Commissioner of Income Tax Vs Indian Fruits Ltd.

Court: Andhra Pradesh High Court

Date of Decision: Oct. 15, 2014

Acts Referred: Companies Act, 1956 â€" Section 209
Income Tax Act, 1961 â€" Section 2(22)(e), 260A

Citation: (2014) 369 ITR 581

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: S.R. Ashok, Senior Standing Counsel, Advocate for the Appellant; K. Neeraja for K.K. Viswanatham, Advocate for the Respondent

Judgement

Challa Kodanda Ram, J.
This appeal is filed by the Revenue under section 260A of the Income-tax Act, 1961 (for short, ""the Act""),

raising the following two substantial questions of law, said to be arising from the orders of the Income-tax Appellate Tribunal, Visakhapatnam (for

short, the Tribunal) dated October 9, 2002, in I.T.A. No. 414/H/1994:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the amount advanced to the

shareholder cannot be considered as deemed dividend within the purview of section 2(22)(e) of the Income-tax Act, 1961?

2. Whether the finding of the Income-tax Appellate Tribunal that lending of the amount to the shareholder is in the ordinary course of its business

and that the activity of lending of money constitutes substantial part of the business of the company are based on material on record?

The facts are that the assessee is a company which is holding 100 per cent, stake in another company under the name ""M/s. Anam Machinery

Fabricators Ltd."" During the financial year 1992-93 corresponding to the assessment year 1993-94, the assessee was assessed to a sum of Rs.

27,59,932 towards deemed dividend received from the subsidiary company. The said amount represents the undistributed dividend of the

subsidiary company. In view of the fact that the assessee-company borrowed certain amounts from the subsidiary company, the said amount was

sought to be taxed in the hands of the assessee by applying the provisions of section 2(22)(e) of the Act. The appeal filed by the assessee with the

first appellate authority ended up in dismissal and, thereafter, it filed further appeal to the Tribunal. The Tribunal, after analysing the facts on record,

gave a categorical finding that there were mutual transactions between the parties in the normal course of business and the subsidiary company had

also one of its objects, as lending money, and for the monies lent to the assessee-company, the subsidiary company had charged interest at the rate

of 13 per cent, per annum. Taking all these aspects into consideration, the Tribunal has set aside the order of the Assessing Officer. The

Department is in appeal raising the substantial questions of law said to be arising from the orders of the Tribunal referred to in paragraph (1) above.

2. Sri S.R. Ashok, learned senior counsel for the Department, by making a reference to the orders of the Tribunal submits that there was only one

single transaction in the whole year and further it was not the business of the subsidiary company to lend monies and there was no other transaction

of lending money to any other entity. He would also submit that the contention of the Department that this being the loan transaction, the resolution

of the board of the directors of the subsidiary company was brought up for the purpose of assessment, was not adverted to and believed by the

Tribunal. He has relied upon the judgment of the Bombay High Court in Walchand and Co. Ltd. Vs. Commissioner of Income Tax, Bombay City,

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3. On the other hand, Ms. K. Neeraja, learned counsel for the respondent-assessee supports the order of the Tribunal and has specifically drawn

the attention of this court to the findings of fact recorded by the Tribunal. She has placed reliance upon the judgment of the Supreme Court in M.

Janardhana Rao Vs. Joint Commissioner of Income Tax, .

4. We feel it necessary to notice the observations made by the Tribunal at paragraph 9 of its order which read as under:

On an over all analysis of the facts and circumstances of the case along with the papers and documents placed before us and the relevant

provisions of different statutes, we observe as follows:

Although the assessment order and the order of the Commissioner of Income-tax (Appeals) appear to have been made on a sound footing but on

a critical analysis of the provisions of the statute and on a perusal of the written submission filed by the learned authorised representative of the

assessee, after hearing the vociferous argument made by the senior counsel, Mr. K.K. Viswanathan, in this regard, we are unable to ignore the

technicalities of law clinching in favour of the assessee. Firstly, because, as discussed above, clauses 9 and 10 of the objects clauses of the

memorandum of association of M/s. Anam Machinery Fabricators Ltd. authorise that company to accumulate funds, to lend, invest or otherwise

employ monies belonging to or entrusted to the company in securities and shares and other investments; to lend and advance money or give credit

to such person, firms or companies and on such terms as may seem expedient and to give guarantees or become sureties for any such person,

firms or companies, the income of such concern. Although, it was never raised by both the sides, analysing further in clause to Explanation 3 to

section 2(22)(e), we found that ''concern'' means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a

company. Hence, the technicalities of all these provisions fully favour the stand of the assessee which simply cannot be brushed aside just with a

purpose to make addition on the ground of deemed dividend.

In addition to all this, the logical argument of the senior counsel on behalf of the appellant-company further substantiate his stand on the ground that

the appellant-company changed their accounting system from cash to mercantile with effect from June 1, 1988, in consonance with the provisions

of section 209 of the Companies Act and offered to tax on mercantile basis thereafter. We also agree with his point that the term "substantial

interest" and ''substantial business'' not having been defined in the Act has to be considered only on the basis of 20 per cent, of the income as per

clause (b) of Explanation 3 to section 2(22)(e) of the Act.

On an over all consideration of the facts and circumstances of the case read with statutory provisions of the Income-tax Act as well as the

Companies Act and the documents relied by the appellant, we do not find any alternative than to delete this addition in favour of the assessee

because of the technicalities adumbrated in the respective statutes which were strictly complied with by the assessee-company.

5. In the light of the findings recorded by the Tribunal and in view of the fact that there is no challenge to the findings recorded by the Tribunal by

raising a plea that such findings of fact are perverse the findings of fact as recorded by the Tribunal are required to be accepted as final and binding

on the court under section 260A of the Act.

6. When we analyse the facts on record, it is evident that the assessee-company owed certain sum during the assessment year and it had a sum of

Rs. 1,12,24,745 to the credit of the subsidiary company which is much in excess of the amount of Rs. 27,59,932 sought to be brought to tax

under deemed dividend. Further, in the assessment order, the Assessing Officer recorded a finding that the parties were maintaining a running

account and as on March 31, 1990, a sum of Rs. 1,12,24,745 was lying to the credit of the subsidiary company. It is also clear from the record

that the subsidiary company was advancing money to the assessee-company for the purpose of purchase of raw material and to make payments to

M/s. Hindalco Ltd. to meet their business/trading liabilities. Taking all these aspects into consideration, the Tribunal recorded a finding that there is

no element of deemed dividend and the amount of undistributed dividend of the subsidiary company cannot be said to be deemed dividend of the

assessee-company.

7. The judgment of the Bombay High Court in Walchand''s case (supra) is not applicable to the case on hand since in the said case it was not

established that giving of loan or advance was in the ordinary course of business of the first company or that lending of money was a substantial

part of its business. Further, in the said case a finding was recorded that there were only a few isolated transactions and at the end of the year, the

accounts were completely squared, off, whereas, in the present case, as noticed supra, there was a running account between the parties and

interest was charged. Apart from that, a sum of Rs. 1,12,24,745 was standing to the credit of the subsidiary company.

8. For the aforesaid reasons, we see no reason to interfere with the orders of the Tribunal and accordingly, we answer the questions of law raised

in the appeal, against the Revenue and in favour of the assessee. The appeal is accordingly dismissed. There shall be no order as to costs.