1958

October 9.

RAJPUTANA AGENCIES LTD.

v.

COMMISSIONER OF I. T., BOMBAY

(T. L. VENKATARAMA AIYAR, P. B. GAJENDRAGADKAR and A. K. SARKAR, JJ.)

Income-tax—Assessment of company—Declaration of dividend in excess of statutory limit—Additional income-tax—Computation—"Rate applicable to the total income of the company", Meaning of—Indian Finance Act, 1951, First Schedule Para. B, proviso (ii), explanation (ii)(b).

The assessee, a private limited company in Saurashtra, was assessed for the assessment year 1952-53 on a total income of Rs. 26,385. It was assessable at the rate of four annas per rupee but in view of the provisions of the Part B States (Taxation Concession) Order, 1950, it was actually assessed at the rate of sixteen pies per rupee. The assessee had declared dividend of Rs. 30,000 out of which Rs. 15,159 was found to be excess dividend. On this excess dividend the assessee was liable to pay additional income-tax and the dispute was regarding the rate at which tax was to be computed. Clause (ii) of the proviso to para. B of Part I of the First Schedule to the Finance Act, 1951, which applied to the case, provided that the additional income-tax was to be equal to the sum by which the aggregate amount of income-tax actually borne by the excess amount fell short of the amount calculated at the rate of five annas per rupee on the excess dividend. Sub-clause (b) of cl. (ii) to the second explanation to proviso to para. B provided that the aggregate amount of income-tax actually borne by the excess dividend was to be determined at the rate applicable to the total income of the company. The assessee contended that the words 'at the rate applicable to the total income of the company' meant the rate prescribed by para. B of the Act, i.e. four annas per rupee, and not the rate as reduced by the Order at which the income-tax had actually and in fact been levied and that consequently it was liable to pay additional income-tax on the excess dividend at the rate of one anna per rupee only.

Held, that the expression 'rate applicable to the total income of the company' meant the rate actually applied and that the assessee was rightly charged at the rate of forty-four pies per rupee being the rate by which the rate at which the assessee was actually assessed fell short of the rate of five annas per rupee. The clause referred to the specific or definite rate which was determined to be applicable to the taxable income of the company for that specific year and not to the rate prescribed by the Act for the relevant year generally in reference to incomes of companies.

Elphinstone Spinning and Weaving Mills Co. Ltd. v. *Commissioner of Income-tax, Bombay City*, [1955] 28 I.T.R. 811, considered.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 91 of 1957.

Appeal from the judgment and order dated March 29, 1956, of the Saurashtra High Court at Rajkot in Civil Reference No. 1 of 1955.

Shankarlal G. Bajaj and *P. C. Aggarwal*, for the appellant.

K. N. Rajagopala Sastri, *R. H. Dhebar* and *D. Gupta*, for the respondent.

1958. October 9. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal arises from the assessment proceedings taken against the appellant, Rajputana Agencies Ltd., Lavanpur, for its income for the assessment year 1952-53, the accounting period being the corresponding Marwadi Year ending in October, 1951. The appellant is a private limited company and it was assessed to income-tax and super-tax by the Income-tax Officer, Morvi Circle, Morvi, on a total income of Rs. 26,385. The appellant had declared dividend of Rs. 30,000. The Income-tax Officer held that out of the said amount of dividend, Rs. 15,159 was excess dividend. On this basis the Income-tax Officer determined the additional income-tax payable by the appellant at the rate of forty-four pies in a rupee on the said excess dividend. The additional income-tax payable by the appellant in that behalf was computed at Rs. 3,473-15-0. This order was passed on November 25, 1952. *Gajendragadkar J.*

The appellant filed an appeal against this order before the Appellate Assistant Commissioner of Income-tax at Rajkot. The appellate authority determined the additional income-tax payable by the appellant at Rs. 2,084-12-0 on August 29, 1953. An appeal was preferred by the appellant against the appellate order before the Income-tax Appellate Tribunal, Bombay, but the appellate tribunal confirmed the order under appeal on November 27, 1954. The

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appellant then moved the appellate tribunal under s. 66(1) of the Income-tax Act and the appellate tribunal, by its order passed on April 25, 1955, referred two questions to the High Court at Saurashtra for its opinion. In the present appeal, we are concerned with the second of the said two questions. This question as framed by the tribunal was: Whether the expression "at the rate applicable to the total income of the company" as appearing in sub-cl. (b) of cl. (ii) to the second explanation to proviso to paragraph B of Part I of the First Schedule to the Indian Finance Act, 1952, means the rate at which a company's total income is actually assessed or the rate prescribed by the respective Finance Act without taking into consideration the rebate allowed in the respective years in accordance with the provisions of the Part 'B' States (Taxation Concessions) Order, 1950 (hereinafter called the Order). Section 2 of the Finance Act, 1952, provides that the provisions of s. 2 of, and the First Schedule to, the Finance Act, 1951, shall apply in relation to income-tax and super-tax for the financial year 1952-53 as they apply in relation to the income-tax and super-tax for the financial year 1951-52 with the modification that, in the said provisions for the figures 1950, 1951 and 1952 wherever they occur, the figures 1951, 1952 and 1953 shall be respectively substituted; and so in the present case we are really concerned with the material provisions of the Finance Act, 1951 (hereinafter called the Act).

By its judgment delivered on March 29, 1956, the High Court answered this question against the appellant and held that the expression "at the rate applicable to the total income of the company" means the rate at which the company's total income is actually assessed. The appellant then applied for and obtained a certificate from the High Court under Art. 133(1)(c) of the Constitution read with s. 66A(2) of the Income-tax Act that the case is a fit one for appeal to this Court. It is with this certificate that the present appeal has been brought to this Court; and the only point which it raises for our decision relates to the construction of the expression "at the rate applicable

to the total income of the company" appearing in the relevant provision of the Act.

The appellant does not dispute its liability to pay additional income-tax under cl. (ii) of the proviso to paragraph B of Part I of the First Schedule to the Act. The dispute between the parties is in regard to the rate at which the additional income-tax has to be charged. The appellant has paid income-tax on its total income in the relevant assessment year at the rate of sixteen pies in a rupee in accordance with the computation prescribed by para. 6 of the Order; and it is urged on its behalf, that the rebate to which it is entitled under the provisions of the said Order is irrelevant in determining the rate at which the additional income-tax can be computed against it. On the other hand, the respondent contends that the additional income-tax has to be computed at the rate at which the appellant's income has been actually assessed and so the rebate granted to the appellant under the said Order must be taken into account in determining the said rate of the additional tax.

It would be relevant, at this stage, to refer to the provisions of the Order under which the appellant has admittedly obtained rebate as a company carrying on its business in Saurashtra. By the Order, the Central Government made exemptions, reductions in the rate of tax and modifications specified in the Order in exercise of the powers conferred by s. 60A of the Income-tax Act. This Order applied to Part 'B' states which included all Part 'B' States other than the State of Jammu and Kashmir. Paragraph 5 of the Order deals with income of a previous year chargeable in the Part 'B' States in 1949-50. Sub-clause (3) of paragraph 5 shows that the State assessment year 1949-50 means the assessment year which commences on any date between April 1, 1949 and December 31, 1949. We are not concerned with the provisions of this paragraph. Paragraph 6(iii) applies to the present case. The effect of para. 6(i), (ii) and (iii) is that in respect of so much of the income, profits and gains included in the total income as accrue or arise in any State other

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than the States of Patiala and East-Punjab States Union and Travancore-Cochin—

(i) the tax shall be computed (a) at the Indian rate of tax; and (b) at the State rate of tax in force immediately before the appointed day;

(ii) where the amount of tax computed under sub-clause (a) of clause (i) is less than or is equal to the amount of tax computed under sub-clause (b) of clause (i) the amount of the first mentioned tax shall be the tax payable;

(iii) where the amount of tax computed under sub-clause (a) of clause (i) exceeds the tax computed under sub-clause (b) of clause (i), the excess shall be allowed as a rebate from the first mentioned tax and the amount of the first mentioned tax as so reduced shall be the tax payable.

Thus under cl. (iii) the amount of income-tax levied against the appellant is not the amount computed at the Indian rate; it represents the difference between the amounts calculated at the Indian rate of tax and that calculated at the State rate of tax. The excess of the first amount over the second is allowed as a rebate. In other words, the Indian rate of tax prescribed by the relevant provisions of the Act does not by itself determine the amount of tax payable by the appellant for the relevant year.

It is well known that when different Part 'B' States merged with the adjoining States or Provinces and were made taxable territories under the Income-tax Act, the operation of the Indian rate of tax was introduced by phases and rebates on a graduated scale were allowed to the assessees under the provisions of this Order. As we have already mentioned, it is common ground that the appellant was entitled to and has obtained rebate under sub-cl. (iii) of paragraph 6 of the Order, with the result that his total income has been taxed to income-tax at the rate of sixteen pies in a rupee. The point for determination is whether this rebate is relevant in determining the rate at which the additional income-tax has to be levied against the appellant under the relevant provisions of the Act.

Let us now consider the relevant provisions of the Act. Section 3 of the Income-tax Act which is the charging section provides that "where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of the assessee". Thus, when levying income-tax against the total income of the assessee, the rate at which the tax has to be levied is prescribed by the Act for the relevant year. Section 2 of the Act provides that, subject to the provisions of sub-ss. (3), (4) and (5), income-tax shall be charged at the rates specified in Part I of the First Schedule; and sub-s. (7) provides that "for the purpose of this section, and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Act". So we must turn to the First Schedule to the Act to find the rate at which the appellant can be assessed. Paragraph B of the said Schedule deals with companies and it provides that, in the case of every company, on the whole of total income the tax is leviable at the rate of four annas in the rupee. There is a proviso to this paragraph and the clause which calls for our construction in the present appeal occurs in the explanation to cl. (ii) of this proviso. This proviso deals with the case of a company which in respect of its profits liable to tax under the Act for the relevant year has made the prescribed arrangements for the declaration and payment within the territory of India excluding the State of Jammu and Kashmir of the dividends payable out of such profits and has deducted the super-tax from the dividends in accordance with the provisions of sub-s. (3D) or (3E) of s. 18 of that Act; and in that connection, it provides:

(i) where the total income, as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax exceeds the amount of any dividends (including dividends payable at a fixed rate) declared

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in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1951, and no order has been made under sub-section (1) of section 23A of the Income-tax Act, a rebate shall be allowed, at the rate of one anna per rupee on the amount of such excess;

(ii) where the amount of dividends referred to in clause (i) above exceeds the total income as reduced by seven annas in the rupee and by the amonnt, if any, exempt from income-tax, there shall be charged on the total income an additional income-tax equal to the sum, if any, by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend.

It would thus be seen that the object of the legislature in enacting this proviso is to encourage companies to plough back some of their profits into the industry and not to distribute unduly large portions of their profits to their shareholders by declaring unreasonably high or excessive dividends. In order to give effect to this intention the legislature has offered an inducement to the companies by giving them a certain rebate. If a company does not distribute as dividends more than roughly nine annas of its profits which is specified as distributable, then the rebate of one anna is given to the company to the extent that the dividend paid by it was less than the distributable dividend. If the company pays more than the distributable amount of dividend then it was not entitled to claim any rebate; but, on the contrary, it becomes liable to pay an additional income-tax as provided in cl. (ii) of the proviso. In other words, the intention of the legislature appears to be that companies should no doubt declare reasonable dividend and thereby invite the investment of capital in business; but they should not declare an excessive dividend and should plough back part of their profits into the industry. It is with this object that the provision for rebate has been made. It would be noticed that, in addition to the rebate received by the appellant under the relevant provisions of the

Order, it would have been entitled to receive the rebate under cl. (i) of the proviso to paragraph B if the dividend declared by it had not exceeded the specified distributable amount. In fact the dividend declared by the appellant has exceeded the said amount and the appellant has thus become liable to pay additional income-tax in respect of the excess dividend under cl. (ii) of the proviso to paragraph B. Under this clause, "the appellant shall be charged on the total income an additional income-tax equal to the sum, if any, by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend". This provision raises the problem of determining the aggregate amount of income-tax actually borne by the excess dividend; and it is to help the solution of this problem that an explanation has been added which says, inter alia, that "for the purposes of cl. (ii) of the above proviso the aggregate amount of income-tax actually borne by the excess dividend shall be determined as follows:

(i) the excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year;

(ii) such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax—

(a) if an order has been made under sub-section (1) of section 23A of the Income-tax Act, in respect of the undistributed profits of that year, at the rate of five annas in the rupee, and

(b) in respect of any other year, at the rate applicable to the total income of the company for that year reduced by the rate at which rebate, if any, was allowed on the undistributed profits."

Clause (i) explains what shall be deemed to be the

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excess dividend and how it should be ascertained. Clause (ii) lays down how the portion of the excess dividend as is deemed to be out of the undistributed profits of each of the years mentioned in cl. (ii) of the proviso shall be deemed to have borne tax. Sub-clause (a) of cl. (ii) is concerned with cases where an order has been made under s. 23A (1) in respect of the undistributed profits of that year at the rate of five annas in a rupee. We are not concerned with this clause in the present appeal. It is sub-cl. (b) of cl. (ii) of the explanation to the proviso to paragraph B that falls for consideration in the present appeal.

The appellant's case is that the expression "at the rate applicable to the total income" means the rate prescribed by paragraph B of the Act and not the rate at which income-tax has actually and in fact been levied. This contention has been rejected by the High Court and the appellant urges that the High Court was in error in rejecting its case. The argument is that the words "at the rate applicable to the total income of the company" must be strictly and literally construed and reliance is placed on the principle that fiscal statutes must be strictly construed. On the other hand, as observed by Maxwell "the tendency of modern decisions upon the whole is to narrow materially the difference between what is called a strict and beneficial construction (1)". Now the words "the rate applicable" may mean either the rate prescribed by paragraph B or the rate actually applied in the light of the relevant statutory provisions. "Applicable", according to its plain grammatical meaning, means capable of being applied or appropriate; and appropriateness of the rate can be determined only after considering all the relevant statutory provisions. In this sense it would mean the rate actually applied. In the present case, if sub-cl. (b) is read as a whole, and all the material words used are given their plain grammatical meaning, its construction would present no serious difficulty. When the clause refers to the rate applicable, it is necessary to remember that it refers to the rate applicable to *the* total income of *the* company for

(1) Maxwell on "Interpretation of Statutes", 10th Ed., p. 284.

that year. In other words, the clause clearly refers to the specific or definite rate which is determined to be applicable to the taxable income of the company for the specific year; and it is not the rate prescribed by the Act for the relevant year generally in reference to incomes of companies. The result is that, for determining the aggregate amount of income-tax actually borne by the excess dividend, the department must take into account the rate at which the income of the company for the specific year has in fact been applied or levied.

Besides, in construing the words "the rate applicable" we must bear in mind the context in which they are used. The context shows that the said words are intended to explain what should be taken to be "the tax actually borne". If the legislation had intended that the tax actually borne should in all cases be determined merely by the application of the rate prescribed for companies in general, the explanation given by the material clause would really not have been necessary. That is why, in our opinion, the context justifies the construction which we are inclined to place on the words "the rate applicable".

The same position is made clear by the further provision in sub-cl. (b) itself which requires that the relevant rate has to be reduced by the rate at which the rebate, if any, has been allowed on the undistributed profits; which means that, for determining the rate in sub-cl. (b), it is necessary to take into account the rebate which may have been allowed to the company under cl. (i) of the proviso to paragraph B, so that in such a case the rate applicable cannot be the rate prescribed in paragraph B of the Act; it must be the rate so prescribed reduced by the rate at which the rebate has been granted under cl. (i) of the proviso to paragraph B. It is thus clear that the words "rate applicable" in such cases mean the rate determined after deducting from the rate prescribed by paragraph B the rate of rebate allowed by cl. (i) of the proviso to the said paragraph. Therefore, at least in these cases the material words mean the rate actually applied. If that be the true position, the rate applicable must in

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all cases mean the rate actually applied. The same words cannot have two different meanings in the same clause.

Incidentally we may point out that the provision of the Act in regard to the payment of additional income-tax appears to be intended to impose a penalty for distributing dividends beyond the distributable limit mentioned by the statute. The method prescribed for determining the amount of this additional income-tax is this. Calculate the amount at the rate of five annas per rupee on the excess dividend and deduct from the amount so determined the aggregate amount of income-tax actually borne by such excess dividend; the balance is the amount of additional income-tax leviable against the company. In adopting this method, if rebate admissible under cl. (i) of the proviso to paragraph B has to be deducted from the rate prescribed, it is difficult to understand why a rebate granted under paragraph 6(iii) of the Order should not likewise be deducted. We accordingly hold that the rate applicable in sub-cl. (b) of cl. (ii) of the explanation read with cl. (ii) of the proviso to paragraph B of Schedule I of the Act means the rate actually applied in a given case. On this construction the rate at which the appellant is liable to pay the additional income-tax would be the difference between the rate of five annas and the rate of sixteen pies in a rupee at which the appellant has in fact paid income-tax in the relevant year. That is to say, the additional income-tax is leviable at the rate of forty-four pies in a rupee.

In its judgment, the High Court of Saurashtra has referred with approval to the decision of the Bombay High Court in *Elphinstone Spinning and Weaving Mills Co., Ltd.* v. *Commissioner of Income-tax, Bombay City* (1). In this case, Chagla C. J. and Tendolkar J. have held that if a company has no taxable income at all for the assessment year 1951-52 and in that year it pays dividends out of the profits earned in the preceding year or years, additional income-tax cannot be levied on the company by reason of the fact that it has paid an excess dividend within the meaning of that

(1) [1955] 28 I.T.R. 811.

expression in the proviso to paragraph B of Part I of the Act. We are not concerned with this aspect of the matter in the present appeal. However, in dealing with the question raised before them, the learned judges have incidentally construed the relevant words "rate applicable" as meaning the rate actually applied; and their observations do support the view taken by the Saurashtra High Court in the present case.

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

THE STATE OF UTTAR PRADESH

v.

BANSRAJ

(and connected appeal)

(JAFER IMAM and J. L. KAPUR, JJ.)

Motor Vehicle—Driving in contravention of terms of permit—Driver, if liable—Motor Vehicles Act (IV of 1939), ss. 42(1) and 123.

The respondents who were drivers, not being owners, were found driving motor vehicles in contravention of the terms of the permits granted under s. 42(1) of the Motor Vehicles Act. They were prosecuted and were convicted under s. 123 of the Act and sentenced to pay fine. The High Court held that under s. 42(1) it was the owner alone who was interdicted from using or permitting the use of the vehicle save in accordance with the conditions of the permit and that, accordingly, if the vehicle was used against the conditions of the permit only the owner, and no one else, including the driver, could be guilty of the contravention under s. 123.

Held, that drivers of the motor vehicles were also liable under s. 123 of the Act for driving in contravention of the terms of the permits. Section 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used only in the manner authorised by the permit. Section 123 penalises all