

(1950) 05 CAL CK 0006

Calcutta High Court

Case No: Excess Profits Tax Reference No. 19 of 1949

COMMISSIONER OF EXCESS
PROFITS TAX, WEST BENGAL

APPELLANT

Vs

RAMNATH BAJORIA.

RESPONDENT

Date of Decision: May 5, 1950

Citation: (1951) 19 ITR 79

Hon'ble Judges: Sinha, J; Harries, J

Bench: Full Bench

Judgement

SINHA, J. - This is a reference u/s 66(1) of the Income Tax Act. The question referred is in the following terms :-

"Whether in the facts and circumstances of this case Section 14(2) of the Excess Profits Tax Act is a bar to recovery of the excess profits tax for the chargeable accounting period ended the April 30, 1945, from the purchaser, Ramnath Bajoria."

The facts giving rise to this reference are as follows : For the chargeable accounting period commencing on May 1, 1944, and ending on April 30, 1945, and assessment was made under the Excess Profits Tax Act on the unregistered firm of Manton & Co. The net demand was Rs. 1,48,260. The firm consisted of three partners. On July 23, 1946, the business was sold by the firm to Ramanth Bajoria by an agreement. By clause 2 of the agreement the price was fixed at Rs. 1,86,965-10-11 and was payable in certain instalments. Clause 7 of the agreement provided as follows :-

"All Income Tax and excess profits tax in respect of the said business made and outstanding for the year first day of May one thousand nine hundred and forty-five to the thirtieth day of April one thousand nine hundred and forty-six and all Bengal sales tax from the first day of August one thousand nine hundred and forty-six together with all existing debts and liabilities of the vendors in respect of the said business will be on the account of the purchaser as appearing from the balance sheet of the business upto the thirtieth day of April one thousand nine hundred and

forty-six. The purchaser hereby undertakes with the vendors that he will pay such taxes and liabilities as and when they respectively fall due and will keep indemnified the vendors and their estates and effects free from and against all actions, costs and demands in respect thereof or any portion thereof."

The demand notice in the name of Manton & Co., was served on Bajoria. Bajoria filed an appeal before the Appellate Assistant Commissioner who ordered that Ramnath Bajoria was not the person on whom the Excess Profits Tax Officer wanted to fix the liability for excess profits tax. He held therefore that Bajoria was not competent to file an appeal against the assessment. Against that order that Commissioner of Income Tax filed an appeal before the Appellate Tribunal. It was admitted before the Appellate Tribunal that in no event could the liability for the tax be fixed on Bajoria. The Tribunal, therefore, held that Section 14(2) of the Excess Profits Tax Act was a bar against the realisation of the excess profits tax from Bajoria.

Application was then made to the Appellate Tribunal to refer a question to this Court and Tribunal has referred the question which I have already mentioned.

It is not disputed u/s 14(2) of the Excess Profits Tax Act Bajoria is not liable for the demand of Rs. 1,48,260 made on Manton & Co. It is however suggested that by reason of clause 7 of the agreement Bajoria may be liable, but that is an entirely indefensible proposition. Clause 7 only says that Bajoria would be liable to excess profits tax for the year beginning with May 1, 1945, and ending on April 30, 1946. The demand to which I have referred is not for that period but for an earlier period namely from May 1, 1944, to April 30, 1945. Even if Bajoria was liable under clause 7 of the agreement of Income Tax authorities could not take advantage of the provision of that agreement and make Bajoria liable. It is however clear that under clause 7 Bajoria did not undertake the liability to pay the excess profits tax for the relevant period. He is not, therefore, chargeable for the excess profits tax which has been assessed by the Excess Profits Tax Officer.

In my opinion the answer to the question propounded should be in the affirmative. The assessee is entitled to the cost of these proceedings. Certified for two counsel.

HARRIES, J. - I agree.

Reference answerd in the affirmative.