

Castrol Limited Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-27-1984

Reported in : (1985)11ITD256(Mum.)

Judge : I Nigam, A Balasubramanyam

Appellant : Castrol Limited

Respondent : inspecting Assistant

Judgement :

1. This is an appeal filed by the assessee-company against the order of the Commissioner under Section 263 of the Income-tax Act, 1961 ('the Act').
2. The assessee is a non-resident company and the appeal relates to the assessment year 1977-78. The income of the assessee-company was determined in the assessment order at 70,738, which was converted by the IAC into Indian currency at the rate of 1 equal to Rs. 15.13, i.e., the rate of exchange at the end of the previous year relevant to the assessment year. The Commissioner was, however, of the view that Rule 115 of the Income-tax Rules, 1962 ('the Rules'), prior to its amendment by the Income-tax (Eighth Amendment) Rules, 1977, with effect from 1-11-1977, would be applicable to the assessment year 1977-78, under consideration here and, therefore, the conversion should have been done at the rate of 1 equal to Rs. 18 instead of at the rate of 1 equal to Rs. 15.13, as was done by the IAC. He, therefore, considered that the assessment order was erroneous and prejudicial to the interests of the revenue. The Commissioner, therefore, by an

order under Section 263, directed the IAC to convert the income at the rate of 1 equal to Rs. 18 and amend the assessment, accordingly. The assessee is aggrieved by the order of the Commissioner and has, therefore, come up in the present appeal before us.

3. The assessee's learned Counsel, Shri Vyas, submitted to us that the earlier value of the rupee was at a fixed rate with reference to other currencies, but with effect from July 1975, the rate of exchange for buying and selling of foreign currency was floated and was fixed from time to time based on a basket of currencies by the Reserve Bank of India under the Foreign Exchange Regulation Act, 1947, and it was only to give effect to this changed situation that Rule 115 was amended by the Income-tax (Eighth Amendment) Rules, 1977, with effect from 1-11-1977, in order to provide that in the case of income chargeable under the head 'Profits and gains of business or profession', the conversion of foreign exchange into Indian rupees would be at the telegraphic transfer buying rate on the last day of the previous year.

Proceeding further, Shri Vyas pointed out that in the case of the assessee's business income from royalty for technical assistance, accrued or arose to the assessee-company on the last day of the previous year. In these circumstances, according to Shri Vyas, the rate of exchange applicable in the assessee's case was the rate of exchange fixed under the Foreign Exchange Regulation Act by the Reserve Bank of India on the last day of the previous year, i.e., 1 equal to Rs. 15.13, as was rightly done by the IAC. Our attention was invited to the decision, of the Special Bench of the Tribunal in the case of Biju Patnaik v. WTO [1983] 3 ITD 693 (Delhi), where, in similar circumstances, the Tribunal held that Rule 1BB of the Wealth-tax Rules, 1957 was a rule of procedure and would, therefore, apply to all the pending proceedings, including the appeal proceedings, on the date of the notification of the rule. Elaborating his arguments, Shri Vyas submitted that the amendment to Rule 115 was brought about with effect from 1-11-1977 and would, therefore, be applicable to the assessment under consideration here which was completed in March 1980. Reference in this connection was made by Shri Vyas to the proposed Rule 1D of the Wealth-tax Draft (Amendment) Rules, 1981, which, according to Sub-rule (3)(c) thereof, would not be applicable to any assessment

year commencing before 1-4-1982, and Rule 9A of the Rules where, by Sub-rule (11) thereof, it was specified that the rule shall not apply to any assessment year before 1-4-1973, and, in certain circumstances, to the assessment years 1973-74 to 1976-77, unlike the amended Rule 115 under consideration here, which was to take effect from 1-11-1977 without any reference to any assessment year, to which it would apply or would not apply. He, therefore, vehemently argued before us that Rule 115, as amended by the Income-tax (Eighth Amendment) Rules, 1977, with effect from 1-11-1977, was a rule of procedure which would be applicable to all the assessments made after 1-11-1977. It was, therefore, claimed that the income in pounds was rightly converted by the IAC at the rate of 1 equal to Rs. 15.13 and the conclusion of the Commissioner that the assessment order on this account was erroneous and incorrect.

Summing up, Shri Vyas vehemently argued before us that the order of the Commissioner was unjustified and should be cancelled.

4. On the other hand, the learned departmental representative, Shri Joy, submitted to us that Rule 115 was not a procedural rule but was a substantive rule and, hence, could not be given retrospective effect.

He, therefore, submitted that the amended Rule 115, which came into effect from 1-11-1977, would have no application to the assessment year 1977-78 under consideration in the present appeal. On this basis, he justified the order of the Commissioner under Section 263.

5. We have carefully considered the rival submissions. The power of the Board to make rules is by Section 295 of the Act, the provisions of which, relevant to the present appeal, are as follows: 295. (1) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters-- (b) the manner in which and the procedure by which the income shall be arrived at in the case of-- (i) income derived in part from agriculture and in part from business; (iii) an individual

who is liable to be assessed under the provisions of Sub-section (2) of Section 64; Rule 115 enacted by the Board was obviously in exercise of its powers under Section 295 to provide for the manner in which and the procedure by which the income shall be arrived at among others in the case of persons residing outside India. This clearly shows that the rule is procedural. The effect of the amendment of Rule 115 was not with reference to any assessment year but with reference to a particular date, viz., 1-11-1977, unlike in the case of the proposed Rule 1D of the Wealth-tax Rules and Rule 9A of the Income-tax Rules. This shows that it was not the intention of the rule-making authority to apply the amended rules with reference to any assessment year. We have, therefore, no hesitation in coming to the conclusion that Rule 115 is a rule of procedure and the amendment to the rule, brought about by the Income-tax (Eighth Amendment) Rules, 1977, with effect from 1-11-1977, was to apply to all the assessments made after that date. This view also finds support from the Special Bench decision of the Tribunal in the case of Biju Patnaik (supra), where, in somewhat "similar circumstances, Rule 1BB of the 1957 Rules, inserted by the Wealth-tax (Amendment) Rules, 1979, with effect from 1-4-1979, was held to be procedural and applicable to all the assessments made after 1-4-1979.

Considering all this, we have no hesitation in coming to the conclusion that the rate of conversion from pounds to rupees in the assessment for 1977-78 under consideration here, which was made by the IAC in March 1980, was rightly taken, according to Rule 115, as amended with effect from 1-11-1977. This means that the conversion exchange rate of 1 equal to Rs. 15.13 taken by the IAC in the assessment order was correct and the Commissioner was wrong in holding that the exchange conversion rate should have been according to Rule 115, as it existed prior to its amendment with effect from 1-11-1977. The order of the Commissioner under Section 263, therefore, in our view, was not correct and is hereby cancelled.

8. The appeal filed by the assessee-company succeeds and is hereby allowed.

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