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Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Apr-12-1955

Reported in : 195629ITR206(Hyd.)

Appellant : S.

Respondent : Naik V. Commissioner of

Judgement :

MOHD. AHMED ANSARI, J. - This is a reference by the Income-tax Appellate Tribunal at Bombay on application by the assessee under sub-section (1) of section 66 of the Indian Income-tax Act, referring the following questions of law, viz. : (1) Whether the amendment to paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, purporting to have been made under section 60A of the Indian Income-tax Act is valid in law (2) If the answer to question No. 1 is in the affirmation, whether the Central Government had the power to pass an order with retrospective effect The assessee who owned during the relevant year of account certain rice mills and a cotton ginning and pressing factory, the assets of which were acquired about 40 years earlier, claimed depreciation allowance for the assessment year 1950-51 under section 10(2)(vi) of the Indian Income-tax Act on the basis of the actual cost of the assets acquired 40 years earlier. Prior to the assessment year 1950-51 when the Indian Income-tax Act was applied to all Part B States including the Hyderabad State, there was in existence the Hyderabad Income-tax Act, under which depreciation was allowed on the written down value of the assets. No corresponding provision existed in the

Indian Income-tax Act, and the question was whether the value of the assets should be written down under the Hyderabad Income-tax Act and depreciation allowed on the value under section 10(2)(vi) of the Indian Income-tax Act. This contention was sought to be supported by the provisions of paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, and the subsequent explanation added thereto by Notification of the Central Government dated March 9, 1953, purporting to be made under section 60A of the Indian Income-tax Act.

The question that has been raised in this reference has already been considered and answered by us in the case of Commissioner of Income-tax, Hyderabad v. D.B.R. Mills Ltd. In that case we had observed at pate 592 as under : "There is, therefore, nothing to warrant the Central Government to exercise its power under the said section to the disadvantage of an assessee on the ground that a difficulty has arisen. The difficulty envisaged by the section is not the difficulty has arisen. The difficulty envisaged by the section is not the difficulty to the Income-tax Department in not being able to collect more tax or in not being able to allow less depreciation allowance, but a difficulty which comes in the way of an assessee not having some advantage which is deemed to be equitable." The learned advocate for the Income-tax Department invites us to reconsider this decision on the ground that the words of section 60A do not warrant this conclusion and that the modification referred to in the said section need not necessarily work in favour of the assessee, but can also work in favour of the Department. We have considered the views of the Income-tax Tribunal in its appellate order dated December 12, 1953, and are not impressed by them. Section 60A deals primarily with avoiding any hardship or anomaly removing any difficulty caused as a result of the extension of the Indian Income-tax Act to the Part B States or to the merged territories granting exemptions, reduction in rate or making any other modifications in respect of income-tax in favour of any class of income or in regard to the whole or any part of the income of any person or class of persons. In other words, it authorises the Central Government to make an exemption, reduction or modification as regards the liability to tax in favour of any class of income or in regard to the whole or any part of income of any person or class of persons in order to avoid hardship, anomaly or to remove any difficulty.

The learned advocate for the Department contends that the words "in favour of" relating to other modifications should only be confined to modification in favour of any class of income, and not with respect to the whole or any part of the income of any person or class of persons.

We are unable to accept this contention for the reason that the Central Government in authorised by general or special order to make exemption, reduction in rate or other modification (i) in respect of income-tax in favour of any class of income, and (ii) in regard to the whole or any part of the income of any person or class of person. We are not concerned whether the exemption, reduction in rate or other modification relates to the first, namely, class of income, or to the second, namely, the income of any person or class of person. It is bound to be in favour of the assessee. If the argument of the learned advocate was to be accepted that the modification can be in favour of the Department also the only way in which it can be modified in favour of the Department would be to increase the burden of the tax on the whole or any part of the income over and above that which is authorised to be levied by the Act itself. It is frankly admitted by the learned advocate that this is not what is intended, and if this is not what is intended, and if this is not what is intended we fail to understand what other implication the word "modification" can have in regard to the whole or any part of the income of any person or class of person unless it be to modify it in his favour as may be necessary or expedient having regard to the application of the Indian Income-tax Act to part B States or other merged territories. Therefore, we see no reason to change the view we have taken in Commissioner of Income-tax, Hyderabad v. D.B.R. Mills.

The learned advocate for the Department submits that if the amendment to paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, is not valid under section 60A of the Indian Income-tax Act, we should consider it as an order made under section 12 of the Income-tax Act, we should consider it as an order made under section 12 of the Finance Act. We have considered this aspect of the matter in the aforementioned case and were clearly of view that the content of the power under Section 12 is different from that under section 60A of the Indian Income-tax Act and that it is not permissible to regard the

order made under section 60A to have been made under section 12 of the Finance Act when the authority vested with the power under both the section deliberately chose to exercise the power under section 60A. At page 595 of the aforesaid case under : "An added reason for declaring the explanation to be bad is that it is not permissible for the Central Government in exercise of the powers under section 60A to amend an order made under section 12 of the Finance Act. The contents of these two section are different. The only power that may at first sight appear to be common to both these section is the power to remove difficulties, that under section 60A of the Income-tax Act is to be excecised specifically in favour of any class of income or in regard to the whole or any part of the income of any person or class of persons while that under section 12 of the Finance Act is vested merely to surmount obstacles or difficulties which may arise in the application of the Indian Income-tax Act to Part B States or merged States, though even this power which is merely an enabling one, does not prima facie appear (though we do not wish to express any definite view on the matter) to authorise the Central Government to make any order to the disadvantage of the assessee who whold be securing a benefit under the provisions of the Act. For the aforesaid reasons, we hole the explanation added to paragraph 2 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, to be void." The answer to the second question, which is dependent on the first question being answered in the nagative, does not arise. But even the answer to this question has been dealt with by us in the case of Commissioner of Income-tax, Hyderabad v. D.B.R. Mills.

This reference is answered with costs to the application which we assess at Rs. 150.

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