66(1)
Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950 â€" Paragraph 2

Citation: (1962) ILR (MP) 651 : (1962) 45 ITR 468 : (1962) JLJ 622

Hon'ble Judges: Dixit, C.J

Bench: Division Bench

Judgement

DIXIT C.J. - In the reference u/s 66(1) of the Income Tax Act, 1922, at the instance of the assessee the four questions of law referred to this

court arise out of a common order of the Income Tax Appellate Tribunal, Bombay, disposing of four appeals relating to the assessment year 1950-

51, 1951-52, 1952-53 and 1953-54, the corresponding accounting years being the years ending on 31st December, 1949, 31st December,

1950, 31st December, 1951, and 31st December, 1952, respectively.

The assessee is a public limited company owning and running a textile mill at Indore and some ginning factories. Till the extension of the Indian

Income Tax Act 1922, to Part B States the company was assessed in Companies Circle, Bombay, in some years as non-resident company and in

some years as a resident company. It was also assessed in the former Indore State under Indore Industrial Tax Rules, 1927. After the extension of

the Indian Income Tax Act to part B States, the company was assessed for the first time for the assessment year 1950-51. In those assessment

years, the assessee asked for the grant of depreciation allowance in respect of its assets such as building, machinery, plant etc. and so the question

of computing the written down value of its assets as on 1st January, 1949, in accordance with the provisions of section 10(5) of the Act read with

the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, arose for determination. In working out the written down value for 1st

January, 1949, the Income Tax Officer applied the Proviso to the second paragraph of the Order of 1950, and took into account the greater of the

deprecation allowance allowed under the Indian Income Tax Act and in the assessments made at Indore. On this basis for the years ending up to

the accounting year 1944, the figures of depreciation allowance under the Indian Income Tax Act were taken and the written down value for 1st

January, 1945, as computed under the Income Tax Act was arrived at. Thereafter for the subsequent four years the depreciation allowed under

the Indore Industrial Tax Rules, 1927, was taken into account under the aforesaid proviso and deducted from the written down value computed

for 1st January, 1945. By this method the written down value of the textile machinery for 1st January, 1949, came to nil. The assessee contended

before the Income Tax Officer that the written down value should be determined only on the basis of the depreciation allowed under the Income

Tax Act as the Removal of Difficulties Order, 1950, was ultra vires. This contention was rejected by the Income Tax Officer.

The contentions were unsuccessfully repeated in appeal before the Appellate Assistant Commissioner, Indore Range. One of the contentions

advanced before the Appellate Assistant Commissioner was that in considering the depreciation allowed in respect of the years up to and inclusive

of 1944, for the purpose of deduction u/s 10(5) (b) of the Act only that depreciation which was actually allowed against the total income should

have been taken into account and not the depreciation computed against the total world income; that if this had been done the depreciation allowed

under the Indore Industrial Tax Rules, 1927, for the years up to and inclusive of 1944 would have been greater than the depreciation for those

years under the Income Tax Act; and that it was this aggregate depreciation allowed under the Indore Industrial Tax Rules, that should have been

deducted in calculating the written down value for 1st January, 1945. The Appellate Assistant Commissioner took the view that the proviso to

paragraph 2 of the Removal of Difficulties Order, 1950, spoke of the depreciation for any year as ""depreciation allowed for any year..... in

the assessment made""; that the word ""assessment"" has been used in the sense of computation of income and there was no ground to limit the word

assessment"" only to cases of assessment of total income and not of the total world income; and that, therefore, the Income Tax Officer was right in

taking into account the depreciation allowance which was deducted in working out the total world income and not merely a proportional

depreciation which was allowed against the total income of the assessee. Accordingly, the Appellate Assistant Commissioner rejected the

contention of the assessee attacking the method by which the Income Tax Officer calculated the written down value for 1st January, 1945. The

contention did not find favour with the Appellate Tribunal also. Rejecting it the Tribunal observed :

The last contention of the assessee is that the Income Tax Officer should not have taken the full depreciation availed of in the preceding years, but

that the depreciation should be apportioned in the same manner as the income brought to assessment. The deduction should only be made in

respect of that depreciation which can reasonably be attributable to the Indian income. We think that the law does not make any distinction as to

the part of income which was brought to assessment under the Indian Income Tax Act. If depreciation has in fact been availed of by the assessee

either under the Indian Income Tax Act or under the Industrial Rules of the State deduction has to be made.

The four questions that the Tribunal has stated for our decision are :

(1) Whether the computation of the written down value of the assets of the applicant in the light of the provisions of the Taxation Laws (Part B

States) (Removal of Difficulties) Order, 1950, is legal and valid ?

(2) Whether the provisions of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, and the subsequent modifications thereof

were valid in law in the light of the provisions of the Indian Income Tax Act, 1922, the Finance Act, 1950, and the Constitution of India ?

(3) Whether the Indore Industrial Tax Rules could be regarded as rule or law of Part B States for the purpose of the said Taxation Laws (Part B

States) (Removal of Difficulties) Order, 1950, and, if so, whether the same are valid in law ? and

(4) Whether the depreciation actually allowed means the depreciation deducted in arriving at the taxable income or in arriving at the world income

?

Shri Chitale, learned counsel for the assessee, did not press the third question. It is, therefore, unnecessary for us to answer it or express any

opinion on it. In regard to the other three questions, it must be stated at outset that they have been framed in very general terms and that is because

the reference was made some months before the question of the validity of the Taxation Laws (Part B States) (Removal of Difficulties) Order,

1950, and especially of the explanation to paragraph 2 of the Order, was set at rest by the Supreme Court in Commissioner of Income Tax v.

Dewan Bahadur Ramgopal Mills Ltd. After the Supreme Courts decision the controversy in this reference only centres round the question whether

in calculating the written down value as for 1st January, 1945, the depreciation actually allowed under the Income Tax Act against the total income

should have been taken into account or whether the depreciation allowance which was deducted in working out the total world income for the

years up to and inclusive of the accounting year 1944, should have been taken into consideration. It is with reference to this precise question that

the learned counsel for the assessee addressed before us arguments on the construction of the Explanation to paragraph 2 of the Removal of

Difficulties Order, 1950, and on the validity of the proviso to that paragraph.

Now, u/s 10 (2) (vi) the depreciation allowed is a percentage on the written down value of the machinery, plant etc. According to section 10(5)

(b) of the Act, ""written down value"" means - ""in the case of assets acquired before the previous year the actual cost to the assessee less all

depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income Tax

Act, 1886 (II of 1886), was in force"". Some difficulty was felt in applying this clause to an assessee in a Part B State. For, before the extension of

the Income Tax Act to Part B States, no depreciation could have been allowed to an assessee in a Part B State under the Income Tax Act or

under any Act repealed thereby. In order to remove this difficulty, the Central Government issued an order, namely, the Taxation Laws (Part B

States) (Removal of Difficulties) Order, 1950, in exercise of the powers conferred by section 12 of the Finance Act, 1950. Paragraph 2 of that

Order is as follows :

In making any assessment under the Indian Income Tax Act, 1922, all depreciation actually allowed under any laws or rules of a Part B State

relating to Income Tax and super-tax, or any law relating to tax on profits of business, shall be taken into account in computing the aggregate

depreciation allowance referred to in sub-clause (c) of the proviso to clause (vi) of sub-section (2) and the written down value under clause (b) of

sub-section (5) of section 10 of the said Act :

Provided that where in respect of any asset, depreciation has been allowed for any year both in the assessment made in the Part B State and in the

taxable territories, the greater of the two sums allowed shall only be taken into account.

Explanation. - For the purpose of this paragraph, the expression all depreciation actually allowed under any laws or rules of Part B State means

and shall be deemed always to have meant the aggregate allowance for depreciation taken into account in computing the written down value under

any laws or rules of a Part B State or carried forward under the said laws or rules"".

In the case of Commissioner of Income Tax v. Dewan Bahadur Ramgopal Mills Ltd., the Supreme Court upheld the validity of this paragraph. In

that case, it was argued that the condition for the exercise of power u/s 12 of the Finance Act, 1950, was the existence of any difficulty in giving

effect to the provisions of the Acts, rules or orders extended by section 3 of the Finance Act, that no difficulty existed in giving effect to the

provisions of section 10(2) (vi) and section 10(5) (b) of the Income Tax Act, and that, therefore, the Explanation to paragraph 2 of the Order was

invalid. The Supreme Court repelled this contention after pointing out how there was a difficulty in the application of section 10(5) (b) to an

assessee in a Part B State and the object of the paragraph and the Explanation thereto. It was further observed that it was for the Central

Government to determine if any difficulty of the nature indicated in section 12 of the Finance Act, 1950, had arisen, and that Parliament had left the

matter to the executive. In view of this decision of the Supreme Court, the various grounds on which the validity of the Order of 1950 was

challenged before the taxing authorities do not survive and in so far as the questions stated by the Tribunal require an answer to those contentions

they must be answered by saying that the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, is valid.

It is not disputed that the proviso to paragraph 2 of the order applies in the present case. Shri Chitale, learned counsel for the assessee, however,

argued that for the purpose of that proviso the depreciation allowed for the years up to and inclusive of 1944 in the assessments made under the

Income Tax Act was the depreciation actually allowed u/s 10(5) and not the allowance for depreciation taken into account against the total world

income. It was said that in any assessment under the Income Tax Act the depreciation to be deducted u/s 10(5) (b) from the actual cost would be

the depreciation actually allowed; that the proviso also said that the greater of the depreciation allowed in the assessments made in the Part B State

and in the taxable territories ""shall only be taken into account""; that the word ""allowed"" meant actually allowed; and that this construction of the

word ""allowed"" could not be wiped out by giving to the word ""assessment"" the wider meaning of ""computation of the total world income"" so as to

take ""allowed"" as meaning ""considered"" only. It was further said that so to construe the proviso would be to render the explanation otiose and to

modify the substantive provision in section 10(5) (b) about the deduction of the ""depreciation actually allowed"" in an assessment made under the

Income Tax Act in respect of the years prior to 1950 when the Act came into force in Part B States, and thus the proviso would be invalid.

Learned counsel proceeded to say that the explanation was applicable only to the depreciation allowance in computing the written down value

under any laws or rules of a Part B State in an assessment made in a Part B State under those laws or rules; that in such a case what was to be

allowed was the aggregate allowance of depreciation taken into account in computing the written down value under any law or rules of a Part B

State; and that the explanation could not be pressed in service in computing the written down value u/s 10(5) (b) in an assessment made under the

Income Tax Act prior to 1950. In reply, the learned Advocate-General said that in the years of assessment after the extension of the Income Tax

Act to part B states the entire income is taken for tax and, therefore, the entire depreciation has to be taken into account for determining the written

down value as on 1st January, 1949, and the aggregate allowance for depreciation in assessments made under he Income Tax Act prior to 1950

can only be not the depreciation actually allowed in the assessments but the depreciation taken into account as against the total world income.

In our judgment, the contention of the learned counsel for the assessee must be given effect to. u/s 10(2) (vi) of the Act an allowance in respect of

depreciation of buildings, machinery, plant, etc. is allowed in the computation of profits or gains. The depreciation allowed is a percentage on the

written down value which is computed in the manner laid down in section 10(5) (b). The written down value means, in the case of assets acquired

in any year before the accounting year, the actual cost less the aggregate of all depreciation actually allowed to the assessee under the Income Tax

Act or any Act repealed thereby. As the Supreme Court pointed out in Commissioner of Income Tax v. Dewan Bahadur Ramgopal Mills Ltd. the

loss relating to Income Tax or super-tax on profits of business enforced in various Part B States were repealed by the Finance Act, 1950, and not

by the Income Tax Act; and therefore ""there was a difficulty in allowing depreciation to an assessee in a Part B State in the first year of assessment

under the Indian Income Tax Act. This difficulty was sought to be removed by paragraph 2 of the Removal of Difficulties Order, 1950"". The effect

of the substantive part of paragraph 2 of the Order of 1950 without the explanation is that in computing the written down value u/s 10(5) (b) of the

Act and in order to see that the aggregate of all depreciation allowance does not exceed the original cost of the assets to the assessee, ""all

depreciation actually allowed"" under a Part B States law or rule shall be taken into account. It must be noted that the Explanation to paragraph 2

was added in 1956. It will be seen that where depreciation has been allowed under the Income Tax Act, then u/s 10(5) (b) ""all depreciation

actually allowed"" under the Act has to be deducted from the actual cost for reaching the written down value. Likewise paragraph 2, as it stood till

the time of the introduction of the explanation thereto in 1956, provided that where depreciation was allowed under any laws or rules of a Part B

State, then all depreciation actually allowed under those laws or rules shall be taken into account in computing the written down value u/s 10(5)

(b). The proviso to paragraph 2 deals with a case where prior to the extension of Income Tax Act to Part B States the same asset had been

allowed depreciation both in the part B State concerned and in the taxable territories in India, and lays down that the higher of the two allowances

shall be taken into account. In other words, the proviso says that where in respect of any asset depreciation has been allowed for any year under

the Income Tax Act and the same asset was allowed depreciation under the Part B States law, the higher of the two allowances shall be taken into

account in computing the written down value u/s 10(5) (b) in the assessments made under the Income Tax Act after its extension to Part B States.

Now, the depreciation in respect of an asset under the Indian Income Tax Act would clearly be the one actually allowed as laid down in section

10(5) (b) and the depreciation under the Part B States law would also be the one actually allowed as provided in the substantive part of paragraph

2. It follows, therefore, that under the proviso it is the greater of the two depreciation allowances actually allowed that has to be taken into account

in computing the written down value u/s 10(5) (b). The word ""allowed"" used in the proviso thus takes its colour from the expression ""all

depreciation actually allowed to him under this Act"" as used in section 10(5) (b) and the words ""all depreciation actually allowed under any laws or

rules of a Part B State"" used in paragraph 2. The Appellate Assistant Commissioner and the Tribunal adopted this construction of the word

allowed"" as used in the proviso; but inconsistently with this they held that the words ""in the assessment made"" used in the proviso indicated that it

was the greater of the depreciation not actually allowed but taken into account against the total world income that was to be taken into account in

computing the written down value u/s 10(5) (b) after 1950. We are unable to agree with this view. The proviso has to be read with the substantive

part of paragraph 2 and section 10(5) (b) and is concerned only with laying down the rule that the greater of the two depreciation allowances shall

be taken into account. So read, there cannot be any doubt that it is the higher of the two depreciation allowances actually allowed that has to be

taken into account. If that is the clear meaning of the proviso and of the word ""allowed"" used therein, then it would be against all canons of

construction to give the words ""assessment made"" used in the proviso a constrained meaning and to say that contrary to what has been provided in

section 10(5) (b) and the substantive part of paragraph 2 with regard to the deduction of all depreciation actually allowed from the cost of the

asset, the proviso meant that it was not all depreciation actually allowed but all depreciation taken into account against the total world income that

should be considered. It will be noticed that on the construction put by the taxing authorities on the words ""assessment made"", the Explanation to

paragraph 2 is rendered altogether superfluous. We have no doubt that under the proviso it is the greater of the two depreciation allowances

actually allowed that has to be taken into account.

This meaning of the proviso is in no way altered by the explanation so far as the taking into account of all depreciation actually allowed under the

Income Tax Act in computing the written down value u/s 10(5) (b) is concerned. The explanation has a limited purpose. It says in plain words that

for the purpose of paragraph 2 the expression ""all depreciation actually allowed under any laws or rules of a Part B State"" shall mean and shall be

deemed always to have meant the aggregate allowance of depreciation taken into account in computing the written down value under a Part B

States laws or rules. It does not touch the provision in section 10(5) (b) with regard to the deduction of all depreciation actually allowed under the

Income Tax Act from the actual cost of the asset in an assessment on an assessee in a Part B State under the Indian Income Tax Act prior to the

extension of the Income Tax Act to Part B States in 1950. The explanation cannot, therefore, be invoked for construing the expression ""all

depreciation actually allowed to him under this Act"" used in section 10(5) (b) of the Act.

Learned counsel for the assessee suggested that if the Central Government had issued an order u/s 12 of the Finance Act, 1950, saying that for the

purpose of section 10(5) (b) the expression ""less all depreciation actually allowed to him under this Act, or any Act repealed thereby"" used therein

would in an assessment made under the Act mean the depreciation allowance taken into account in computing the total world income, such an

order would have amounted to an amendment of section 10(5) (b) and would have been invalid, and consequently a construction to that effect of

the proviso would render it invalid. It is quite true that what cannot be legally done cannot be achieved by construing a provision. But in the view

we have taken of the clear language of the proviso and the explanation, it is unnecessary to consider this contention.

The object of this explanation has been pointed out by the Supreme Court in Commissioner of Income Tax v. Dewan Bahadur Ramgopal Mills

Ltd. thus :

The basic and normal scheme of depreciation under the Indian Income Tax Act is that it decreases every year, being a percentage of the written

down value which in the first year is the actual cost and in succeeding years actual cost less all depreciation actually allowed under the Income Tax

Act or any Act repealed thereby etc. The Hyderabad Income Tax Act not having been repealed by the Income Tax Act but by the Finance Act,

1950, there was a difficulty in allowing depreciation to an assessee in a Part B State in the first year of assessment under the Indian Income Tax

Act. This difficulty was sought to be removed by paragraph 2 of the Removal of Difficulties Order, 1950. If, however, depreciation actually

allowed under the Hyderabad Income Tax Act was taken into account in computing the aggregate depreciation allowance and the written down

value, an anomalous result would follow as in the present case, namely, depreciation allowance to be allowed to the assessee in the accounting

year under the Indian Income Tax Act would be more than what was allowed in previous years under the Hyderabad Income Tax Act. This would

create a disparity and be against the scheme of the Indian Income Tax Act. It was therefore necessary to explain paragraph 2 of the Removal of

Difficulties Order, 1950, to assimilate or harmonise the position regarding depreciation allowance, and the Explanation added in 1953 or 1956 was

obviously intended to remove the difficulty arising out of the disparity of disharmony.

The explanation is thus intended to prevent the anomalous result of a depreciation allowance being allowed to an assessee in the accounting year

under the Indian Income Tax Act higher than what was allowed to him in previous years under a part B States Act. The explanation brought about

conformity with the principle that the depreciation decreases every year. By it the assimilation and harmony that was secured was that the

depreciation allowance allowed to an assessee in an accounting year under the Indian Income Tax Act after its extension to Part B States would be

less than the depreciation allowed to him in the previous years under the Part B States Act. It is not as if section 10(5) (b) already embodied the

principle contained in the explanation to paragraph 2 of the Order of 1950 and the explanation was introduced in the Order for bringing paragraph

2 in harmony with section 10(5) (b). So far as the computation of the written down value of an asset u/s 10(5) (b). So far as the computation of the

written down value of an asset u/s 10(5) (b) in an assessment on an assessee in a Part B State under the Income Tax Act prior to 1950 is

concerned, the rule remains that it is all depreciation actually allowed to the assessee under the Act that is to be deducted from the actual cost of

the asset. The Income Tax authorities, therefore, were in error in holding that the depreciation that could be allowed in respect of the years up to

and inclusive of 1944 for the purpose of deduction u/s 10(5) (b) of the Act was the depreciation computed against the total world income and not

the actual depreciation allowed against the total income.

For the foregoing reasons, we answer the first question by saying that the depreciation allowed for the years up to and inclusive of 1944 in the

assessment made in the taxable territories would be the depreciation which was actually allowed against the total income and not the depreciation

computed against the total world income. The second question is concluded by the decision of the Supreme Court in Commissioner of Income Tax

v. Dewan Bahadur Ramgopal Mills Ltd. and our answer to it is in the affirmative. The third question was not pressed and, therefore, no answer is

necessary. The answer to the fourth question is that the depreciation ""actually"" allowed means the depreciation deducted in arriving at the taxable

income. The assessee shall have costs of this reference. Counsels fee is fixed at Rs. 200.

Questions answered accordingly.