

M/s. Groz-Beckert Saboo Ltd., Chandigarh v. The Commissioner of Income Tax, Patiala (Pb.) (Mahajan, J.)

This section is in my opinion wide enough to prevent a dependant from receiving any benefit similar to 'dependants' benefit' which he is entitled to receive under any other enactment, e.g. Workmen's Compensation Act."

The Division Bench in *Workmen of Rohtas Industries Ltd. v. H. K. Choudhuri and others* (3) similarly whilst construing the scope of customary benefits etc. had briefly observed in these terms:—

"Section 61 debars a person entitled to anyone of the benefits provided by the Act from being entitled to receive any similar benefits admissible under any other enactment, but does not debar him to receive similar benefits to which the workman may be entitled under his service conditions or by way of customary concession."

(9) I would, therefore, hold that section 61 of the Act debars the dependants of an insured workman (the respondent-applicants) under the Act from claiming a similar benefit under the provisions of section 3 of the Workmen's Compensation Act. The finding of the trial Court on issue No. 1, therefore, is reversed and allowing the appeal I set aside the compensation granted to the respondents against the appellants. There will, however, be no order as to costs.

B. S. G.

INCOME TAX REFERENCE

Before D. K. Mahajan and H. R. Sodhi, JJ.

M/S. GROZ-BECKERT SABOO LTD., CHANDIGARH,—
Applicant.

versus

THE COMMISSIONER OF INCOME TAX, PATIALA (PB.),—
Respondent.

Income Tax Reference No. 12 of 1971.

September 20, 1971.

Income-tax Act (XLIII of 1961)—Section 10(3)—Assessee, an Indian Company, setting up factory for manufacture and sale of a particular item in collaboration with a foreign company which is also a partner

(3) A.I.R. 1965 Patna 127.

with the assessee—Collaborating company supplying raw material free of cost to the assessee to facilitate expeditious starting of production—Assessee-company treating the raw material as stock-in-trade, processing it and selling it like other manufactured goods in the market—Value of such raw material supplied to the assessee-company free of cost—Whether amounts to income of the assessee-company.

Held, that where the assessee, an Indian Company, sets up a factory in collaboration with a foreign company for manufacture of hosiery needles, the collaborating company being also partner of the assessee and supplies to the assessee raw material in various stages of manufacture free of cost to facilitate expeditious starting of production of the company, the value of such raw material does not tantamount to the 'income' of the assessee, even though the assessee treats the raw material as stock-in-trade and after processing it sells it in the market like other manufactured goods. No doubt income is a term of wide connotation and all incomings would be income, yet the value of the gift in the above circumstances is not income. The value of the raw-material does not fall in any of the three exceptions under sub-section (3) of Section 10 of Income-tax Act, 1961 which takes out a receipt of a casual and non-recurring nature from the ambit of the term "income". The assessee being a limited company for the purpose of book-keeping may have entered the value of gifts received as the value of the stock-in-trade but in order to give impetus to the assessee-company, the collaborators, who are also partners in the company, give certain raw materials free of cost to enable the company to function without delay, the value of the material supplied free of cost is not income of the assessee. Moreover, stock-in-trade by itself does not become income or profits of a business. It is only when the stock-in-trade is disposed of after processing or otherwise that the resultant is either profit or loss. (Paras 3, 9 and 10).

Reference under Section 256(1) of the Income Tax Act, 1961, made by the Income Tax Appellate Tribunal (Chandigarh Bench),—vide his order dated 16th February, 1971, in R.A. No. 11 of 1970-71, to this court for opinion of the following question of law, arising out of I.T.A. No. 2490 of 1968-69, regarding Assessing year 1960-61.

1. *Whether on the facts and in the circumstances of the case, the sum of Rs. 74,448 being the actual value of raw material received from German Collaborators free of cost represented revenue receipt ?*
2. *Whether on the facts and in the circumstances of the case the amount of Rs. 74,448 being the actual value of raw material received free of cost from German collaborators was rightly debited at that value to the revenue account ?*

G. C. Sharma, Brij Mohan Khanna and V. Kumeria, Advocates, for the applicant.

D. N. Awasthy and B. S. Gupta, Advocates, for the respondent.

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JUDGMENT

Judgment of this Court was delivered by:—

MAHAJAN, J.—(1) This case is of its own type. There is no precedent which governs it. It presents a fairly ticklish problem and has to be settled on first principles.

(2) The assessee is an Indian company with German collaboration. This company set up a factory for fabrication, manufacture and sale of hosiery needles. The West German collaborators are M/s. Gheodor Groz and Soehne and Ernst Beckert. The first accounting year of this company ended on 31st March, 1961. The present controversy relates to the assessment year 1962-63, the account year ending 31st March, 1962.

(3) The relevant facts are that the assessee-company entered into an agreement with the collaborators. Under this agreement, the collaborators had to supply the machinery and were to get shares in the company. In the invoice dated 4th April, 1961, for machinery costing Rs. 9,45,545, there is no mention of any other material. But along with the machinery "working-in-material" was supplied, but its value was not indicated in the invoice. An objection was raised by the Customs authorities and a separate invoice was sent by the collaborators indicating the value for the purpose of customs duty. They also wrote to the Income-tax Officer stating that the materials had been supplied to the company free of cost. The material supplied consisted of raw materials and knitting needles in various stages of manufacture. This material, according to the collaborators, was supplied to facilitate expeditious starting of production by the company. This material was treated by the company as stock-in-trade. After it was processed it was sold like any other goods manufactured by the company and the sale-proceeds were credited to the sales account. The cost of the machinery received was debited to the capital account, but no book entries were made with regard to the materials at that time. On 30th September, 1961, the amounts representing the value of the material were debited and credited to gift accounts. On 31st March, 1962, the amount was credited to the capital reserve account debiting the gift accounts. It is, therefore, clear that this material was received free of cost and was taken by the assessee in its stock account. The total value of this material is Rs. 74,448.

(4) Before the Income-tax Officer, the assessee claimed that these materials were received as gift from the German collaborators and as such could not be dealt with in the revenue account as stock-in-trade. In the alternative, it was claimed that although the material was received free of cost, the company could debit its value to the trading account as cost of that material. The Income-tax Officer rejected the assessee's contention and held that the material was received by the assessee during the course of business from the German collaborators and formed part of its stock and its sale-proceeds would be revenue receipts in the hands of the assessee company. As no expense had been incurred by the assessee to acquire this material, the Income-tax Officer did not accept the assessee's claim that the trading account could be debited with the amount of Rs. 74,448, the value of the material.

(5) The assessee preferred an appeal to the Appellate Assistant Commissioner claiming that the amount of Rs. 74,448 could not be treated as its income. In fact, the effect of the order of the Income-tax Officer was that the amount of Rs. 74,448 representing the value of the material was treated as income of the assessee. The Appellate Assistant Commissioner rejected the appeal with the following observations :—

“From the above facts it is clear that the receipt of the materials was incidental to the business of manufacture of hosiery needles started and carried on this year. Their receipt, manufacture and sale were an integral part of this business. Neither at the time of the receipt nor at any later stage were the materials impressed with the character of capital goods or any character other than that of stock-in-trade. Only by virtue of book entries subsequently made has a debit been given to the trading account transferring the value to a capital reserve account. In the circumstances the materials represent wholly items of stock-in-trade and the sale proceeds thereof have been correctly taxed.”

(6) Against the decision of the Appellate Assistant Commissioner, a further appeal was preferred by the assessee to the Income-tax Appellate Tribunal but without any success. The relevant part of the decision of the Tribunal runs thus :—

“In other words, the claim would mean that although the company receives raw materials and semi-finished goods free of

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cost, a notional cost of Rs. 74,448 should be allowed to be debited to the revenue account. While complementing the company and its accountants for the very highly intelligent claim, we are of the opinion that it is not a proper debit to the revenue account. In our opinion, the overriding consideration which would go beyond all other factors, is the fact that the materials received were in the nature of raw materials and semi-finished products, and, therefore, relatable to the revenue account.

It is a well-known principle that all the expenditure relating to trading stocks or purchase price of the trading stocks go to revenue account. Similarly, all the proceeds from the sale of raw materials or finished products are part of the trading profits. In fact, one of the crucial tests in 'capital-revenue' questions is to see whether the expenditure relates to trading stocks or not. If they do then they are trading expenditure. As the materials received belong to trading stocks (and there is no disagreement on this finding of fact), it should be deemed to be receipt of trading stocks free of cost and, therefore, profits assessable to tax.

The assessee perhaps could make a claim on another account, but it has not been made. It could have been said that the stocks were received prior to commencement of business free of cost; therefore, it represents capital receipts. This claim was not made and, in fact, it would not be made, because the assessee company had claimed an expenditure of Rs. 22,000 as revenue expenditure in the earlier years and thereby has committed itself to the position that their business itself had commenced in the earlier year. In fact, the clear finding of fact is that 10 days prior to the commencement of the present accounting period, the business had already commenced. It is for this reason that we have consolidated the two appeals together."

(7) At the instance of the assessee, the following questions of law have been referred for our opinion under section 256(1) of the Income-tax Act, 1961 :—

- (1) Whether on the facts and in the circumstances of the case, the sum of Rs. 74,448 being the actual value of raw material received from German collaborators free of cost represented revenue receipt ?

(2) Whether on the facts and in the circumstances of the case the amount of Rs. 74,448 being the actual value of raw material received free of cost from German collaborators was rightly debited at that value to the revenue account ?

(8) The entire basis of the decision of the Tribunal is that as the goods received free of cost from the German collaborators were treated as stock-in-trade by the assessee, they would necessarily form part of revenue. This basis loses sight of the fact that to acquire stock-in-trade some expense has to be incurred. We have not been able to appreciate how a gift of raw material or even ex-gratia delivery of raw material free of cost can be treated as income. The departmental authorities as well as Tribunal have treated the value of the gift as income in the hand of the assessee. Even accepting the view that income is a term of very wide connotation and all incomings would be income, yet we are not able to accept that the value of the gift in this case is income. It will be profitable as this stage to refer to section 10 of the Income Tax Act, 1961, particularly, to sub-section (3) which takes out a payment of this kind out of the ambit of income, for section 10 says,—

“In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.”

Sub-section (3) takes out any receipts from the ambit of the term income for the purpose of the Act which are of a casual and non-recurring nature. The only exception to such receipts are :—

- “(i) capital gains, chargeable under the provisions of section 45; or
- (ii) receipts arising from business or the exercise of a profession or occupation; or
- (iii) receipts by way of addition to the remuneration of an employee.”

Admittedly the value of the raw material in this case does not fall under any of the above three heads. It is, therefore, clear that

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the receipt in question even if taken to be a revenue receipt, can in no sense be said to be income.

(9) One cannot lose sight of the fact that the assessee is a limited company and for the purpose of book-keeping it has to enter the value of gifts received as the value of the stock-in-trade and to deduct the said value from the proceeds of the material in order to determine the profit it made on that stock-in-trade. But in no case can such a stock-in-trade be said to be income. No authority has been cited which has held such a receipt as income. It is also not the case of the department that there has been a repetition of such gifts to the assessee company. It is a peculiar case where in order to give impetus to the company, the collaborators who were also partners in the company, gave certain raw materials free of cost to enable the company to function without delay. We are unable to hold that the Tribunal is right in coming to the conclusion that the departmental authorities correctly included the value of the material supplied free of cost as income of the assessee. We asked Mr. Awasthi, learned counsel for the Department, as to what would be the position if instead of raw materials, a gift in cash had been made to the company and the company had proceeded to buy raw material with that amount. Mr. Awasthi was constrained to admit that the payment of cash as gift could not be termed as income. It would partake of proceeds of the nature contemplated by section 10(3) of the Act. Therefore, the mere circumstance that instead of cash, gift of raw material is made can make no difference.

(10) There was lot of argument before us that there can be only two types of receipts, that is, receipt of a capital nature or a receipt of a revenue nature. We are unable to agree with this line of approach. There can be receipts which are neither capital nor revenue and yet those receipts may, on the facts of a given case, be given the impress of either one or the other. But the mere fact that the receipt is given such an impress will not detract from the nature of the receipt and make it either revenue or of capital receipt. Moreover, stock-in-trade by itself does not become income or profits of a business. It is only when the stock-in-trade is disposed of after processing or otherwise that the resultant is either profit or loss. It is not correct to say that in the present case there was gift of stock-in-trade.

In fact, the gift was of some material and it was later on when that material was used that it became stock-in-trade. After giving our careful consideration, we are unable to agree with the decision of the Tribunal that the value of the gifts can be treated as income of the assessee.

(11) The result, therefore, is that the first question referred to us has to be answered in the negative, that is, in favour of the assessee and against the department. In view of our answer to the first question, the second question has to be answered in the affirmative, that is, in favour of the assessee and against the department. In view of the difficult nature of the question involved, we make no order as to costs.

B. S. G.