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on the fact that it was only a valid reference which gave jurisdiction to the Court and therefore the Court had to ask itself the question whether it had jurisdiction to entertain the reference.

In view of these authorities it is clear that it was the duty of the learned Judge below to consider whether the Collector was right in refusing to make a reference and in order to determine that it was incumbent upon the learned Judge to decide the question of limitation. If the learned Judge came to the conclusion that the application made by the claimants was within time then undoubtedly he had a right to issue an order under s. 45 of the Specific Relief Act upon the Collector compelling him to make a reference at the instance of the claimants.

We therefore set aside the order of the learned Judge and send the petition back to him and direct him to determine as to whether the application of the claimants was within time and if he comes to the conclusion that the application was within time then the learned Judge will issue an order under s. 45 of the Specific Relief Act. If on the other hand he comes to the conclusion that the Land Acquisition Officer was right and that the application was barred by limitation then he will dismiss the petition.

Each party to bear his own costs.

Petition dismissed.

A. J. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

COMMISSIONER OF INCOME-TAX, APPELLANT *v.* THE CENTURY SPINNING AND MANUFACTURING CO. LTD., RESPONDENT.*

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Business Profits Tax Act (XXI of 1947), r. 2 (1) in Sch. II—Capital of a Company—"Reserves" meaning of—Setting aside a part of profits.

The language used in rule 2 (*1*) in Schedule II of the Business Profits Tax Act is not "reserve fund" but "reserves" and "reserves" does not mean the same thing as "reserve fund".

* Income-tax Ref. No. 27 of 1950.

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The expression "reserves" is not used in the Income-tax Act at all and it cannot be given any technical meaning. The Court should give to the term "reserves" its plain natural meaning.

The term "reserves" as used in rule 2 means profit earned by a company and not distributed as dividend to the share-holders but kept back by the directors for any purpose to which it may be put in future.

Held, therefore, that the sum of Rs. 5,08,637 kept aside from the Company's profit of Rs. 90,44,677 and carried over as a balance to the balance sheet and being already subjected to taxation satisfied the requirements of rule 2 and formed part of the "reserve" of the Company and constituted a part of the capital of the Company for the purposes of the Business Profits Tax Act.

Held, further that the assessee Company was not entitled to include the profits made by it for the period January 1, to April 1, 1946 as "reserves" for the purposes of r. 2 because the Company after having made profits for the said period, had not kept back that amount by some conscious act so as to constitute the same as "reserves."

Reference at the instance of the Commissioner of Income-tax, Bombay City arising from the Tribunal's order under Business Profits Tax Act, 1947.

The chargeable accounting period for the purpose of this reference was April 1, 1946 to December 31, 1946.

According to the Profit and loss Account, the assessee company made a profit of Rs. 90,44,677 for the year ending December 31, 1945.

After providing for paying dividend and setting aside for depreciation, taxation, etc. a sum of Rs. 5,08,637 was carried to the balance sheet.

The first contention of the assessee company was that the sum of Rs. 5,08,637 should be included in its reserves while determining the company's capital on April 1, 1946. The second contention of the company was that its proportionate profits between January 1, 1946 should also be included in the aforesaid reserves.

The Income-tax Officer rejected both the contentions. On appeal to the Appellate Assistant Commissioner the order of the Income-tax Officer was confirmed.

The company appealed to the Tribunal which upheld both the contentions of the company.

The Commissioner of Income-tax thereupon applied to the Tribunal to refer two questions of law arising from the Tribunal's order to the High Court.

The Tribunal referred the following two questions for the decision of the High Court.

1. Whether the amount of Rs. 5,08,637 is a part of the "reserves" of the assessee company as on April 1, 1946, within the meaning of rule 2 (*1*) of the rules in Schedule 11 to the Business Profits Tax Act?

2. Whether the profits of the assessee company from January 1, 1946, to April 1, 1946, should be included in the said "reserves" as on April 1, 1946.

The Reference was heard.

C. K. Daphtary, Advocate-General with *G. N. Joshi*, for the Commissioner.

Sir Jamshedji Kanga with *R. J. Kolah*, for the assessee.

CHAGLA C. J. This reference raises a question under the Business Profits Tax Act. The assessee company is the Century Spinning & Manufacturing Co., Ltd., and its balance sheet for the year 1945 shows that it made a profit of Rs. 90,44,677. This profit was appropriated by a certain amount being paid for dividend and certain amounts being set aside for depreciation and other funds. Under this heading amounts were set aside for machinery, for buildings, for provision for taxation and for compulsory Excess Profits Tax deposit; and a sum of Rs. 5,08,637 was carried over as balance to the balance sheet. Now the question that falls to be determined is whether this sum of Rs. 5,08,637 can be called a reserve for the purposes of r. 2 (*1*) in schedule II of the Business Profits Tax Act. That rule provides that

> "Where the company is one to which clause (*a*) of Rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act, 1922."

Therefore, in order to determine the capital of the company for the purposes of this Act you have got to take the paid-up share capital of the company, then you have to add to it the reserves and you have to add only those reserves which have been subjected to taxation. The expression used in this rule is rather curious because we do not find the expression "reserves" used in the Indian Income-tax Act at all. An assessee may build up any reserves that he likes, but it does not follow that those reserves escape taxation. The only provision made in the Income-tax Act is under s. 10 (2) (*vi*) which permits an assessee doing business a certain amount for depreciation

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which escapes taxation, or is considered to be an allowable deduction. Depreciation is allowed according to the rules framed by the Department. Therefore, we cannot give to the expression "reserves" used in this rule any technical meaning which has been given to it in any taxing statute, but we must give to it its plain natural meaning. Now what is urged by the Advocate-General is that this sum of Rs. 5,08,637 which has been admittedly subjected to taxation does not satisfy the characteristics of a reserve contemplated by r. 2. He says that before a certain amount can be added to capital two conditions must be satisfied. It is not sufficient that the amount should be subjected to tax; it is also necessary that that amount must be a reserve. Therefore, says the Advocate General, although the sum of Rs. 5,08,637 has been subjected to tax, it is not a reserve. He says that this sum of Rs. 5,08,637 would be a reserve provided it had been appropriated for some specific purpose, or for some general purpose. Our attention is drawn to the fact that other amounts have been appropriated for specific purposes, e.g. machinery, building, provision for taxation, etc., but no purpose has been mentioned as far as this sum of Rs. 5,08,637 is concerned. Therefore, the contention of the Advocate General is that this sum is not a reserve at all. I do not see any reason at all why in order that a certain amount should be a reserve it should be appropriated for a specific purpose. It was open to the directors to distribute the sum of Rs. 5,08,637 as dividends. They did not choose to do so and have kept back this amount. Therefore, by keeping back this amount they constituted a reserve. A reserve in the sense in which it is used in s. 2 can only mean profit earned by a company and not distributed as dividends to the shareholders but kept back by the directors for any purpose to which it may be put in future. Therefore, giving to the "reserves" its plain natural meaning it is clear that the sum of Rs. 5,08,637 was kept in reserve by the company and not distributed as profits and subjected to taxation. Therefore, it satisfied all the requirements of r. 2. The Advocate General has asked us to give to the expression "reserves" the meaning it has in accountancy. In the first place we do not see why a particular meaning should be given to the expression which is technical and which is divorced from the statute in which it is used. I could have appreciated his argument if the expression was used in any other taxing statute and he was asking us to import the meaning given in that statute into this Act.

But taxing statutes have nothing whatever to do with accountancy as such and even as far as accountants are concerned as the Tribunal has pointed out in its order there is a divergence of opinion amongst accountants as to the distinction between the terms "reserves" and "reserve fund". The language used in r. 2 is not "a reserve fund" but "reserves" and what the Advocate General asks us to do is to interpret "reserves" as if the term was synonymous with "reserve fund". If the Legislature had used the term "reserve fund" instead of "reserves", there would have been considerable force in the argument of the Advocate General; but, considering that the Legislature has used the term "reserves" and not "reserve fund" we must give that expression its plain natural meaning. Therefore, the sum of Rs. 5,08,637 shown in the profit and loss account as balance carried to the balance sheet must be deemed to be a reserve for the purposes of r. 2 of the second schedule.

The second question that arises on this reference is with regard to the profits of the assessee company from January 1, 1946, to April 1, 1946. The accounting year of the company is from January 1 to December 31, and the chargeable accounting period for the purposes of the Business Profits Tax Act is April 1, 1946, to December 31, 1946. The question that arises is whether the assessee is entitled to include the profits earned by the company from January 1 to April 1, 1946, as "reserves" for the purposes of r. 2 in the second schedule. Now it is contended by the assessee that the company had earned profits during these three months, which could be ascertained by preparing a dummy balance sheet as on March 31, 1946, and the Tribunal has agreed with that view, and they state that it can be presumed that profits were evenly earned and on that basis the profits for the three months from January 1, to April 1 could be ascertained. But the fallacy underlying this argument is that what we have to consider for the purposes of r. 2 is not profits earned by the company but the reserves, and it is impossible to accept the contention that reserves are synonymous with profits. The question is whether there were any reserves which would attract the application of r. 2 between January 1 and April 1, 1946. It is not sufficient for the company to earn profits. Having earned profits it must then by some concious act determine that part of these profits should be kept back. It is only when part of these profits is kept back that it constitutes reserves. We are told that these profits were used in business and, therefore, they constitute

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reserves. But, what makes a part of the profits reserves is not the fact that they are used in the business but that they are consciously kept back and not distributed amongst the share-holders as dividends. No question of distributing any of the profits between January 1 and April 1, 1946, to the share-holders ever arose or could arise and, therefore, no question could arise of these profits constituting reserves during this period. The directors were never called upon to consider the question and in fact they did not consider the question as to whether part of the profits earned during this period should not be distributed as dividends but should be kept back for the purposes of the company. Therefore, we are unable to agree with the view taken by the Tribunal that the profits of the assessee company from January 1 to April 1, 1946, should be included in the reserves contemplated by r. 2 of the second schedule.

The result, therefore, is that we answer the first question referred to us in the affirmative and the second question in the negative. No order for the costs of the reference.

Attorney for appellant: *N. K. Petigara.*

Attorneys for respondent: *Kanga & Co.*

Answer accordingly.

A. J. P.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

1951 *March 28*

JAMNADAS PRABHUDAS, APPLICANT *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, RESPONDENT.*

Indian Income-tax Act (XI of 1922), s. 9—Municipal Property Tax and Urban property tax, whether allowable deductions—Decision of the Supreme Court—Indian Income-tax (Amendment), Act LXXI of 1950—Amending the law declared by the Supreme Court—Constitution of India arts. 372, 141—Competency of the Parliament to amend pre-existing law.

* Income-tax Ref. No. 3 of 1950.