income-tax Officer, a-ward, Indore Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd.

LegalCrystal Citation : legalcrystal.com/650764

Court : Supreme Court of India

Decided On : Sep-18-1975

Reported in : [1975]101ITR457(SC)

Judge : Murtaza Fazal Ali and; V.R. Krishna Iyer, JJ.

Acts : Finance Act, 1965 - Sections 3; Income Tax Act, 1961 - Sections 220(2) and 220(3)

Appellant : income-tax Officer, "a"-ward, Indore

Respondent : Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd.

Judgement :

Murtaza Fazal Ali, J.

1. These appeals are by the Income-tax Officer, ' A ' Ward, Indore, against the judgment of the Madhya Pradesh High Court and involve a question of law regarding the interpretation Section 220, Sub-sections (2) and (3) of the Income-tax Act, 1961. In order to understand the scope and ambit of the question involved, it may be necessary to mention a few facts leading to these appeals.

2. The respondent firm carries on the business of manufacturing cloth. In 1947 the then Maharaja of Gwalior granted to the firm exemption from tax for a period of twelve years from the date when the firm started its factories. Under the Part B States (Taxation Concessions) Order, 1950, the Commissioner of Income-tax of the region concerned approved of the exemption only to the weaving division of the respondent for ten years, but deferred decision regarding the staple fibre division until the factory started functioning in 1954. The Commissioner was approached again for granting exemption but he refused to do so. The respondent, thereafter, moved the High Court of Madhya Pradesh for cancelling the order of the Commissioner refusing exemption. The writ petition before the High Court succeeded and the respondent's right to exemption was upheld by the High Court. Thereafter, the revenue filed an appeal to this Court which was allowed and by its order dated April 28, 1964, reported in : [1964]53ITR466(SC) Union of India v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., this Court reversed the decision of the High Court and maintained the order of the Commissioner refusing exemption. As a result of the cancellation of the exemption, a huge amount of income-tax became due from the respondent, and the provisional assessments made for the years 1959-60 to 1964-65 reached the aggregate amount of over Rs. 6.60 crores which was payable by the firm was actually demanded from the respondent. In fact, the effect of the order of this Court was that the amount exempted became payable at once and was accordingly

demanded from the respondent but the respondent instead of paying the amount tried to negotiate with the revenue for certain concessions. In this connection a series of correspondence followed between the respondent and the income-tax department including a letter which was written by the assessee on December 26, 1964, by which the assessee paid a sum of Rs. 3 crores and wanted the balance of Rs. 3.60 crores to be paid in instalments. The assessee further undertook to pay interest on the arrears at the . rate of 5% per annum, even though under Sub-section (2) of Section 220 of the Income-tax Act, 1961 (hereinafter referred to as ' the Act '), it was required to pay interest at the rate of 4% only. In view of these favourable terms offered by the assessee, the Income-tax Officer acceded to its request by his letter dated January 16, 1965. The assessee had agreed to pay the arrears in the following manner:

Rs. 1,00,00,000 by March 15, 1966 1,20,00,000 by March 15, 1967 1,34,76,000 by March 15, 1968

3. Soon after the request of the assessee was granted by the Income-tax Officer, Sub-section (2) of Section 220 of the Act was amended by the Finance Act, 1965, by which the rate of interest was increased from 4% to 6% per annum. In view of this amendment, the Income-tax Officer by his letter dated January 10, 1966, informed the assessee that on the unpaid balance of tax arrears the respondent would be liable to pay interest at the rate of 6% per annum with effect from April 1, 1965, instead of 5% as agreed to by the Income-tax Officer in his previous letter. The Income-tax Officer pointed out that this course was necessitated in view of the amendment made by the Finance Act, 1965. Consequently, a notice of demand under Section 156 of the Act was served on the respondent which resulted in his filing writ petitions before the High Court with the result mentioned above.

4. The main point urged in the petitions before the High Court by the respondent was that the Income-tax Officer having acceded to the request of the assessee a settlement between the parties was arrived at to pay the balance of arrears at the rate of interest at 5% per annum and it was not open to the Income-tax Officer to vary that rate to the prejudice of the assessee even in spite of a change in the rate of interest by the Finance Act, 1965, because a vested right could not be taken away by a statute which in terms did not apply retrospectively. This plea appears to have found favour with the High Court, though not on the ground expressly taken by the respondent. The High Court found that in view of the notice of demand the liability of the assessee to pay the arrears arose only after the expiry of 35 days and this period had expired before the Finance Act, 1965, amending Section 220(2) of the Act and, therefore, the revenue had no jurisdiction to demand payment of the arrears at the rate of 6% interest. Thus, it would appear that the High Court actually decided the case on a point which was not raised by the respondent in its petition but after making out a new case made out at the time of arguments and without giving any opportunity to the revenue to rebut the same. The High Court has written a detailed judgment regarding the time as to when the liability of the assessee where a notice of demand under Section 156 of the Act is issued would arise. It is, however, not necessary for us to consider the reasons given by the High Court in detail, because in the view that we take we find that the basis on which the High Court has decided this case is wholly irrelevant and is not at all germane to the issue that was involved. It was not a case of a notice of demand under Section 156 of the Act simpliciter, but the admitted position was that in view of the decision of the Supreme Court the respondent was in arrears of tax and had to pay heavy amounts of over Rs. 6.6 crores. The respondent voluntarily paid the amount of Rs. 3 crores and requested the

Income-tax Officer to allow it to pay the balance in instalments and persuaded the Income-tax Officer to accept the request even by agreeing to pay a higher rate of interest of 5% than the rate prescribed under Section 220(2) of the Act, The liability to pay the arrears was never disputed and the only dispute between the parties was as to the rate of interest that was payable.

5. Section 220, Sub-sections (2) and (3) run thus :

(2) If the amount specified in any notice of demand under Section 156 is not paid within the period limited under Sub-section (1), the assessee shall be liable to pay simple interest at four per cent per annum from the day commencing alter the end of the period mentioned in Sub-section (1):

Provided that, where as a result of an order under Section 154, or Section 155, or Section 250, or Section 254, or Section 260, or Section 262, or Section 264, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.(3) Without prejudice to the provisions contained in Sub-section (2), on an application made by the assessee before the expiry of the due date under Sub-section (1), the Income-tax Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

6. The fact that the arrears were demanded from the assessee is not disputed as would appear from the statement made by the respondent in paragraph 2 of the writ petition filed before the High Court where it was averred thus :

Subsequently, when assessments for the assessment years 1959-60 to 1964-65 were provisionally made, a huge amount aggregating to over rupees six and a half crores became payable and was demanded from the petitioner.

7. In these circumstances, therefore, the conditions precedent to the application of Sub-section (2) of Section 220 of the Act were undoubtedly fulfilled in this case. It would be seen that before the assessee entered into correspondence with the revenue, the rate of interest prescribed under Sub-section (2) of Section 220 was only four per cent and yet the assessee offered to pay a higher rate, namely, 5% per annum, if he was allowed to pay the arrears in instalments. This request of the assessee was accepted by the Income-tax Officer on January 16, 1965, when there was no amendment in the provisions contained in Section 220(2) of the Act and the order passed by the Income-tax Officer must be construed as one made under Sub-section (3) of Section 220 of the Act.

8. It was suggested before the High Court that the order of the Income-tax Officer amounted to an irrevocable agreement which could not be varied merely because the rate of interest contained in Sub-section (2) of Section 220 of the Act was enhanced. Mr. S. Chowdhury, learned Counsel for the respondent, however, has fairly conceded that there was no question of an agreement or settlement because Section 220(3) does not empower the Income-tax Officer to enter into agreement or settlement in order to bind the revenue. We find ourselves in complete agreement with this view. Section 220(3) merely empowers the Income-tax Officer to extend the time for payment or allow payment by instalments on such conditions as he may impose. In the instant case the Income-tax Officer merely exercised his powers under Sub-

section (3) of Section 220 by imposing the condition that the assessee shall be allowed to pay the arrears by instalments if he paid interest at the rate of 5% per annum offered by him. What is important, however, is that Sub-section (3) is not independent of Sub-section (2) but is inter-connected with it. The words ' without prejudice to the provisions contained in Sub-section (2)' clearly show that any order passed by the Income-tax Officer under Sub-section (3) must neither be inconsistent with nor prejudicial to the provisions contained in Sub-section (2). In other words, the position is that although Sub-section (3) is an independent provision the power under this sub-section has to be exercised subject to the terms and conditions mentioned in Sub-section (2) so far as they apply to the facts mentioned in Sub-section (3), Thus, if Sub-section (2) of Section 220 provided that the rate of interest chargeable would be four percent per annum any order passed under Sub-section (3) could not vary that rate, and if it did, then the order to that extent would stand superseded. The argument of the assessee is that Sub-sections (2) and (3) of Section 220 were independent provisions which operated in fields of their own. We are, however, unable to accept this somewhat broad proposition of law. Sub-sections (2) and (3) form part of the same section, namely Section 220, and are, therefore, closely allied to each other. It is no doubt true that the two sub-sections deal with separate issues but the non-obstante clause of Sub-section (3) clearly restricts the order passed under Sub-section (3) to the conditions mentioned in Sub-section (2) of Section 220 of the Act.

9. Furthermore, it is the Finance Act which fixes the rate of interest payable under Sub-section (2) of Section 220 and it is common knowledge that every year the Finance Act makes important amendments in the rates ' payable under the various provisions of the Income-tax Act. In these circumstances, therefore, it is not within the competence of the Income-tax Officer to vary the rate of interest fixed by the Finance Act under Sub-section (2) of Section 220 from time to time. We are fortified in this view by a decision of this Court in Esthuri Aswathiah v. Commissioner of Income-tax [19C6] 60 ITR 411, where this Court observed thus :

The Income-tax Officer has no power to vary the rate on which the income of the previous year is to be assessed. The rate of tax is fixed by the Finance Act every year. By Section 3, the tax is levied at that rate for an assessment year in respect of the income of the previous year. Once the length of the previous year is fixed and the income of the previous year is determined, that income must be charged at the rate specified in the Finance Act and at no other rate.

10. As we have already pointed out Sub-section (3) of Section 220 of the Act does not empower the Income-tax Officer to enter into any indefeasible settlement with the assessee or to clothe the Income-tax Officer with any such power so as to vary the statutory inhibition contained in Sub-section (2). Any order which is passed under Sub-section (3) would be subject to the rate of interest mentioned in Sub-section (2) and as soon as the rate mentioned in Sub-section (2) is varied or enhanced by the legislature it would have to be read into Sub-section (2) from the date of the amendment and any order passed under Sub-section (3) would be subject to the rate so fixed. In fact if this is not the position, then the order passed under Sub-section (3) being prejudicial to Sub-section (2) becomes illegal and invalid and the Income-tax Officer exceeds the limits of his jurisdiction in passing such an order.

11. In the instant case the Finance Act of 1965 became effective from April 1, 1965, and the Income-tax Officer in his letter dated January 10, 1966, to the assesses had

merely given effect to the legal provisions of the Finance Act by insisting that in view of the variation in the rate of interest under Sub-section (2) of Section 220 the assessee would have to pay interest at the rate of 6% per annum only from April 1, 1965. There was absolutely no question of the Finance Act operating retrospectively, nor was there any question of the Finance Act taking away a vested right which had accrued to the assessee because we have already held that the order of the Income-tax Officer under Sub-section (3) of Section 220 does not amount to any final settlement or agreement.

12. There is yet another view of the matter. In the present case the assessee himself wanted extension of time for being allowed to pay the arrears by instalments. The assessee could be permitted to seek this indulgence under Sub-section (3) of Section 220 only within the four corners of the law and not outside the same. The moment the Finance Act, 1965, came into operation and the rate of interest in Sub-section (2) of Section 220 was increased from 4% to 6% per annum, any order passed by the Income-tax Officer would automatically operate in accordance with the Finance Act with effect from April 1, 1965. This is what has happened in the present case. Thus, it is manifest that the Income-tax Officer could not have passed any order against the statutory provisions of Sub-section (2) of Section 220 either with or without the consent of the assessee. Even the order of the Income-tax Officer dated January 16, 1965, accepting the offer of the assessee to pay interest at the rate of 5% per annum was legally invalid, because if the rate of interest fixed by the statute was 4% the parties could not be allowed to contract out of the statute. The only relief, therefore, which the assessee could get is that it was liable to pay interest at the rate of 4% and not 5% per annum for the period January to March, 1965. But from April 1, 1965, it was bound to pay interest at the rate of 6% per annum as found by the Income-tax Officer.

13. Reliance was placed by Mr. G.C. Sharma appearing for the revenue on a decision of the Orissa High Court in Biswanath Ghosh v. Income-tax Officer : [1974]95ITR372(Orissa) , where a Division Bench of that court observed as follows :

As we find, the Income-tax Officer has charged interest at 6 per cent. until the provision was amended to enhance the rate of interest at 9 per cent. In fact, in the counter-affidavit given by the Income-tax Officer in O.J.C. No. 195 of 1972 that position has been clarified. Mr. Pasayat for the petitioner claims that the rate of interest must be only at 6 per cent in view of the fact that default in this case had occurred prior to the amendment. It is only here that he relies upon the decision of the Madhya Pradesh High Court in Gwalior Rayon Silk Manufacturing (Weaving) Co. v. Income-tax Officer : [1969]73ITR95(MP) . That was a case in respect of penalty under Section 220(2) of the Act and the court took the view that the rate of interest as provided on the date when default occurred would apply to the facts of the case. We do not agree with the view expressed in the said decision. It is true that Central Act 27 of 1967 has no retrospective effect, but in respect of continuing default after the amendment, in our view, the rate of interest as provided there under would apply.

14. The Orissa High Court expressly dissented from the view taken by the Madhya Pradesh High Court in the present judgment under appeal and we find ourselves in complete agreement with the view taken by the, Orissa High Court.

15. We have already pointed out that the Madhya Pradesh High Court did not at all go into the question which really arose in this case with respect to the payment of

interest at the rate of 6 per cent in accordance with the Finance Act, 1965.

16. For these reasons, therefore, the appeals are allowed and the order of the High Court is set aside with slight modification, namely, that the assessee shall pay interest on the entire amount of arrears at the rate of 4 per cent per annum only during the period January to March, 1965. So far as the rest of the period is concerned, the order of the Income-tax Officer directing the assessee to pay interest at the rate of 6 per cent per annum is restored. In view of the peculiar circumstances of the case, however, we leave the parties to bear their own costs throughout.