

**WAR PROFITS TAX COMMISSIONER, MADHYA PRADESH, A
INDORE**

v

M/S. BINODRAM BALCHAND OF UJJAIN

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April 20, 1966

[K. N. WANCHOO, J. C. SHAH AND S. M. SIKRI, JJ.]

Gwalior War Profits Tax Ordinance, Samvat 2001, as amended by Amendment Ordinances of Samvat 2002 and Samvat 2004, First Schedule, r. 3(1) and (2) and Explanation—Explanation, if retrospective—If applies to r. 3(1).

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The assessee was the managing agent of a Textile Mill in Ujjain. In 1944, the Gwalior State promulgated the Gwalior War Profits Tax Ordinance. In 1946, by the Gwalior War Profits Tax (Amendment) Ordinance, an Explanation was added after r. 3(2) of the First Schedule to the Ordinance of 1944. In 1947, another Amendment Ordinance was promulgated whereby a comma was inserted in the Explanation. In July 1944, the assessee received about Rs. 11 lacs as dividend on its shares in the Textile Mill. The War Profits Tax Officer included the amount in the assessee's taxable income, and the order was upheld by the Appellate Assistant Commissioner and the Commissioner. On the question: whether the dividend income was chargeable to war profits tax, the High Court held, on a reference, that the Explanation applied and that under the Explanation the dividend income was not liable to be included in the assessee's taxable income.

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In appeal to this Court, it was contended that the Explanation was not applicable, because, (i) it was not retrospective; and (ii) it was only an Explanation to r. 3(2) and not to r. 3(1) which was the rule applicable to the assessee.

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HELD: The Explanation applies to the computation of the profits of the chargeable accounting period, because: (i) the Ordinance of 1947 expressly assumes that the Explanation was in existence from the date when the War Profits Tax Ordinance came into force in 1944; and (ii) on the language of the Explanation it was meant to be an Explanation not only to r. 3(2) but also to r. 3(1). By the words "in r. 3(2) the following shall be added", in the amending Ordinance of 1946, all that was meant was that the Explanation should be added below r. 3(2). [228 H-229 E]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 225 of 1965.

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Appeal by special leave from the judgment and order dated September 6, 1962 of the Madhya Pradesh High Court in Misc. Civil Case No. 108 of 1958.

I. N. Shroff, for the appellant.

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S. T. Desai, S. N. Andley, Rameshwar Nath, P. L. Vohra, and Mahinder Narain, for the respondent.

A The Judgment of the Court was delivered by **Sikri, J.** This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh in a reference made to it under s. 46 of the Gwalior War Profits Tax Ordinance, Samvat 2001—hereinafter called the Ordinance. Three questions were referred to the High Court by the War Profits Tax Commissioner, but we are only concerned with question No. 1, which reads as follows:—

“Whether the dividend income of Rs. 11,09,332/- received from the Binod Mills was chargeable under the War Profits Tax?”

C When the reference was first heard by the High Court three contentions were raised by M/s Binodram Balchand of Ujjain, respondents before us, hereinafter referred to as the assessees. They were:

“(1) The assessees did not deal in shares and their holdings in the Binod Mills Limited were purely in the nature of investments, having no connections with their business as defined in Section 2(5) read with Rule 1 of Schedule 1 of the Gwalior War Profits Tax Ordinance. The business of the secretaries, treasurers and agents of the Binod Mills Limited, which was carried on by them did not require any holding of the shares of the company and was not dependent on their investment in the said company.

(2) The dividend income accrued or arose from the profits of the Binod Mills Limited, and as the Ordinance applied to the business carried on by this company, the dividends were excluded under the explanation to Rule 3(1) of Schedule 1.

(3) The dividend income should be considered as income of the full accounting period, *i.e.*, from Diwali of 1943 to Diwali of 1944 and should be apportioned on that basis”.

G The High Court by its judgment dated April 19, 1957, accepted the first contention of the assessees and accordingly answered the question in their favour. It did not deal with contentions Nos. 2 and 3. The Commissioner appealed to this Court and this Court by its judgment dated December 20, 1961, set aside the judgment of the High Court and answered the first contention in relation to question No. 1 against the assessees and remanded the case to the High Court for the consideration of the other two contentions with reference to that question. The High Court on remand accepted the second contention of the assessees and answered question No. 1, set out above, in favour of the assessees. The Commissioner having obtained special leave, the appeal is now before us for disposal.

A few facts may be given in order to appreciate the point that has been argued before us. The assessee were, at the relevant time, the Managing Agents of the Binod Mills Ltd., Ujjain, which was a private limited company carrying on the business of manufacturing and selling textile goods in 1944. The Ruler of the Gwalior State promulgated the Gwalior War Profits Tax Ordinance, Samvat 2001, for the purpose of imposing tax on excess profits arising out of certain businesses. The Ordinance came into force on July 1, 1944, and applied originally to the accounting period falling within the period commencing on July 1, 1944, and ending on June 30, 1945. By virtue of a notification the period was extended to June 30, 1946.

The assessee carried on the Managing Agency business during the aforesaid period in Gwalior State and being liable to be assessed to war profits submitted a return for the period commencing from July 1, 1944, to October 16, 1944. It appears that Rs. 11,09,332/- was received by the assessee on July 5, 1944, on account of dividend on shares of the Binod Mills for the year 1943. The assessee *inter alia* contended before the War Profits Tax Officer that this sum was not liable to be charged. The War Profits Tax Officer, however, by order dated July 9, 1951, included this sum of Rs. 11,09,332/- in the taxable income and his view was upheld in appeal by the Appellate Assistant Commissioner and the Commissioner. As stated above, the Commissioner, at the instance of the assessee, referred three questions, including the one with which we are concerned, to the High Court.

It appears that before the High Court the learned counsel for the Commissioner did not seriously dispute the contention of the assessee that the dividend income which the assessee had received was exempted by the Explanation to r. 3 of Schedule I of the Ordinance. The rule as it existed originally was as follows:—

“(1) Income received from investments shall be included in the profits of a business liable to the War Profits Tax, unless it is proved to satisfaction of the War Profits Tax Officer that the investments have no connection whatever with the business.

(2) In the case of business which consists wholly or mainly in the dealing in or handling of investments, income received from investments shall be deemed to be profits of that business, and in the case of a business, a specific part only of which consists in dealing in investments, the income received from investments held for the purposes of that part of the business shall be deemed to be profits of that part of the business”.

A By s. 2 of the Gwalior War Profits Tax (Amendment) Ordinance, Samvat 2002—hereinafter referred to as Ordinance 2002, r. 3 of the First Schedule to the Ordinance was amended as follows:—

B “In rule 3(2) of the First Schedule to Ordinance the following shall be added, namely:—

C *Explanation*—“The income from investments to be included in the profits of the business under the provisions of this rule shall be computed exclusive of all income received by way of dividends or distribution of profits from a company carrying on a business to the whole of which the Section of the Ordinance imposing the War Profits Tax applies”.

This Ordinance was promulgated on February 28, 1946. Another Ordinance called the Gwalior War Profits Tax (Amendment) Ordinance, Samvat 2004—hereinafter referred to as Ordinance 2004—was promulgated on September 6, 1947. This Ordinance amended the Explanation to sub-rule (2) of rule 3 of Schedule 1 as follows:—

D “In the explanation of sub-rule (2) of Rule 3 of Schedule I of the Gwalior War Profits Tax Ordinance, Samvat 2001 a comma is added after the words “from a company carrying on a business” and before the words “to the whole of which” and shall be always deemed to be there from the date from which the said Ordinance came into force”.

The High Court felt no difficulty in holding that the explanation applied, and that on its plain terms the dividend income which the assessees received from the profits of Binod Mills Ltd. was not liable to be included in the taxable income. The High Court observed:—

F “The language of the explanation is very plain, and it means that if income is received by way of dividends or profits from a company carrying on a business, to the whole of which the section of the Ordinance imposing the War Profits Tax applies, then the income has to be excluded in the assessment to War Profits Tax of the assessee receiving that income. The object of the explanation is clearly to avoid double taxation. Here it is not disputed that the dividend income which the assessee received was from the profits of the Binod Mills Limited and the Mills were subject to the burden of the War Profits Tax under the Ordinance. That being so, the explanation in terms applies to the case, and the assessee is entitled to claim that the dividend income of Rs. 11,09,332/- received from Binod Mills could not

be included in the computation of its profits for the purposes of War Profits Tax and was consequently not chargeable under the War Profits Tax Ordinance. Learned Advocate-General appearing for the State did not dispute this position".

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Mr. Shroff, the learned counsel for the Commissioner, contends, first, that the explanation was not in existence at the relevant time, and, therefore, cannot be taken into consideration; secondly, that the explanation is an explanation to r. 3(2) and not to r. 3(1) and, therefore, cannot be used to explain r. 3(1). Mr. Shroff complains that the High Court was wrong in thinking that the explanation formed part of Ordinance 2001, as it was originally promulgated. The High Court seems to have been under this impression because in the order refusing leave to appeal to this Court the High Court observed:—

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"There was no omission at all on our part to consider the question whether the explanation was prospective or not. Indeed, this question was never raised by the learned Advocate-General, appearing for the Department and it was rightly not raised as the Explanation was not added subsequent to the promulgation of the Ordinance and the very basis of the assessment of the income of the assessee was that rule 3 of Schedule I of the Ordinance together with the Explanation applied to the income received by the assessee during the period from 1st July 1944 to 16th October 1944".

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It seems that Ordinance 2002 and Ordinance 2004 were not placed before the High Court and for this reason it assumed that the explanation was not added subsequent to the promulgation of the Ordinance.

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But even if it was added subsequently, in our opinion, the explanation applies to the computation of the profits of the chargeable accounting period July 1, 1944 to October 16, 1944. If we read Ordinance 2002 and Ordinance 2004 together the legislative intention to make the explanation retrospective becomes clear. Apart from Ordinance 2004, it would have been very arguable that the explanation inserted by Ordinance 2002 was retrospective because it dealt with the computation of profits and would apply to all computation of profits made by the Taxing authorities after February 28, 1946. But we need not go into this question because Ordinance 2004 expressly assumes that the explanation was in existence from the date when the Ordinance came into force and no other meaning can be given to s. 2 of Ordinance 2004 because by deeming that the comma shall be deemed to be there from the date from which the Ordinance came into force it expressly assumes that the explanation was also in force from that date. Accordingly we are not inclined to

A accept the first contention of Mr. Shroff and we must hold that the explanation applies to the computation of profits of the chargeable accounting period July 1, 1944 to October 16, 1944.

B Regarding the second contention, Mr. Shroff says that Ordinance 2002 expressly provides that the explanation shall be added in r. 3(2) of the First Schedule to the Ordinance. He further says that this explanation is referred in Ordinance 2004 as "explanation of sub-rule (2) of rule 3 of Schedule 1". There is no doubt that Ordinance 2002 did purport to add this explanation to r. 3(2) but it seems to us that if we look at the language of the explanation it was meant to be an explanation not only to r. 3(2) but to r. 3(1) also. First, the words "the income from investments to be included in the profits of the business under the provisions of *this rule*" are comprehensive and include income from investments both under r. 3(1) and r. 3(2). Secondly, there is no reason why any distinction should have been made between investments mentioned in r. 3(1) and investments mentioned in r. 3(2). Rule 3(1) is general and deals with all investments from profits of all businesses and would include investments mentioned in r. 3(2). Rule 3(2) deals with investments of a certain business, *i.e.*, business which consists wholly or mainly in the dealing in or holding of investments. We have not been able to appreciate why, if Mr. Shroff is right, was it necessary to distinguish between income from investments mentioned in r. 3(1) and income from investments mentioned in r. 3(2). At any rate, the language of the explanation is quite clear and it seems to us that by the words "in rule 3(2) of the First Schedule to the Ordinance, the following shall be added" what was really meant was to add the explanation below r. 3(2).

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In the result we agree with the High Court that the answer to the question referred should be in the negative. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.