

Statesman Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : May-05-1988

Reported in : (1988)27ITD589(Kol.)

Judge : Y Upadhyay, Vice, D Sharma

Appellant : Statesman Ltd.

Respondent : inspecting Assistant

Judgement :

1. These two appeals are taken together and disposed of by this common order for the sake of convenience.

2. The assessee is a limited company and derives income from publication of an English daily 'The Statesman' and from allied publications. The assessee is in appeal against the consolidated order passed by the Commissioner of Income-tax under Section 263 of the Income-tax Act, 1961 for the assessment years 1981-82 and 1982-83. The point did not arise before the Inspecting Asstt. Commissioner while he was completing the assessments. However, the brief facts relevant for these appeals are that the assessee-company, as a settlor, created two irrevocable trusts on 11th September, 1979 and 12th November, 1979. The first trust was created for providing financial assistance to the employees of the settlor and their families and dependents for their education, medical facilities, sports, games, cultural and other activities and their welfare generally. The second trust was created for the financial assistance to be provided to the officers of the settlor

and their families and dependents for their education, medical facilities, sports, games, cultural and other activities and their welfare generally. In short, the first trust was created for the benefit of the employees of the settlor whereas the second trust was created for the benefit of the officers of the settlor. The settlor, 'The Statesman Limited' settled a sum of Rs. 4,00,500 for the first trust whereas a sum of Rs. 2,50,000 was settled for the second trust.

The amounts settled by the Settlor were invested in shares and for the years under consideration the first and the second trusts respectively received dividends amounting to Rs. 34,650 and Rs. 21,970. The total dividend received by the two trusts in each year is thus Rs. 56,620.

The assessments for the two years were completed by the Inspecting Asstt. Commissioner under Section 143(3) of the Act.

3. Subsequently, the assessment records were perused by the CIT. He found that the orders passed by the IAC were erroneous insofar as they were prejudicial to the interests of the revenue. Consequently, the CIT issued show-cause notices under Section 263 of the Act. The CIT was of the opinion that in view of Clause 8(6) of the trust deeds, the trusts were revocable under the provisions of Section 63(a)(ii) of the Act.

The assessee indicated that the Settlor did not make any provision for reassumption of power directly or indirectly over the whole or any part of income or the assets of the trusts. The CIT did not agree and consequently he came to the conclusion that the orders passed by the IAC for these two years were erroneous and prejudicial to the interests of the revenue. Accordingly, the CIT set aside the assessments and directed the IAC to make fresh assessments after considering the correct position of law and records.

4. The counsel for the assessee filed copies of the two trust deeds and referred to the provisions of Section 63(a)(ii) of the Act and Clause 3(b) of the trust deeds, and urged that the CIT did not assume jurisdiction under Section 263 correctly since the Settlor did not reassume power on the income or assets of the trusts. Therefore, he indicated that dividends received by the trusts could not be included

in the income of the Settlor. The departmental representative, on the other hand, relying on the decision of the Calcutta High Court in the case of Panchanan Dey v. CIT [1983] 142 IT.R 762 and on Clause 8(b) of the trust deeds, stated that the trusts were revocable and, therefore, the dividends received by the trusts were includible in the total income of the Settlor and, accordingly, the orders passed by the IAC were prejudicial to the interests of the- revenue. Hence, it was urged that the order of the CIT should be maintained.

5. The short point for consideration is whether the CIT has rightly set aside the assessments for these years for consideration of the application of the provisions of Section 63(a)(ii) of the Act in view of Clause 8(b) of the trust deeds. The assessee., as a Settlor, created two trusts as noted above. The first trust was created for the benefit of the employees and the second trust was created for the benefit of the officers. The shares had been purchased out of the amounts settled by the Settlor for the trusts and the trusts received dividends of Es.

66,620 in aggregate. The provisions of Section 63(a)(ii) and Clause 8(b) of the trust deeds are quoted below: (ii) it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets; 8(b). The trustees in consultation with the settlor may by deed vary any of the provisions of this Trust Deed, but no such variation shall extend to vary or affect the definition of the objects of the said Trust as contained herein nor authorise the application of any part of the capital or income of the Trust Fund for any purpose other than the purposes specified herein.

If the provisions of Section 63(a)(ii) are carefully perused, it would be clear that application of this provision would only arise when the Settlor reassumes power directly or indirectly over the whole or any part of the income of assets. In other words, if the Settlor, directly or indirectly, has right to reassume power over whole or any part of the income or assets of the trusts, the trusts could not be said to be irrevocable. A similar point came up for consideration before the Hon'ble Calcutta High Court in the case of CIT v. Trustees of Sreeram-Surajmull Charity Trust [1971] 79 ITR 649, where the first proviso to Section 16(l)(c) of the Indian Income-tax Act, 1922 was under consideration which is similar to Section 63(a)(ii) of the

Income-tax Act, 1961. In that case their Lordships at pages 666-667 observed as under: The second point which we emphasize is about the two words of significant importance: 'retransfer' and 'reassume'. The prefix 're' plainly indicates that it must be a 'transfer' to himself as himself and not in any different capacity or it must have to 'reassume' which means to assume for himself as himself and not in a different capacity.

The Hon'ble Calcutta High Court while considering the proviso to Section 16(1)(c) of the 1922 Act also considered the decision of the Hon'ble Supreme Court in the case of CIT v. Jayantilal Amratlal [1968] 67 ITR 1 wherein the Supreme Court observed as under: What then is the fair meaning of Section 16(1)(c), proviso 1 It seems to us that the words 'reassume power' give indication to the correct meaning of the proviso. The latter part of the proviso contemplates that the settlor should be able, by virtue of something contained in the trust deed, to take back the power he had over the assets or income previous to the execution of the trust deed. A provision enabling the settlor to give directions to trustees to employ the assets or funds of the trust in a particular manner or for a particular charitable object contemplated by the trust cannot be said to confer a right to reassume power within the first proviso. Otherwise a settlor could never name himself as a sole trustee. It seems to us that the latter part of the proviso contemplates a provision which would enable the settlor to take the income or assets outside the provisions of the trust deed.

The Hon'ble High Court further considered the decision of the Supreme Court in the case of CIT v. S. Raghbir Singh [1965] 57 ITR 408. The view taken by the Hon'ble Calcutta High Court has been referred to the case of Mrs. Leela Nath v. CIT [1982] 134 ITR 507.

6. A perusal of Clause 8(b), as quoted above, does not indicate, in any way, that the Settlor reassumed power directly or indirectly over the whole or any part of income or the assets of the trusts; rather, it has been made clear that variation shall not extend to vary or affect the definition of the objects of the trusts, as contained herein nor authorise the application of any part of the capital or income of the trust funds for any purpose other than the purposes specified therein.

Therefore, the power to reassume over a part or whole of the income or assets of the trusts by the Settlor was not given by Clause 8(b) of the trust deed. It has been made very clear by the Supreme Court in the case of Jayantilal Amratlal (supra) that if such power is reassumed by the Settlor; then the trust could be revocable. The CIT erroneously came to the conclusion that by virtue of Clause 8(b) of the trust deeds, the trusts were revocable and, therefore, the income earned by the two trusts was includible in the income of the Settlor. This is not correct. Clause 8(b) of the trust deed is not hit by the provisions of Section 63(a)(ii) of the Act both on facts as well as on law, as it is clear by the judicial pronouncements made by the Hon'ble Supreme Court and the Calcutta High Court (supra).

7. The decision in the case of Panchanan Dey (supra) relied on by the departmental representative is distinguishable on facts and hence is not applicable to the facts of the present case. Under the said circumstances, the assumption of jurisdiction under Section 263 of the Act by the CIT was not proper and, further, he was not justified on merits in setting aside the assessment orders of the I AC. Consequently, the order passed by the CIT under Section 263 is set aside.

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