

PETITIONER:
COMMISSIONER OF INCOME TAX, CALCUTTA

Vs.

RESPONDENT:
BRAITHWAITE AND CO. LTD.

DATE OF JUDGMENT 03/03/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1993 SCR (2) 187 1993 SCC (2) 262
JT 1993 (3) 159 1993 SCALE (1) 761

ACT:
Companies (Profits) Surtax Act, 1964:
Second Schedule Rule 1(v)-Term Loan from Bank-Repayment during a period of seven years-Whether amounts to "repayment during a period of not less than seven years"-Whether the repayment qualifies for inclusion in the capital base.

HEADNOTE:
The respondent-company obtained a Term Loan of Rs. 50,00,000 repayable within a period of seven years. The company included proportionate amount of the said Term Loan in its capital base and claimed the statutory 10% deduction in the calculation of its chargeable profits for the assessment year 1965-66. The Income-tax Officer rejected the claim of the respondent company on the ground that the repayment of the Term Loan was not during a period of not less than 7 years as contemplated in Rule 1(v) of the Second Schedule to the Companies (Profits) Surtax Act, 1964. On appeal, the Appellate Assistant Commissioner reversed the findings of the Income-tax Officer. Revenue preferred further appeal to the Tribunal which held that only the last instalment of Rs. 16,00,000 satisfied the requirements of Rule 1(v); but in respect of the other four instalments aggregating to Rs. 34,00,000 the Tribunal allowed the appeal of the Department and rejected the claim of the respondent-company. However at the instance of the respondent-company, Tribunal referred to the High Court the question whether the Tribunal was right in holding that only Rs. 16,00,000 out of the loan of Rs. 50,00,000 taken from Bank qualified for inclusion in the capital base under Rule 1(v). The High Court answered the question in the negative and in favour of the respondent-company. Against this, Revenue has come in appeal. Allowing the appeal, this court,
HELD : 1. On a plain reading of the proviso to Rule 1(v) of Second Schedule to the Companies (Profits) Surtax Act, 1964, it is clear that in

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order to claim benefit of the said provision the borrowed money has to be repaid during the period of more than seven years. The only interpretation which can be given to the expression "during a period of not less than seven years" is that the said period should go beyond seven years. The

reasoning is simple. The period of seven years would not complete till the last 'minute' or even the last 'second' of the said period is counted. The period of 'not less than seven years' can only mean till after the completion of seven years. Therefore the repayment of borrowed amount during the period of seven years does not mean repayment 'during a period of not less than seven years'. To claim the benefit under Rule 1 (v) of the Second Schedule to the Act the repayment of the borrowed money must be during a period which is more than seven years. [191D-G]

2. In the instant case, the entire term loan of Rs. 50,00,000 taken from the bank does not qualify for inclusion in the capital base under Rule 1(v) of the Second Schedule to the Act but in view of the fact that the order of the Tribunal granting relief to the respondent-company to the extent of Rs. 16 lacs has not been challenged by the department, the Revenue shall be entitled to relief to the extent of Rs.34 lacs only as not qualified for inclusion in the capital base. [192E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1054 (NT) of 1977.

From the Judgment and Order dated 18.7.75 of the Calcutta High Court in I.T.R. No. 44 of 1972.

J. Ramamurthi, R. Ayyam Perumal and Ms. A Subhashini (N.P.) for the Appellant.

K.C. Dua for the Respondent.

The Judgment of the Court was delivered by KULDIP SINGH, J. The respondent-company obtained a Term Loan of Rs. 50,00,000 from the National Grindlays Bank Ltd. The agreement dated August 1, 1964 provided for repayment of the loan in five instalments. The last instalment was to be paid on July 31, 1971. Thus the loan was to be paid back within the period of seven years from the date of the agreement. The question for our consideration is whether the repay

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ment under the agreement was "during a period of not less than seven years" within the proviso to Rule 1(v) of the Second Schedule to the Companies (Profits) Surtax Act, 1964 (the Act).

The Act imposed a surtax on so much of the chargeable profits of every company as exceeded the statutory deduction. "Chargeable profits" were defined by Section 2(5) of the Act to mean the total income as computed under the Income-tax Act, 1961 and adjusted in accordance with the First Schedule to the Act. "Statutory deduction" was defined by Section 2(8) of the Act to mean an amount equal to ten per cent of the capital of the company as computed in accordance with the provisions of the Second Schedule to the Act or an amount of Rs. 2,00,000 whichever was greater. Rule 1 of the Second Schedule to the Act provided how the capital of a company was to be computed. The relevant part of the Rule is as under:

"1. Subject to the other provisions contained in this Schedule, the capital of a company shall be the aggregate of the amounts as on the first day of the previous year relevant to the assessment year, of

(i).....

(ii).....

(iii).....

(iv).....

(v) any moneys borrowed by it from Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution which the Central Government may notify in this behalf in the Official Gazette or any banking institution (not being a financial institution notified as aforesaid) or any person in a country outside India :

Provided that such moneys are borrowed for the creation of a capital asset in India and the agreement under which such moneys are borrowed provides for the repayment thereof during a period of not less than seven years.

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EXPLANATION:.....

The agreement dated August 1, 1964 provided for repayment of the loan in five instalments as follows :

1. On July 31, 1967 Rs. 5 lakhs
2. On July 31, 1968 Rs. 7 lakhs
3. On July 31, 1969 Rs. 10 lakhs
4. On July 31, 1970 Rs. 12 lakhs
5. On July 31, 1971 Rs. 16 lakhs

The respondent-company included proportionate amount of the Term Loan of Rs. 50,00,000 in its capital base and claimed statutory percentage of the said amount as deduction in the calculation of its chargeable profits assessable for the assessment year 1965- 66. The Income-tax Officer rejected the claim of the respondent-company on the ground that the repayment of the Term Loan was not "during a period of not less than seven years". On appeal the Appellate Assistant Commissioner reversed the findings of the Income-tax Officer and held that the provisions of Rule 1(v) of the Second Schedule to the Act were satisfied and as such the respondent-company was entitled to include the Term Loan for the purposes of computing the chargeable profits. The Department preferred further appeal to the Income-tax Appellate Tribunal. The Tribunal held that only the last instalment of Rs. 16,00,000 was payable 'during a period of not less than seven years' and as such satisfied the requirements of Rule 1(v) but so far as the other four instalments aggregating to Rs. 34,00,000 were concerned the Tribunal allowed the appeal of the Department and rejected the claim of the respondent-company. At the instance of the respondent-company the Appellate Tribunal referred the following question for adjudication :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only Rs. 16,00,000 out of the loan of Rs. 50,00,000 taken from the Bank qualified for inclusion in the capital base under rule 1(v) of the Second Schedule to the Companies (Profits) Surtax Act, 1964 ?"

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The High Court answered the question in the negative and in favour of the respondent-company. This appeal by special leave is by the Incometax Department against the judgment of the High Court.

Learned counsel for the appellant contended that no part of the Term Loan of Rs. 50,00,000 qualified for inclusion in the capital base because the provisions of Rule 1(v) of the Second Schedule to the Act were not satisfied. According to

him under the Term Loan-Agreement dated August 1, 1964 the last instalment was to be paid on July 31, 1971 and as such the period of repayment was less than seven years. He further contended that in the context the expression "during a period of not less than seven years", means a period or more than seven years. The learned counsel for the respondent, on the other hand, argued that the Term Loan was payable within the period of seven years. According to him the period of seven years is obviously a period which is "not less than seven years".

We are of the view that on the plain reading of the proviso to Rule 1(v), Second Schedule to the Act it is clear that in order to claim benefit of the said provision the borrowed money has to be repaid during the period of more than seven years. The only interpretation which can be given to the expression "during a period of not less than seven years" is that the said period should go beyond seven years. The reasoning is simple. The period of seven years would not complete till the last 'minute' or even the last 'second' of the said period are counted. In other words till the last minute of the seven years period is completed the period remains less than seven years. In the present case the agreement was entered on August 1, 1964. The last instalment was to be paid on July 31, 1971. The seven years were to complete at 12 a.m. (between the night of July 31, 1971 and August 1, 1971). Even if the loan was paid back at 11.59 p.m. on July 31, 1971 the period would be less than seven years by one minute. It is, therefore, obvious that the period of "not less than seven years" can only mean till after the completion of seven years. We, therefore, hold that the repayment of borrowed amount during the period of seven years does not mean repayment "during a period of not less than seven years". To claim the benefit under Rule 1(v) of the Second Schedule to the Act the repayment of the borrowed money must be during a period which is more than seven years.

We find support in the view taken by us in the following cases. In

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Ramanasari v. Muthusami Naik, ILR 30 Madras 248, Section 1.8 of the Madras Rent Recovery Act VIII of 1865 required that, in fixing the day of sale, not less than seven days must be allowed 'from the time of the public notice and not less than 30 days from the date of distraint'. The sale was held on the 13th February, but the notice was published on 6th February. It was held that 'not less than' means the same as 'clear' and seven whole days must elapse between the day of the notice and the day fixed for sale. In re 77 The Railway Sleepers Supply Company LJ 1885 54 Ch 720, the expression 'not less' than given number of days means 'clear days'. It was held that the expression 'not less' indicates 'a minimum'.

In the present case the whole of the Term Loan was payable within the period of seven years and as such the loan of Rs. 50,00,000 taken by the respondent-company from National Grindlays Bank was not qualified for inclusion in the capital base under Rule 1(v) of the Second Schedule to the Act. The Tribunal in part and the High Court were not justified in deciding the issue in favour of the respondent-company. Since the order of the Tribunal, granting relief to the respondent-company to the extent of Rs. 16,00,000 has become final, no interference is called for to that extent. We allow this appeal, set aside the judgment of the High Court and answer the question in the manner that the entire term loan of Rs. 50,00,000 taken from the bank does not

qualify for inclusion in the capital base under Rule 1(v) of the Second Schedule to the Act but in view of the fact that the order of the Tribunal granting relief to the respondent-company to the extent of Rs.16 lacs has not been challenged by the department, the Revenue shall be entitled to relief to the extent of Rs. 34 lacs only as not qualified for inclusion in the capital base. In the facts and circumstances of this case, we leave the parties to bear their own costs.

G.N.

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