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Bombay High Court

Case No: Income-tax Reference No. 5 of 1974

Cement Agencies Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax, Bombay City-II		RESPONDENT

Date of Decision: March 28, 1982

Acts Referred:

- Income Tax Act, 1961 - Section 32, 32(1), 34

Citation: (1984) 146 ITR 137

Hon'ble Judges: M.N. Chandurkar, J; M. Jagannatha Rao, J; Kania, J

Bench: Full Bench

Judgement

Kania, J.
This is a reference on a case stated under s. 256(1) of the I.T. Act, 1961 (referred to hereinafter as "the said Act"). There are two question referred to us in this reference, which run as follows :

"(1) Whether, on the facts and in the circumstances of the case, for the purposes of abatement in tax to be allowed in India with reference to the "excess" in terms of article IV-A of the Agreement for the Avoidance of Double Taxation between India and Pakistan, the Pakistan, income is to be taken as determined, and included, in the indian assessment under the Indian laws, or as assessed in Pakistan a as per the Pakistan laws for the assessment years 1956-57 to 1966-67 (both inclusive) ?

(2) Whether, on the facts and in the circumstances of the case, the sum of Rs. 24,390 is deductible u/s 32(1)(iii) of the Income Tax Act, 1961, in the computation of the total income for the assessment year 1965-66 ?"

2. The learned counsel for the respective parties agree that in view of the decision of this court in Associated Cement Co. Ltd. Vs. Commissioner of Income Tax, Bombay City-II, ,

question No. 1 aforesaid is concluded against the assessee. In view of this, we only propose to consider the relevant facts in so far as question No. 2 is concerned.

3. The assessee is a corporation and was at all material times the managing agent of the Associated Cement company Ltd. Bombay. Pursuant to advertisement in the "Times of India" in June, 1961, for the sale of a Mercedes-Benz car, inserted by one Mrs. Rajendra Kumari of lukhnow, the assessee purchased the same of Rs. 45,000 from her. In April, 1964, the Customs authorities issued a notice to the assessee-company to show cause why the said car should not be confiscated and penalty should not be levied against it, as the car had been unauthorisedly imported should not be levied against it, as the car had been unauthorisedly imported into India without payment of Customs, duty. In spite of the efforts of the assessee, the car was confiscated, although no penalty was levied. The facts found by the Tribunal show that when the assessee purchased the said car it was not aware that it had been illegally brought into India or was liable to confiscation. The car was seized by the Customs authorities in April, 1964, that is, in the previous year relevant to the assessment year 1965-66, which previous year ended on 31st December, 1964. In these circumstances, the assessee wrote off a sum of Rs. 24,390. being the written down value of the car in its books of account and claimed it as a deduction under s. 32(1)(iii) of the said Act. This claim was disallowed by the ITO on the ground that when the car was confiscated it could not be said that it was either sold or discarded or destroyed as contemplated under sub-s. (1) of s. 32 of the said Act. The appeal preferred by the assessee to the AAC was allowed by the AAC on the ground that the confiscation of the car by the Customs authorities amounted to either demolition or destruction of the said car. The Revenue preferred and appeal to the Income Tax Appellate Tribunal. against the said decision, and this appeal was allowed by the Tribunal. The Tribunal held that the confiscation of an asset could not be brought within one or the other of the expression "sold, discarded, demolished or destroyed". It is from this decision of the Tribunal that the aforesaid question (No. 2) has been referred to us.

4. Section 32 of the said act deals with the question of depreciation. The opening portion of sub-s. (1) of s. 32 read with cl. (iii) runs as follows :

"32. (I) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed -

(iii) in the case of any building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof :

Provided that such deficiency is actually written off in the books of the assessee...."

5. There is an Explanation to this sub-section, but we do not feel in necessary to set out the same. Suffice it to say that under cl. (2) of the Explanation, as it stood at the relevant time, it was clarified that the term "sold" would include, inter alia, a compulsory acquisition under any law for the time being in force. The first submission of Mr. Kolah learned counsel for the assesse, is that in the present case the confiscation of the car amounts to the same thing as the destruction or demolition thereof from the point of view of the assessee and hence the case is covered by the aforesaid provision. In our view, it is not possible to accept this submission. "Confiscation", in the relevant context, means appropriation to public treasury by way of penalty or seizure as if by authority (see Concise Oxford Dictionary of Current English, 5th edn., p. 254). There is no question of demolition or destruction of any asset when it is confiscated, and on a plain grammatical reading it is not possible to extent the provision of this clause to a case of confiscation. As per the well-known dictum of Rowlatt J. in Cape Brandy Syndicate v. IRC [1921] 1 KB 64 :

"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."

6. This argument of mr. Kolah must, therefore, be rejected.

7. The next submission of Mr. Kolah was that, in any event, when the said car was confiscated by the Customs authorities the asset was lost to the assessee and this loss must be taken into account in computing the taxable income of the assessee. We are afraid that the question referred to us does not enable to us to go into this contention at all. The question referred is specifically regarding the applicability of the provision of cl. (iii) of sub-s. (1) s. 32 of the said Act, and we cannot go into the contention sought to be raised by Mr. Kolah in answering that question. It may be open to the assessee to raise such a contention when the matter goes back to the Tribunal. That will be a matter for the Tribunal to consider and not for us. the question referred to us are, therefore, answered as follows :

Question No. 1 : For the purposes of abatement in tax to be allowed in India with reference to the "excess" in terms of art. IV-A of the Agreement for the Avoidance of Double Taxation between India and Pakistan, the Pakistan income is to be taken as determined and included in the Indian assessment under the Indian laws and not such income as determined in Pakistan as per the Pakistan laws for the assessment years 1956-57 to 1966 (both inclusive).

Question No. 2 : In the negative and against the assessee. Looking to the facts and circumstances of the case, there will be no order as to costs.