**Ethnor Ltd. Vs. Inspecting Assistant**

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**SooperKanoon Citation** : sooperkanoon.com/64334

**Court** : Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** Aug-10-1990

**Reported in** : (1990)35ITD268(Mum.)

**Judge** : N Prabhu, G Israni

**Appellant** : Ethnor Ltd.

**Respondent** : inspecting Assistant

**Judgement** :

1. These two appeals by the assessee, relate to the assessment years 1984-85 and 1985-86. Common contentions are raised, the appeals are consolidated and disposed of by this order.

2. The first common ground of appeal is that the CWT(A) erred in not accepting the assessee's contention that the assessee was a company in which the public are substantially interested within the meaning of Section 2(18) of the IT Act, 1961 and hence not liable to wealth-tax.

The assessee is a limited company incorporated under the Companies Act, 1956 and a subsidiary of Johnson & Johnson Limited, India which holds 99.8 per cent of the share capital of the assessee. Johnson & Johnson Limited, India is, in turn, a subsidiary of Johnson & Johnson, New Brunswick, USA - the shareholding of the USA company being 75 per cent of the equity share capital of the Indian company. The foreign company, i.e., the USA company which is the parent company of

Johnson & Johnson Limited, is registered under the laws relating to companies in the United States and its shares are quoted at New York Stock Exchange.

3. The claim of the assessee in this regard before the revenue authorities was that the assessee is a company in which public are substantially interested as its share capital was substantially held by the public. This was rejected, both the assessing officer and by the CWT(A).

4. It is contended on behalf of the assessee that Section 40 of the Finance Act, 1983, which provided for levy of charge to wealth-tax of companies, takes effect from assessment year 1984-85; though the same is deemed to have come into force on the first day of April, 1983.

This, according to the assessee, is an undisputed position and is also evident from the Circular No. 372 dated 8-12-1983. Under the Explanation to Section 40(1) a company in which public are substantially interested should have the meaning assigned to it in Section 2(18) of the IT Act, 1961. It is argued that since provisions of Section 40 of the Finance Act, 1983, had come into force w.e.f.

1-4-1983, the amended Section 2(18) which has effect from 2-4-1983, would have to be ignored. In other words, for the purpose of Section 40 of the Finance Act, 1983, a company in which public are substantially interested, would have the meaning given to it in Section 2(18) as it stood prior to the amendment which took effect from 2-4-1983. In this connection our attention is invited to the decision of the Supreme Court in the case of Mahindra and Mahindra Ltd. v. Union of India [1979] 2 SCC 529. It is pointed out that in that case the Supreme Court was concerned with the interpretation of Section 55 of the MRTP Act which provides for filing of an appeal and it was stated therein that an appeal could be filed on the same grounds as in Section 100 of the CPC, 1908. The question for consideration before the Supreme Court was whether reference to Section 100 of the CPC in Section 55 of the MRTP Act was to be construed as reference to the provisions of that section prior to its amendment by the Civil Procedure (Amendment) Act, 1976 w.e.f. 1-2-1977. The Supreme Court held that Section 55 of the MRTP Act incorporated the provisions of Section 100 of the CPC as it stood prior to the amendment and that it was not a case of definition by mere reference but it was a

case of reference by incorporation so that the amendment of the first mentioned statute would not affect the provisions of second statute.

5. It is submitted that the facts are analogous and the principle laid down by the Supreme Court in Mahindra & Mahindra Ltd.'s case (supra), would apply with equal force. The result would be that the amendment by the Finance Act to Section 2(18) which took effect from 2-4-1983 would notbeavailable to the department for determining whether a company is a company in which the public are substantially interested or not. It is then contended that the fact the amendment has been allowed to take effect from 2-4-1983 by the Legislature was a deliberate act and that amendment will not change the definition of a company in which public are substantially interested as Section 40 of the Finance Act, 1983, has been made effective from 1-4-1983.

6. As an alternate plea, it is contended, that the expression "is said to be" appearing in Section 2(78) would clearly go to indicate that the definition given in that section of a company in which public are substantially interested is an conclusive definition. Inviting our attention to the decision of the Supreme Court in CGT v. N.S. Cetti Chettiar [1971] 82ITR599, itis contended that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. Thus, it is claimed, a word or an expression in a statute has to be given its ordinary meaning in addition to its extended meaning which it is capable of assuming under the interpretation clause. This view, it is submitted, is supported by the Explanation to Section 2(18)(b)(B). Reference to Indian company in that section whose business consists of certain specified types of activities would clearly go to indicate that companies other than Indian companies are not excluded from the definition which took effect from 2-4-1983. It is then submitted that the legislative intent was to make Section 2 (18) exhaustive. Then there was no need to make a reference to Indian companies Under Section 2(18)(b)(B). It is a broad rule of interpretation and one which is accepted by the Courts that a construction which would make the provision workable is preferable to the one which renders it meaningless and nugatory. If this test of rule of interpretation is applied, there can be no escape of conclusion that a company in which public are substantially interested after the amendment does not stand to the complete

exclusion of a company which is a subsidiary of a company in which foreign public are interested.

Thus, the USA company is a company in which public are substantially interested. Its Indian subsidiary Johnson & Johnson Ltd. and its subsidiary, viz., the assessee would also be company in which publicare substantially interested. There, therefore, could be no levy of wealth-tax.

7. The learned Departmental Representative, on the other hand, contends that there is no merit in the arguments of the assessee. Provisions of Section 2(18)(b)(B) have been amended by the Finance Act, 1983. This amendment is intended to exclude specie of companies which were regarded as companies in which public are substantially interested prior to the amendment. If the arguments as canvassed by the learned counsel for the assessee are accepted the amendment would be rendered meaningless and even according to the assessee such interpretation has to be avoided. It is also submitted that the argument that since the definition of expression "company in which public are substantially interested" is a definition by incorporation, the same should be given the meaning as on 1-4-1983 when Section 40 of the Finance Act came into force, has to be rejected. The company in which public are substantially interested has to be a company which is so on the relevant valuation date. If for income-tax purposes a company is not regarded as a company in which public are substantially interested, the same would be the case for wealth-tax also. It is further argued that the decision of the Supreme Court in Mahindra& Mahindra Ltd.' s case (supra) was rendered on an entirely different setting and cannot be urged in support of assessee's case.

8. We have heard the parties to the dispute and we feel compelled to reject the contentions of the assessee. The provisions of Section 40 of the Finance Act, 1983, we do agree, came into force w.e.f. 1 -4-1983.

It is also true that the definition of expression "company in which public are substantially interested" as contained in Section 2(75) was amended and such amended provisions were to the effect only from 2-4-1983. Even so, the amended definition would govern the chargeability of a company to wealth-tax, in terms of

the provisions of Section 40 of the Finance Act, 1983. As on the valuation date thecompany was one in which the public were not substantially interested as per the new definition given to that expression, we dont's see any merit in the contention of the assessee that since this is a definition by incorporation, the subsequent amendment has to be ignored. Reliance on the decision of the Supreme Courtin Mahindra & Mahindra Ltd.' s case (supra) to our mind, is totally misplaced. If one goes through the decision carefully, it would be clear that this decision was rendered in an entirely different context. That was a case where the Supreme Court had discussed at length the scope and ambit of appeal under Section 55 of MRTP Act. This section provides, inter alia, that any pers6n aggrieved by an order made under Section 13 may prefer an appeal to the Court on "one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908". Section 100 of CPC specified three grounds on which second appeal could be brought to the High Court and one of the grounds was that the decision appealed against was contrary to law. The Legislature intended to confer on a person under the MRTP Act a right of appeal on the same grounds as in Section 100 of the CPC. The Code of Civil Procedure was amended by the Code of Civil Procedure (Amendment) Act, 1976, w.e.f. 1977 and under the amended provisions right of appeal would lie only if the Court was satisfied that the case involved a substantial question of law. The Supreme Court in that connection observed that the right of appeal under the CPC stood abrogated. There were three grounds on which appeals could be filed prior to the amendment and these rights were abrogated and the right of appeal was granted only if there was satisfication by the High Court that a substantial question of law was involved. The amendment, abridging the right of appeal, according to the Supreme Court, would have no bearing on similar rights under the MRTP Act. This has been explained by the Supreme Court in the following words in the decision in Mahindra & Mahindra Ltd.'s case (supra) at page 548 : It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that as reference to the

provision as re-enacted. Such was the case in the Collector of Customs v. Nathella Sampathu Chetty and New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise. But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the Legislature. Where the Legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at lengh the provisions which it desires to adopt.

Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute.

The Supreme Court further elaborated these remarks by stating that if there is a mere reference to a provision of one statute in another without incorporation, then unless a different intention clearly appears the provisions of that statute would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if the provision of one statute is incorporated in another, any subsequent amendment in the former statute; or even if it is totally repealed, would not affect the provision as incorporated in the latter statute. In this case reference to Section 2(18) of the IT Act, 1961, in Section 40 of the Finance Act, 1983, can only be construed as a reference and not incorporation and this would be evident if one looks at the scheme of the IT Act, 1961 for the purpose of taxation. Companies have been categorised in a variety of ways. The categorisation was primarily with a view to determining the tax liability of these companies. Thus, a company in which public are not substantially interested was required to pay tax at a higher rate. There was a tax on companies under the Wealth-tax Act also at the inception but the same was dispensed with. With effect from 1-4-1983, the taxation of companies was reintroducedbut in an emasculated form. Only companies in which public are not substantially interested were required to pay such tax and it was for this purpose

that Section 40 of the Finance Act, 1983, which was the charging section, referred to Section 2(75) of the IT Act. It is not a case of incorporation but a case of mere reference and the amendment to Section 2(18) cannot, therefore, be ignored. Even assuming that this is a reference by incorporation, the contention of the assessee will still have to be rejected. Though the provisions of Section 40 of the Finance Act, 1983, became part of the Statute book w.e.f. 1-4-1983, they became operative only from the assessment year 1984-85. The definition of Section 2(75) had by then been amended and for the year 1984-85 where for the first time a levy of tax was imposed on companies which are not widely held, it would be the amended definition that would be relevant.

In this view of the matter, the first contention of the assessee is rejected.

9. The alternate plea though in the first flush appears to be attractive, is also to be rejected. Section 2(75) of IT Act was amended by the Finance Act, 1983 with a view to excluding certain companies from the purview of widely held companies. The memo explaining the provisions of Finance Act, 1983 (see 140 ITR Statute of pages 174-175) makes it very clear that a company would not be regarded as a widely held company if its shares are not quoted in a recognised stock exchange in India. Since this is not the case here, the assessee-company cannot be considered as a company in which public are substantially interested. Reference to an 'Indian company' in the explanation on which heavy reliance has been placed by the learned counsel for the assessee is not in any way going to help the assessee.

The explanation is intended as would be evident from the contents of the same, to mitigate the rigours of the main provision. It is not intended to include what has been excluded specifically by the main provision. Though there can be no general rule regarding the scope and effect of an explanation, the same is normally intended only to explain, clarify, subtract or include something. But the explanation can in no way be interpreted to render the provisions of the Statute to which it is appended totally nugatory. In this appeal the learned counsel for the assessee has only sought to advance its case by relying heavily on the use of the words "Indian company" in the Explanation to Section 2(78) of the IT Act. These words in the

Explanation can in no way give a meaning different from the one which is given in the main Section.

10. We are also not impressed by. the argument of the assessee that the definition of the expression "company in which public are substantially interesed" in Section 2(18) of the IT Act cannot be regarded as exhaustive because of the words "is said to be" appearing in that section. A mere reading of the section would leave nobody in doubt that Section 2(18) of the IT Act, 1961 defines the expression "company in which public are substantially interested" in a comprehensive manner.

There would, therefore, be no scope to read anything beyond what is contained in that section on the specious plea that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. The definition of the widely held company does not extend its meaning but seeks to restrict the same. In this view of the matter, we are inclined to reject the contention of the assessee.

11. The last common ground of appeal is that the CWT (A) erred in upholding the action of the IAC in valuing the motor cars on the basis of the value adopted by the insurance company. The short submission of the assessee in this connection is that the value at which the assets are insured do not necessarily represent price it would fetch if sold in the open market.

12. We have heard the parties to the dispute and in our opinion the valuation adopted by the insurance company of the cars appears to be reasonable. It has to be remembered in this connection that the cost of the cars has been going up from year to year if not from nonth to month. There is absolutely no material produced before us to show that the value adopted is excessive or unreasonable.