

Jindal Strips Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Aug-24-1993

Reported in : (1993)47ITD349(Delhi)

Judge : G Krishnamurthy, J Bengra

Appellant : Jindal Strips Ltd.

Respondent : inspecting Assistant

Judgement :

1. This is an appeal arising out of an assessment made for surtax for the assessment year 1983-84. In response to statutory notice issued, the assessee-company filed return showing chargeable profit of Rs. 10,78,730. To arrive at the chargeable profit, for levy of surtax, the Surtax Officer deducted from the income-tax payable on the total income determined a sum of Rs. 1,88,929 which represented the tax deducted from the dividends declared to be distributed to the shareholders. The view of the Assessing Officer was that under Rule 2(i)(b) of the First Schedule, the amount of income-tax if any payable on the distribution of dividends should be reduced from the total income arrived at after making adjustments as provided for in Rule 1. It was the interpretation placed upon this Sub-rule (ii)(b) by the Surtax Officer and approved of by the Commissioner of Income-tax (A) that is now the subject matter of appeal before us.

2. For income-tax purposes, the income assessed was Rs. 1.30 crores on which the tax payable was determined at Rs. 79,90,412. This sum was to be deducted

from the total income determined in income-tax purposes to arrive at the chargeable profit. In deducting the income-tax payable the Surtax Officer further deducted from this, the sum of Rs. 1,88,929 on the view that this represented the income-tax payable on the amount of distribution of dividends. The assessment was originally made in this case by taking a similar view but when that matter came in appeal to the Tribunal, the Tribunal disagreeing with the conclusions drawn by the Department set aside assessment directing the Commissioner of Income-tax to make a fresh assessment after dealing with all the contentions raised by the assessee. In the reassessment that was now directed to be made, the same view was again reiterated without much of a discussion.

3. Now let us see what Rule 2(b) of the First Schedule says and whether the meaning assigned to it by the revenue is in accord with the legislative intent: 2. The balance of the total income arrived at after making the exclusions mentioned in Rule 1 shall be reduced by- (i) the amount of income-tax payable by the company in respect of its total income under the provisions of the Income-tax Act after making allowance for any relief, rebate or deduction in respect of income-tax to which the company may be entitled under the provisions of the said Act or the annual Finance Act and after excluding from such amount- (a) the amount of income-tax, if any, payable by the company in respect of any income referred to in Clause (i) or Clause (ii) or Clause (iii) or Clause (vii) of Rule 1 included in the total income; (b) the amount of income-tax, if any, payable by the company under the provisions of the annual Finance Act, with reference to the relevant amount of distributions of dividends by it.

Explanation: In this sub-clause, the expression 'the relevant amount of distributions of dividends' has the meaning assigned to it in the Finance Act of the relevant year.

In the First Schedule to the Surtax Act of 1964, the rules for computing the chargeable profits were mentioned. In Rule 1, certain items of income and profits and gains and other sums were directed to be excluded from the total income determined for the purpose of income-tax assessment. From the income so arrived at after exclusions, Sub-rule 2 says certain further deductions to be given.

The first deduction was the amount of income-tax payable by the company in respect of the total income under the provisions of the Income-tax Act after making allowance for any relief, rebate or deduction in respect of income-tax to which the company may be entitled under the provisions of the Income-tax Act or the Finance Act, after excluding from such amount, the amount of income-tax, if any, payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distribution of dividends by it. The Explanation says that the expression "the relevant amount of distributions of dividends" means the meaning assigned to it in the Finance Act of the relevant year. Now in the Finance Act of 1984, the expression 'relevant amount of distributions of dividends' has not come up for any particular consideration. That apart what is to be excluded from the amount of income-tax payable by the company in respect of its total income is the amount of income-tax, if any, payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distribution of dividends by it that is to say if under the annual Finance Act, if any, income-tax is made payable with reference to the amount of (i.e., on the distribution of dividends such amount of income-tax alone will have to be excluded from the amount of income-tax payable by the company in respect of its total income). The annual Finance Act concerned here is the Finance Act, 1984. This Finance Act did not levy any tax on the distribution of dividends. Therefore, the question of any income-tax payable on the distribution of dividends does not arise or did not arise. There was a time when companies were declaring excess dividends and with a view to discourage the declaration of excess dividends, the Government levied some tax on such excess declaration of dividends by an Act called "Excess Dividends Act of 1964". That Act has now been withdrawn and the tax on excess dividends was abolished. Thereafter no tax on distribution of dividends was levied by any Finance Act as far as our knowledge goes and much less by the Finance Act, 1984 which is the relevant Act for our present purpose. Yet no tax was levied by the Finance Act with reference to the distribution of dividends as we have said earlier, the question of deducting the tax does not arise. That is how the tax deducted at source on the declaration of dividends of the shareholders is confused to be the tax payable on the distribution of dividends. Under the Income-tax Act, a company is obligated to deduct tax from the dividends

it pays to the shareholders. This is a provision in the process of recovery of tax at source. So the tax deducted at source on the dividends payable to the shareholders is not the tax payable on the distribution of dividends. The tax payable on distribution of dividends is somewhat a penal provision to curb a particular activity considered to be injurious to the economic health of the country. The distribution of dividends and the tax deducted at source on the dividends payable to the shareholders is not a penal action. The tax has to be paid by the shareholders on the dividends. For the purpose of facility of collection of tax, tax was directed to be deducted at source before it was paid to the shareholders and a shareholder will receive only the net amount, although he would be entitled to claim credit for the tax deducted at source, on production of the prescribed certificate of credit for tax deducted at source. This is not so in the case of tax levied on the company with reference to the amount of distribution of dividends because that amount is absorbed by the company. Since that is not the case here, the interpretation placed upon this provision by the revenue does not appear to us to be in accord with legislative intent.

The tax deducted at source from the dividends paid to the shareholders is confused for the tax payable by the company under the Finance Act with reference to the amount of distribution of dividends. This amount of Rs. 1,88,929 not being the tax payable by the company on its own but paid by it on behalf of the shareholders cannot be excluded from the amount of income-tax payable by the company in respect of its total income.

4. There is a purpose for excluding this amount from the income-tax payable on its income. Let us take Clause (a) of (i) first. It says the amount of income-tax, if any, payable by the company in respect of any income referred to in Clause (i) - capital gains ; Clause (ii) compensation or other payment; Clause (iii) profits and gains of any business of life insurance; and Clause (viii) income by way of dividends from an Indian company or a company which has made the arrangements for the declaration and payment of dividends in India.

Since these incomes are to be excluded to arrive at the chargeable profits meaning thereby that these are not incomes of a business earned in the normal

course of business to be consistent therewith the tax payable on such incomes is also to be excluded from the income-tax payable. This is very rational.

5. Similarly Clause (b) says that amount of income-tax payable by a company on the amount of distribution of dividends, it means that if there is any tax payable by the company on its own that has not to be taken into consideration because that amount becomes a sort of an expenditure incurred by a company and it will be absorbed by it as we observed above, just like any other expenditure. Though it is called income-tax, since it is to be absorbed by the company, this amount is also not available for exclusions and the amount of income-tax payable by a company in respect of its total income. If this is the rationale behind the exclusions, then the tax deducted at source from the dividends payable to the shareholders is not the income-tax payable by a company on its own under any Finance Act with reference to the distribution of dividends. Therefore, the deduction of this sum from the income-tax payable does not appear to us to be correct. We direct the inclusion of this sum and allow the assessee's appeal.

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