Commissioner of Income Tax Vs West Bengal Industrial Development Corpn. Ltd.

Court: Calcutta High Court

Date of Decision: Nov. 8, 1990

Acts Referred: Finance Act, 1985 â€" Section 10
Income Tax Act, 1961 â€" Section 2(45), 256(1), 36, 36(1), 36(1)(vii)

Citation: (1995) 78 TAXMAN 166

Hon'ble Judges: Bhagabati Prasad Banerjee, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.
In this reference u/s 256(1) of the income tax Act, 1961 ("the Act") for the assessment years 1978-79 and 1983-84,

the following common question of law has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the deduction u/s 36(1)(viii) of the income tax

Act, 1961, should be allowed on a given percentage of the total income as reduced by the said deduction allowable u/s 36(1)(viii) of the income

tax Act ?

Shortly stated, the facts are that the assessee, West Bengal Industrial Development Corpn. Ltd., is admittedly a financial corporation within the

meaning of clause (viii) of sub-section (1) of section 36 of the Act. The dispute in the assessment years 1978-79 and 1983-84 related to the

manner of computation of the deduction allowable to the assessee under clause (viii) of sub-section (1) of section 36. The ITO computed the

deduction at the stipulated percentage of the total income arrived at after allowing the said deduction, that is to say, he reduced the total income by

such allowable deduction and computed the deduction on the balance. The assessee went in appeal before the Commissioner (Appeals) who,

following the judgment of the Patna High Court in the case of Commissioner of Income Tax Vs. Bihar State Financial Corporation, held that, for

the purpose of deduction u/s 36(1)(viii), the total income of the assessee should be taken without reducing it by the amount of the said deduction.

The revenue came in appeal before the Tribunal. The Tribunal endorsed the order of the Commissioner (Appeals).

2. Before us, the learned counsel appearing for the parties reiterated the contentions raised before the Tribunal.

3. Section 36(1)(viii), as originally enacted, provided that if a financial corporation, for the time being approved by the Central Government for the

purpose of this clause, which is engaged in providing long-term finance for industrial development in India, creates a special reserve, then deduction

shall be allowed in computing its business income to the extent of the specified percentage of the total income carried to such reserve account.

4. As a result of the amendment made by the Finance (No. 2) Act, 1967, the total income for the purpose of this clause, on and from 1-4-1968,

means total income computed before making any deduction under Chapter VI-A.

5. For and from the assessment year 1968-69, the total income for the above purpose was required to be computed before making any deduction

under the newly added (from that year) Chapter YI-A (at present comprising sections 80A to 80VV).

6. By the amendment of the Finance Act, 1985, with effect from 1-4-1985, it has been provided that the total income shall be computed before

making any deduction under this clause, i.e., clause (viii) of section 36(1) and Chapter VI-A.

7. The question is whether, before the amendment made by the Finance Act, 1985 with effect from 1-4-1985, the computation of the total income

for the purpose of relief u/s 36(1)(vii) shall be made on the total income before deduction of the amount allowable u/s 36(1)(viii).

8. The High Courts, before the amendment in 1985, held almost uniformly that "total income" must be the total income before any deductions are

made and not the total income as assessed. The views of the various High Courts are stated hereunder:

In Bihar State Financial Corpn."s case (supra), the Patna High Court observed that the bone of contention between the assessee and the revenue

has been as to whether the maximum deduction admissible under the said provision of law to the tune of ten per cent would be on the final figure of

the total income assessed after deducting the ten per cent or whether it would be ten per cent of the total income arrived at on a computation, in

accordance with the provisions of the Act, before deducting the ten per cent admissible u/s 36(1)(viii). The High Court held that the view taken by

the Tribunal that deduction admissible under the said provision would be ten per cent of the total income arrived at on a computation in accordance

with the provisions of the Act, before deducting the ten per cent admissible u/s 36(1)(viii) is correct. Then, the Court observed:

....The question for consideration is, whether the literal and the face meaning of the expression "total income" given in section 2(45) has got to be

taken for the purpose of finding out the extent of the admissible deduction under clause (viii) of section 36(1), as has been the stand of the revenue,

or is it legitimate to take the view that the context in this regard requires otherwise? In the case of a corporation of the kind envisaged in clause

(viii), of which kind undoubtedly the assessee-Corporation is, the amount carried to the special reserve fund by the Corporation has got to be

allowed as a deduction. If the amount falls short of the maximum limit provided in the clause, then the whole of the amount will be allowable as a

deduction. But if the amount is in excess of the maximum limit, then, on account of the transfer of a portion of the income to the special reserve

fund, an amount which will be equivalent to one-tenth of the total income will be allowed and the rest will be disallowed. I am, however, of the

opinion that in the process of computing the income all additions which can justifiably be made should be made; all deductions which are

permissible to be allowed should be deducted. Then comes a figure of total income at a stage where the ITO proceeds to give a further deduction

u/s 36(1)(viii) of the Act. Should he at that stage, while computing the income, by a circuitous method, find out what would be the total taxable

income after making the deduction and then limit the amount of deduction to one-tenth of such income; or, while computing the income, is it

permissible for him to proceed straight and allow one-tenth of the total income determined at the stage where he has exhausted his power of

making additions and deductions and then allow one-tenth of the amount of such total income? To my mind the answer to the first question which I

have posed here should be in the negative and that to the second in the affirmative. While in the process of computation it is not incumbent upon

the ITO to allow only one-eleventh of the amount of total income determined before making the deduction u/s 36(1)(viii) and then rest content by

saying that the one-eleventh amount so deducted is only the one-tenth amount of the assessed income. In my opinion, by doing so, the assessing

authority would be going against the spirit and the scheme of the deduction allowable u/s 36(1)(viii) of the Act.

Even assuming that the interpretation sought to be put on behalf of the Department is correct, I can say unhesitatingly that the language of clause

(viii) of section 36(1), as it stood at the relevant time, was ambiguous and not clear enough to sustain the argument of the revenue...."" (p. 522)

It would thus be seen, in view of the law enunciated above, that for the purposes of finding out the maximum limit, to which deduction u/s 36(1)

(viii) ought to have been allowed in this case, the total income arrived at by the ITO after making additions and other deductions was Rs.

8,56,580. Since the amount of Rs. 81,745 transferred to the special reserve fund by the Corporation was less than ten per cent of the said total

income - the whole of it was permissible to be deducted u/s 36(1)(viii) of the Act - it was rightly allowed by the ITO in his original order; and the

order of rectification was not correct."" (p. 524)

9. Accordingly, it was held that the deduction referred to in section 36(1)(viii) envisages ten per cent of the total income, and not ten per cent of

the total assessed income, before deduction of the amount so allowed.

10. In Commissioner of Income Tax Vs. Bihar State Financial Corporation, the Patna High Court, following the decision in the aforesaid case, held

that the special reserve had to be allowed on the basis of the total income computed before allowing the deduction for special reserve. Regarding

the amended provisions, the Court was of the opinion that the amendment strengthened the interpretation which the Corporation wanted the Court

to put on the provisions.

11. In Commissioner of Income Tax Vs. Andhra Pradesh State Financial Corporation, the Andhra Pradesh High Court examined the question

regarding the interpretation to be placed on the provisions of section 36(1)(viii) and held that, for the purpose of allowing a deduction under the

said section, the total income of the assessee has to be computed before giving any deduction under the said section.

12. There, the Andhra Pradesh High Court observed as follow:

The controversy can be illustrated by giving an example: Assuming the total income before applying this provision to be Rs. 1,000, according to the

assessee, for calculating the deduction under this section (and if this sum of Rs. 1,000 is put in a reserve fund), 40 per cent should be calculated on

Rs. 1,000 and a deduction of Rs. 400 is to be given. According to the revenue, the deduction at 40 per cent should be calculated on the figure of

total income arrived at after this deduction also is applied for which a notional calculation is to be done by adding 40 per cent to the total income

and then calculating the deduction to be allowed at 40 per cent of Rs. 1,400. The income tax Officer has adopted the method urged by the

revenue, but the first appellate authority and the Tribunal have not accepted it and reliance was placed on the instructions of the Board, which were

in vogue during the relevant accounting and assessment year. The applicability of the said instructions is the subject-matter of question No. 1. We

have considered it appropriate to examine this question without reference to any of the circulars of the Board.

Learned counsel for the revenue has placed reliance on the definition of "total income" in section 2(45) of the Act and contended that for the

purpose of giving any deduction, the income as computed in accordance with the Act alone will have to be taken into account, that is, after giving

effect to the deduction mentioned in this section and he supported the calculation adopted by the income tax Officer. He has not been able to cite

any authority in support of this contention. According to learned counsel for the assessee, the definition in section 2(45) will have to be read in the

context of the language used in the present section. Instead of adopting a circuitous method, a simple deduction calculated at 40 per cent of the

total income arrived at that stage is to be taken into consideration for applying this section. Any notional addition to the income for calculation of a

statutory deduction is not justified. He has relied upon two decisions of the Patna High Court in Commissioner of Income Tax Vs. Bihar State

Financial Corporation, and Commissioner of Income Tax Vs. Bihar State Financial Corporation, In the earlier decision, the aforesaid provision has

been considered at length and a similar contention of the revenue has been negatived. In our view also, this is a correct approach...."" (p. 89)

13. In Commissioner of Income Tax Vs. M.P. Audyogik Vikas Nigam Ltd. (No. 1), , the Madhya Pradesh High Court held as follows:

... Clause (viii) of section 36(1) of the Act provides for deduction on the basis of total income computed before making any deduction under

Chapter VI-A of the Act. ''Total income'' as defined by section 2(45) of the Act means the total amount of income referred to in section 5,

computed in the manner laid down in the Act. Chapter III of the Act refers to income which do not form part of the total income. Chapter VI-A

provides for certain deductions which are required to be made in computing total income. However, section 36(1)(viii) of the Act provides that

deduction admissible under that provision has to be calculated on the basis of total income computed before making any deduction under Chapter

VI-A of the Act. In view of this provision, it would not be permissible for the assessing authority, as held in Commissioner of Income Tax Vs.

Bihar State Financial Corporation, to find out what would be the total income after making the deduction admissible u/s 36(1)(viii) of the Act and

then limit the amount of deduction to 40 per cent of the total income, as reduced by the deduction u/s 36(1)(viii) of the Act. In our opinion, the

Tribunal was right in holding that the deduction permissible u/s 36(1)(viii) of the Act had to be calculated on the basis of the total income of the

assessee as it stood before the deduction allowable u/s 36(1)(viii) of the Act."" (p. 178)

14. However, in Karnataka State Financial Corporation Vs. Commissioner of Income Tax, the Karnataka High Court took a contrary view and

held as follows:

''Total income'' is defined in section 2(45) of the income tax Act as ''the total amount of income referred to in section 5, computed in the manner

laid down in this Act''. The computation referred to in the above definition encompasses the provisions of the entire Act. The only exception which

has to be made u/s 36(1)(viii) is that the total income for the purposes of this section must be the one ''computed before making any deduction

under Chapter VI-A". No other exception is made. Since no other exception is specifically made in the section itself, to make an exception in

respect of the deduction u/s 36(1)(viii) would be contrary to the language of the section. It was suggested that there might be difficulty in arriving at

the deduction, if the Department"s view is to be accepted. In our opinion, no such difficulty would arise since the matter is one of simple

mathematics as shown below:

Let "X" be the amount deductible u/s 36(1)(viii), "T" the total income (before making any deduction under Chapter VI-A), and "Y" the amount of

what we might call the gross total income before deductions under Chapter VI-A and also before deduction u/s 36(1)(viii). Then, according to the

view we have taken above:

X = 40 per cent of T = 2 / 5 T

T + X = Y

Therefore, T + 2 / 5 T = Y, i.e., 7 / 5 T = Y

Hence, T = 5 / 7 Y

Thus, X = 2 / 5 T = 2 / 5 x 5 / 7 Y = 2 / 7 Y

The above calculation would show that once the total income is computed before making any deduction provided for under Chapter VI-A and

also before making the deduction u/s 36(1)(viii), the deduction under that section would be 2/7ths of the amount so arrived at. The calculation

made by the income tax Officer is, therefore, strictly in accordance with the provisions of section 36(1)(viii) and the Appellate Assistant

Commissioner was in error in holding otherwise."" (p. 208)

15. The Karnataka High Court was of the view that whatever is provided by the Legislature shall be given effect to and if the construction as

suggested by the assessee is accepted, it would really amount to legislation in the guise of interpretation which is plainly impermissible. The view of

the Karnataka High Court is also that the amendment effected in the Finance Act, 1985, and the object with which the same has been amended,

far from supporting the case of the assessee, supports the case of the revenue. The Karnataka High Court observed that the view taken by the

Patna High Court in the case of Bihar State Financial Corpn. (supra) is not sound. The question is whether the view expressed by the Tribunal is

correct or not. It is no doubt true that, in a taxing statute, one has to look merely at what is clearly said: there is no room for any intendment; there

is no equity about a tax; nor is there any presumption as to tax. One has to look fairly at the language used. As the section originally stood, no

indication was given as to how the total income should be computed for the purpose of allowing the deduction u/s 36(1)(viii). In 1967, the

amendment was made which provided that the total income shall be computed before making any deduction under Chapter VI-A. The decisions

of all other High Courts, excepting the Karnataka High Court, have taken the view that not only the computation should be made before making

any deduction under Chapter VI-A but before making also any deduction under the aforesaid provision, i.e., section 36(1)(viii).

16. Section 10 of the Finance Act of 1985 has amended section 36(1)(viii) with effect from 1-4-1985. The object of the said amendment is set out

in the memorandum explaining the provisions in the Finance Bill thus (see [1985] 152 ITR (St.) 175):

106. Financial corporations engaged in providing long-term finance for industrial or agricultural development in India or public companies providing

long-term finance for construction or purchase of houses in India for residential purposes are entitled to a deduction, in the computation of their

taxable profits, of an amount not exceeding 40 per cent of the total income carried to a special reserve. Under the existing provisions, the total

income for this purpose is the total income as computed before making any deduction under Chapter VI-A. It is proposed to provide that the

deduction shall be for an amount not exceeding 40 per cent of the total income as computed before making any deduction under the aforesaid

provision and Chapter VI-A.

The view taken by the different High Courts that total income as computed before deduction under the aforesaid clause has now received statutory

recognition by the aforesaid amendment. By interpretation, the court has to arrive at the legal meaning of the enactment which is not necessarily the

same as its grammatical meaning. The Karnataka High Court confined itself to the language of the enactment without considering the context in

which the expression "total income" appears. The amendment would unmistakably show that the view taken by the other High Courts on the

interpretation as to how the deduction u/s 36(1)(viii) should be allowed is the correct view. The Parliament is normally presumed to legislate in the

knowledge of, and having regard to, relevant judicial decisions. If, therefore, Parliament has a subsequent opportunity to alter the effect of a

decision on the legal meaning of an enactment, but refrains from doing so, the implication is that Parliament approves of that decision and adopts it.

This is amply demonstrated by the amendment made in 1985. The view that a court cannot add words to a statute or read words into it which are

not there is not in consonance with the rule that the finding of proper implications within the express words of an enactment is a legitimate, indeed a

necessary, function of the Court. If Parliament had intended that the meaning given by the several High Courts to the construction of section 36(1)

(viii) was not the intention of Parliament and any qualification should be added, it could easily have said so. It would have been simpler to give

express effect to it. That was not done which only confirms the view that it was the intention of Parliament that deduction should be made on the

total income as computed before allowing the deduction u/s 36(1)(viii). We do not agree that the finding of the implications is an improper

technique in interpretation. Willes, J., said that the legal meaning of an enactment includes "what is necessarily or properly implied" by the language

used (Chorlton v. Lings [1868] LR 4 CP 374 at page 387).

[Emphasis supplied]

17. For the foregoing reasons, with respect, we are unable to agree with the view taken by the Karnataka High Court. The question in this

reference is, therefore, answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

I agree.