The Sree Meenakshi Mills, Ltd.

Vs

Their Workmen (and connected appeals)

Civil Appeal No. 217 of 1956

(Sayed Jafar Imam, P. B. Gajendragadkar, N. H. Bhagwati JJ)

05.11.1957

JUDGMENT

GAJENDRAGADKAR J. -

These three appeals arise out of two industrial disputes Nos. 24 and 26 of 1951 between the appellants and their workmen. Dispute No. 24 of 1951 had arisen between the management and workers of the Sree Meenakshi Mills, Ltd., Madurai, whereas dispute No. 26 of 1951, was between the management and workers of the Thiakesar Alai, Manapparai. Both the disputes were in respect of bonus claimed by the workmen for the year 1950-51. The workmen claimed bonus for the year 1950-51 on the allegation that the two mills constituted one unit and had made profits during the relevant year. On the other hand, the appellants contended that the two mills were two different units and the claims for bonus made by the workmen against them should not be considered together. According to the appellants, during the relevant year there was a trading loss and as such no bonus was payable to the workers. The Industrial Tribunal rejected the pleas raised by the appellants and held that the two mills formed part of the same unit. It also came to the conclusion that for the year in question there was a surplus of Rs. 2,87,676 against which the workmen's claim for bonus was justified. That is why the tribunal awarded three months' bonus to the workmen.

Against this decision the appellants preferred two appeals Nos. 133 and 134 of 1952 to the Labour Appellate Tribunal of India at Madras. In these appeals the appellants challenged the finding made by the tribunal against them and urged that bonus was not payable during the relevant year. The workmen also preferred an appeal, No. 168 of 1952, and in this appeal they claimed a larger bonus than what had been awarded by the tribunal below. The appellate tribunal confirmed the finding of the tribunal that the two mills formed part of the same unit. According to the appellate tribunal, the net surplus available for distribution as bonus came to Rs. 2,57,496. The claim made by the appellants in respect of various deductions was examined by the appellate tribunal and deductions were substantially disallowed in respect of three items. In respect of an amount of Rs. 8,43,927 claimed by the appellants as depreciation on machinery and buildings the appellate tribunal concurred with the industrial tribunal in holding that the claim only for a sum of Rs. 4,00,000 was admissible; in other words, a claim for deducting the balance of Rs. 4,43,927 was disallowed. It is this finding in particular with which we are directly concerned in the present appeals. It may be pointed out at this stage that in determining the amount of net surplus available for distribution as bonus, the appellate tribunal agreed with the industrial tribunal that the provision for taxation made by the appellants to the extent of Rs. 1,75,000 was adequate. In the result, the appeals preferred by the appellants as well as the respondents failed and were dismissed by the appellate tribunal. Against the order dismissing their appeals, the appellants have preferred to this Court by special leave the present Civil Appeals Nos. 218 and 219 of 1956.

The appellants had also preferred an application for review before the Labour Appellate Tribunal, Misc. Case No. III-C-387 of 1953 (Review) on the ground that the order passed by the Labour Appellate Tribunal was patently erroneous inasmuch as there was a mistake apparent on the face of the record which should be corrected under the appellate tribunal's powers of review. The appellate tribunal held that it had no power of review and that, even if it had such a power, no case had been made out for the exercise of such power because there was no mistake apparent on the face of the record which would not have been discovered when the order was made in the presence of the parties. Against this decision, the appellants have preferred to this Court by special leave the present Civil Appeal No. 217 of 1956.

In Appeals Nos. 218 and 219 of 1956, the main point which has been urged before us on behalf of the appellant is that the appellate tribunal erred in law in disallowing the appellants' claim in respect of depreciation debited by the appellants to the extent of Rs. 4,43,927. In the appeal preferred against the order passed by the appellate tribunal refusing to review its decision, it has been urged before us by the learned counsel for the appellants that the appellate tribunal was in error in holding that it had no jurisdiction to review its decision under O. 47 of the Code of Civil Procedure. It has also been argued that on the merits it was wrong to have held that the appellants had failed to make out a case for the exercise of the said jurisdiction.

It may be relevant at this stage to set out the financial position of the appellants during the relevant year as summed up in the judgment of the appellate tribunal :

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"Net Profit as per Ex. M. 1 : ... Rs. 2,40,302

Add the sum wrongly debited

as cost of repairs etc.

(Rs. 2,57,793 minus

Rs. 1,00,000) ... Rs. 1,57,793

Add bonus for the year 1949-50

wrongly debited to 1950-51. ... Rs. 1,49,920

Add bonus paid to clerical

staff for 1950-51. ... Rs. 37,896

Add depreciation debited by

the company : ... Rs. 8,43,927

Add provision for taxation : ... Rs. 1,75,000

Add donation to a College : ... Rs. 40,000

Total ... Rs. 16,44,838

Thus the gross total profit comes to Rs. 16,44,838.

From this the following deductions have to be made :

Depreciation allowed : ... Rs. 4,00,000

Bonus for the year 1950-51

paid to clerical staff : ... Rs. 37,896

Provision for taxation : ... Rs. 1,75,000

Return on capital (preference

and ordinary shares) : ... Rs. 2,94,500

Return on the reserve used as

working capital at 4 per cent. : ... Rs. 2,23,946

Provision for rehabilitation

(Rs. 6,56,000 minus

Rs. 4,00,000) : ... Rs. 2,56,000

Total ... Rs. 13,87,342

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Thus the net surplus available for distribution as bonus comes to Rs. 16,44,838 minus Rs. 13,87,342 - 2,57,496."

Since in the present appeals we are concerned only with the amount of depreciation debited by the appellants, it would be useful to set out the depreciation analysis as explained by the representative of the appellants in the Court of the Industrial Tribunal. The depreciation analysis, according to this statement, is made thus as per the Income-tax Act :

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Normal. Extra. Initial.

"(245 days) Madurai. 3,17,331 38,465 2,87,250

(250 days) Usilampatti. 2,23,206 Including

extra. 16,077."

It would be noticed that the total of these amounts comes to Rs. 8,82,329.

The true nature and character of the workmen's claim for bonus against their employers is now well settled. Bonus is not, as its etymological meaning would suggest, a mere matter of bounty gratuitously made by the employer to his employees; nor is it a matter of deferred wages. It has been held by this Court in Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur [[1955] 1 S.C.R. 991] that "the terms 'bonus' is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained." This decision is based on the view that both labour and capital contribute to the earnings of the industrial concern and so it is but fair that labour should derive some benefit if there is surplus available for that purpose. Even so, the claim for bonus cannot be effectively made unless two conditions are satisfied; the wages paid to workmen fall short of what can be properly described as living wages; and the industry must be shown to have made profits which are partly the result of the contribution made by the workmen in increasing production.

In determining the question as to whether the industry has made profit, and, if so, how much is the net surplus in a given year, provision has first to be made in respect of prior charges. This principle has been recognized by what is often described as the Full Bench formula as laid down in the matter of The Mill Owners Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay [(1950) 2 L.L.J. 1247]. According to this formula, distributable surplus has to be ascertain after providing from the gross profits for (1) depreciation, (2) rehabilitation, (3) return at 6% on the paid-up capital, (4) return on the working capital at a lesser but reasonable rate, and (5) for an estimated amount in respect of the payment of income-tax. It is common ground before us that the question as to whether the workmen's claim for bonus is justified or not must be decided in the light of this Full Bench Formula.

The appellants contended that in determining the question as to whether they have made a trading profit during the relevant year the industrial tribunal is not required to adopt the same basis as under the Income-tax Act. It is however, urged that in dealing with this question there is no justification for not giving effect to the relevant provisions of the Income-tax Act in respect of depreciation. Section 10 of the Income-tax Act provides for three kinds of allowances in respect of depreciation. Section 10(vi) deals with allowances in respect of depreciation of buildings, machinery, plant or furniture used for the purposes of the business, being the property of the assessee, of a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other cases, to such percentage on the written-down value thereof as may in any case or class of cases be prescribed. This allowance is in respect of what is described as normal depreciation. Section 10(vi) further provides for what is described as initial depreciation in cases where the buildings have been newly erected or the machinery or plant being new, (not being machinery or plant entitled to the development rebate under cl. (vi-b)), has been installed after March 31, 1945, a further sum (which shall however not be deductible in determining the written-down value for the purpose of this clause) in respect of the year of erection or installation as prescribed by cls. (a), (b), and (c) of s. 10(vi). Then s. 10(vi-a) provides for allowances of what is described as additional depreciation. This is in respect of depreciation of buildings newly erected or

of machinery or plant being new which has been installed after March 31, 1948. Section 10(vi-b) also provides for allowance "in respect of machinery or plant being new, which has been installed after the 31st day of March, 1954, and which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of installation equivalent to twenty-five per cent. of the actual cost of such machinery or plant to the assessee : Provided that no allowance under this clause shall be made unless the particulars prescribed for the purpose of clause (vi) have been furnished by the assessee in respect of such machinery or plant." The question which arises for decision is whether, in determining the question as to whether net surplus is available for distribution by way of bonus or not, it is obligatory on the industrial tribunals to allow the whole of the depreciation admissible under the said provisions of the Income-tax Act.

Before dealing with this question, it may be relevant to mention one fact on which both the tribunals below have placed emphasis in the present case. It appears that, when the proceedings were pending before the industrial tribunal, an application was made by the workmen requesting the tribunal to direct the appellants to allow the workmen inspection of accounts. The tribunal passed an order for inspection and inspection was allowed. Thereupon an application was made on behalf of the workemen on February 28, 1952, for particulars relating to the amount of Rs. 8,44,000 claimed by the appellants by way of depreciation. The appellants promised to supply the information on March 8, 1952; but ultimately, on behalf of the appellants, it was stated to the tribunal that the appellants were not able to give the details called for. The industrial tribunal and the appellate tribunal have both adversely commented on this conduct of the appellants and they were presumably disposed to draw an adverse inference against the appellants in respect of the amount of depreciation in question. Mr. Viswanatha Sastri, for the appellants, however, contended before us that though the tribunals below may have been justified in commenting on the default of the appellants to supply the particulars, that itself would not justify a drastic reduction in the amount of depreciation claimed by the appellants. He argues that the balance-sheet of the appellants has been duly audited and it was not reasonable for the tribunals to have disallowed such a large amount as Rs. 4,43,927 under the claim of depreciation. It is fairly conceded by him that if the tribunals below were not bound to grant claims for depreciation on what is described as initial and additional depreciations, then he could not challenge the propriety or correctness of the decision of the tribunals in disallowing the items appearing in the depreciation account in respect of these depreciations. It is in the light of these facts that the question raised by the appellants must be considered.

This question has been decided by a Full Bench of the Labour Appellant Tribunal in U.P. Electric Supply Co. Ltd. v. Their Workmen [[1955] L.A.C. 659]. It is true that the question of bonus had to be considered in this case in the light of the provision of the U.P. Electricity (Supply) Act, 1948. Nevertheless the Full Bench has dealt with this matter on general considerations and has set at rest the divergence of views expressed by different Benches of the Tribunal on this point. According to this decision, the initial depreciation and additional depreciation are in a sense abnormal additions to the income-tax depreciation and they are designed to meet particular contingencies and for a limited period. It would, therefore, not be fair to the workmen that these two depreciation are rated as prior charges before the available surplus is ascertained. It is likely that, in many cases, if these two depreciations are allowed as prior charges no surplus would be left even though workmen may have laboured during the year to the best of their ability and the concern was for all purpose prosperous. In other words, according to this decision, considerations on which the grant of additional depreciation may be justified under the Income-tax Act are different from considerations of social justice and fair apportionment on which the original Full Bench formula in regard to the payment of bonus to the workmen is based. That is why, in the result, this subsequent Full Bench held that only

normal depreciation including multiple shift depreciation, but not initial or additional depreciation, should rank as prior charge in applying the Full Bench formula as to the payment of bonus. If it cannot be disputed that in industrial adjudication it is not obligatory to adopt the very same procedure as prescribed by the Income-tax Act for ascertaining gross profits and then determining the amount of net surplus available, it is not easy to accept the appellants' argument that in respect of depreciation alone industrial tribunals must necessarily and in every case follow the relevant provisions of the Income-tax Act. If that be the true position, then was see no reason why, in respect of one item to debit only the technical provisions of the Income-tax Act must be followed in industrial adjudications in respect of workmen's claim for bonus. On the whole, the reasons given by the appellant tribunal in the case of The U.P. Electric Supply Co. Ltd. [[1955] L.A.C. 659] appears to us to be satisfactory; and so we are not prepared to accept the appellant's argument that the appellate tribunal in the present case has erred in law in not allowing the appellant's claim for initial and additional depreciations. In our opinion, therefore, the main point urged by the appellants in Appeals Nos. 218 and 219 of 1956 cannot succeed.

That takes us to the two other points raised by the appellants in Appeal No. 217 of 1956. The first point which has been raised in this appeal by the appellants is about the jurisdiction of the appellate tribunal to review its own orders in appropriate cases under O. 47 of the Code of Civil Procedure. This Court has recently had occasion to consider the question about the applicability of Code of Civil Procedure to the proceedings before the Labour Appellate Tribunal in M/s. Martin Burn Ltd. v. R.N. Banerjee (Civil Appeal No. 92 of 1957). Sections 9(1) and s. 10 of the Industrial Disputes (Appellate Tribunal) Act, 1950, as well as the relevant rules and orders framed under the Act were considered and it was held that the Code of Civil Procedure applies to the proceedings before the appellate tribunal with the result that the appellate tribunal can exercise its power under O. 41, r. 21, as well as under s. 151 of the Code. It is true that in this case there was no occasion to consider the applicability of the provisions of O. 47 of the Code but that does not make any difference. If the Code of Civil Procedure applies to the proceedings before the Labour Appellate Tribunal, it is clear that the provisions of O. 47 would apply to these proceedings as much as s. 151 of the Code or the provisions of O. 41. We must accordingly hold that the appellate tribunal erred in law in coming to the conclusion that it had no jurisdiction to review its own order under the provisions of O. 47 of the Code.

As we have already pointed out, the appellate tribunal has also held that even if it had jurisdiction to review its decision or judgment, in the present case it would not grant the appellants' request because it had not been shown that the order or decision suffered from any mistake which could not have been known when the order was pronounced in open court in the presence of both the parties in the present proceedings. Mr. Viswanatha Sastri, for the appellants, argues that this view is obviously wrong and should be reversed. In support of this argument, the learned counsel has invited our attention to the fact that, when the appeal was pending before the appellate tribunal, a statement had been filed by the appellants showing that the provision for income-tax had to be revised in view of the findings recorded by the industrial tribunal. According to this statement, no surplus was available for payment of bonus to workmen even on the assumption that the findings recorded by the tribunal were correct. The appellants pointed out in this statement that if an amount of Rs. 4,43,927 was disallowed by way of depreciation that would necessarily add to the amount of gross profit and in consequence the provision for income-tax would have to be proportionately increased. The appellants' case was that instead of Rs. 1,75,000 which had been allowed by the industrial tribunal by way of provision for income-tax, it would be necessary to allow an amount of Rs. 4,75,582 in that behalf. The appellants' grievance is that though this statement was filed before the appellate tribunal, the appellate tribunal has not considered it at all.

On the other hand, it appears from the judgment of the appellant tribunal that this point was not raised by the appellants before it in their arguments. No grievance was made and no higher amount was claimed by them to be reserved for taxation. The appellate tribunal has also observed that the point raised by the appellants in their review petition did not show that any new and important matter had been discovered which, after the exercise of due diligence, would not have been discovered by the parties at the time of the hearing of the appeal. Besides, the appellate tribunal also held that there was no mistake apparent on the face of the record. Technically there may be some force in the observations made by the appellate tribunal; but we cannot overlook the fact that a written statement had been filed before the appellate tribunal expressly and specially raising this point. That is why we propose to deal with the merits of the argument and not to reject it on the ground that this argument had not been urged at the proper stage.

On the merits, the argument is that, if out of the total amount of Rs. 8,43,927 debited by the appellants to depreciation, an amount of Rs. 4,43,927 is disallowed, that must inevitably add to the total amount of gross profits and if the total amount of gross profits is increased, logically provision for a higher amount of income-tax must be made. Thus presented the argument is simple and at first blush appears to be attractive; but the difficulty in accepting the argument is that the total amount of gross profits determined by Industrial Tribunals in these proceedings is not and cannot necessarily be the taxable gross profits of the employer. We have already observed that in determining the trading profits of the employer in such disputes, the method adopted by the industrial tribunals does not conform to all the requirements and provisions of the Income-tax Act, and so it would be fallacious to assume that the gross profits determined by the industrial tribunal should be taken to be gross profits that would be necessarily taxable under the Income-tax Act. Besides, it would be relevant to remember that the provision for taxation in question has been made by the appellants themselves and presumably it is based on the appellant's anticipation as to how much approximately they will have to pay by way of income-tax. But, apart from this consideration, there can be doubt that the appellants would get exemption from the payment of income-tax in respect of the amounts of initial and additional depreciation also as shown in their books of accounts. That is a right which has been conferred on the appellants by the relevant provisions of s. 10 of the Income-tax Act; and the benefit which the appellants are entitled to get under the said section cannot be ignored in deciding whether or not the provision of the sum of Rs. 1,75,000 for taxation purposes is adequate or not. We think it is not open to the appellants to contend that though for the amounts covered by the normal and additional depreciations they would not be required to pay income-tax, nevertheless they should be allowed to provide for the payment of income-tax in respect of these two items merely on the ground that they are disallowed by the industrial tribunal and have thus added to the total of gross profits as determined by the tribunal. The adequacy or otherwise of the provision for income-tax must necessarily be judge in the light of the income-tax Act since it is under the said Act that the liability to pay tax would ultimately be determined. Besides, if the appellants' argument is accepted and an amount notionally payable by way of income-tax in respect of disallowed items of depreciation is added to the estimated amount of income-tax provided by the appellants, the very object of disallowing the two items of depreciation would be substantially defeated. On the other hand, the rejection of the appellants' argument would not mean any hardship because the additional amount sought to be added by them in the provision for income-tax would definitely not have to be paid by them. We are, therefore, satisfied that the grievance made by the appellants against the order passed by the appellate tribunal on the ground that it suffers from a mistake apparent on the face of the record is not wellfounded.

It would now be necessary to refer briefly to the decisions of industrial courts to which our attention has been drawn by the learned counsel for the appellants. In Model Mills, etc. Textile Mills, Nagpur

v. Rashtriya Mills Mazdoor Sangh [(1955) I L.L.J. 534], the implications of the Full Bench formula for ascertainment of bonus have been explained. It is observed that "the formula did not purport to direct what a concern should do or should not do with its own moneys. In evolving the formula the rights and liabilities of the parties inter se in notional satisfaction of their legitimate claims as two co-operating units in the venture were tried to be equated. Opinions might differ as to the weightage to be attached to the various components constituting the formula. But the formula has to be taken as a whole in order that an equitable balance between the rights of capital and labour might be achieved for the ascertainment of bonus."

It may incidentally be pointed out that this decision recognizes that income-tax calculated on the trading profits for the year must be deducted as a prior charge from the profits even though exemption under the Income-tax Act is granted for the year in question taking into consideration the past year's losses. The same view has been expressed by the appellate tribunal in Mahalaxmi Wollen Mills, Ltd. v. Their Workmen [(1956) I L.L.J. 305]. In this case, it has been held that "even if a concern is allowed exemption from the levy of income-tax because of prior losses or unabsorbed depreciation, etc., that by itself is no ground for preventing the concern from claiming the amount of income-tax it would have been liable to pay if the profits made in the relevant year alone had been taken into account. Hence, in calculating the amount of available surplus, the amount of income-tax payable for that trading year is to be deducted irrespective of the fact whether the company in fact pays tax for the year or not". Similarly in Bennett Coleman and Company, Ltd. v. Their Workmen [(1955) II L.L.J. 60], the Labour Appellate Tribunal has held that "unabsorbed depreciation and loss incurred during prior years are allowed under s. 24(2) of the Income-tax Act to be adjusted against the profits of a future year. Where the company claims either to adjust this amount against gross profits or to deduct such amount of income-tax as would be payable on the profits if the said two items are not to be adjusted, labour cannot be permitted to refuse relief resting on unabsorbed loss and depreciation and at the same time try to get benefit for itself by refusing provision for tax resting on those very items which are permitted to be adjusted by the income-tax authorities which will result in reduced income-tax or no tax at all." It would thus appear from the decisions cited before us that industrial tribunals have consistently taken the view that income-tax calculated on the trading profits for the relevant year must be deducted as a prior charge from the gross profits even though the employer may be entitled to claim exemption under the Income-tax Act in view of the fact that he had suffered losses during the previous year. Prima facie it may be said that, if the essential basis for deciding the workmen's claim for bonus in a given year is the existence of the net surplus available for that year, it may not be permissible to question the propriety for the provision for income-tax made by the employer solely on the ground that in view of his previous year's losses he may not be called upon to pay income-tax during the year in question. After all, in this connection the calculations are made by reference to the financial position of the employer during the particular year only and in these calculations considerations relevant under the Income-tax Act in regard to the financial losses of the employer in the previous year would not be allowed to enter. However, in the present appeals we are not called upon to consider the correctness of the view taken by the Appellate Tribunal in these cases and so we need not pursue the matter any further.

Mr. Viswanatha Sastri has strongly relied on two labour decisions reported in B.E.S.T. Workers' Union v. Bombay Suburban Electric Supply. Ltd. [(1957) 2 L.L.J. 112], and Greaves Cotton and Crompton Parkinson, Ltd. v. Its Workmen [(1956) 1 L.L.J. 486]. These two decisions no doubt support the appellants' arguments before us but, for the reasons which we have already given, we must hold that these decisions are not sound or correct.

The last case to which our attention has been drawn by Mr. Viswanatha Sastri is the decision of the Labour Appellate Tribunal in Bengal Chemical & Pharmaceutical Works, Ltd. v. Their Workmen [(1954-55) 6 F.J.R. 590]. This case decide that "in providing for income-tax the tax payable by the concern on its income earned in the year for which bonus is claimed must be ascertained. The amount of income-tax actually paid during the year which is the tax of the income of the previous year should not be taken into account." In this case, the tribunal has observed that "for the purpose of ascertaining the income-tax which may be payable by the employer for the year in question, the figures appearing on the expenditure side of the profit and loss account of that year have to be marshalled and examined." This case is not of much help in deciding the point with which we are concerned.

In the result, the appeals fail on the merits and must be dismissed with costs. There will, however, be one set of costs in all these appeals.

Appeals dismissed.

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