Commissioner of Income-Tax, Bombay North

Vs

Chamanlal Mangaldas & Co.

Commissioner of Income-Tax, Bombay North

Vs

Mangaldas Girdhardas Parekh Ltd.

Civil Appeals Nos. 162 and 210 of 1958

(S. K. Das, M. Hidayatullah, J. L. Kapur JJ)

19.02.1960

JUDGMENT

KAPUR, J. –

These are two appeals against two judgments and orders of the High Court of Bombay on two references made by the Income-tax Appellate Tribunal. The appellant in both the appeals is the Commissioner of Income-tax and in C.A. No. 162 of 1958, the respondent is the assessee Chamanlal Mangaldas & Co., a registered firm, who are the managing agents of Girdhardas Harivallavdas Mills Ltd., Ahmedabad, and in C.A. No. 210 of 1958, the respondent is Mangaldas Girdhar Das Parekh Ltd., a private limited company, which is the managing agent of Rajnagar Spinning Weaving and Manufacturing Co. Ltd., Ahmedabad. The respondents in the two appeals will in the judgment be called the managing agents and the company of which they are the managing agents will be referred to as the company of which they are the managing agents will be referred to as the managers company.

In C.A. No. 162 of 1958 the managing agents were appointed by an agreement dated September 7, 1940, under which they were to receive from the managed company a commission at the rate of 3 1/2% on the sale price of all cotton yarn and cotton cloth manufactured and sold by the company and a commission of 3 1/2% on the sale proceeds of all material yarn and fabrics manufactured from wool, jute and silk and other fibres sold by the company and a commission of 10% on the profits made by the company from its ginning or pressing operations. On December 28, 1950, the directors of the managed company passed a resolution modifying the terms of the managing agency agreement in regard to the commission and added a proviso that for the years 1950 and 1951 if the directors of the company having regard to the result of the working were of the opinion that a lesser remuneration than that given in the agreement should be paid to the managing agents then the directors shall have the right, in their absolute discretion, to fix

> "Rs. 1,05,575-3-0 M/s. Chamanlal Mangaldas & Co.'s commission account credited dated 31-12-1950.

Commission from 1-1-1950 to 31-12-1950 calculated on your sales of Rs. 62,36,802 less returns

inwards etc., Rs. 3,63,226 equal to Rs. 58,73,557 at 3 1/2% Rs. 2,05,575-3-0 but as per resolution passed by the board of directors on 8-4-1951, commission of Rs. 1,05,575-3-0 only is credited to the account of agents."

The income-tax authorities held that the entire sum of Rs. 2,05,575 was taxable income having accrued as commission during the previous year and that Rs. 1,00,000 was a mere voluntary surrender which could not affect the taxability of the whole amount of commission accruing to the managing agents. On appeal the Income-tax Appellate Tribunal by an order dated February 9, 1954, held that as a result of the agreement between the managing agents and the managed company the right of the managing agents to claim full remuneration, i.e., Rs. 2,05,575, had been taken away as from the first January, 1950, and it was not a voluntary relinquishment on the part of the managing agents and, therefore, the amount which was subject to taxation on this account was Rs. 1,05,575. The two members of the Tribunal approached the question from a different point of view but both were of the opinion that Rs. 1,00,000 out of the commission due according to the original agreement was not income in the hands of the managing agents whic

In Civil Appeal No. 210 of 1958 the facts are very similar. The agreement between the managing agent and the managed company was dated May 9, 1947, by clause (3) of which the managing agent was to be paid for services as secretaries and treasurers and agents a commission of 3% on the gross sale proceeds of all yarn and cloth manufactured in the company's mills provided that if there was not sufficient profit in any financial year to enable a distribution of a dividend of Rs. 1,20,000 on the total paid up capital the managing agent was to give up out of the commission an amount up to 1/3 of the commission to enable the distribution of that amount of dividend to the shareholders. On December 28, 1950, a resolution was passed varying the agreement in regard to the payment of commission and adding a proviso to it applicable to years 1950 and 1951, that if the directors having regard to the results of the working of the managed company were of the opinion that a lesser remuneration should be paid to the managing

In both these appeals the question for decision is whether there was a voluntary relinquishment on the part of the managing agents of a part of the income, i.e., Rs. 100,000, which was the difference in both cases between the commission payable under the original agreements and the commission calculated on the modified agreements. In these appeals, as in C.A. No. 145 of 1958, which we have decided today, the question has to be determined on that basis. In both these appeals the clause in regard to commission has to be read as one integrated whole. In C.A. No. 162 of 1958 the commission was payable on the sale price of all cotton yarn and cloth sold and on the sale proceeds of all material yarn and fabrics manufactured from other fibres and sold by the company and 10% on the net profits from ginning or pressing operations. Read as an integrated whole it means that the right to receive the commission was at the end of the year because (1) the commission was payable on all cotton yarn and cloth manufactured and

In C.A. No. 210 of 1958 under clause 3 of the managing agency agreement containing the terms as to commission was also to be determined at the end of the year. The agreement was one integrated and indivisible whole. In this appeal the commission was at 3% on the sale of all yarn and cloth manufactured by the managed company and the total commission was only determinable and would accrue when the year was over.

Further the right to receive the commission arose after the profits were determined because only then could it be decided as to what amount, if any, the managing agents would have to contribute under the proviso to clause 3.

Counsel for the appellant relied on the entry in the books of account of the company where the words used are "amount accrued Rs. 5,11,875", but this entry must be read as a whole and it shows that the amount which the managing agents were entitled to receive was Rs. 4,11,875. No doubt in this case the amounts of commission were credited every six months which only means that as an interim arrangement the accounts of all sales were made up at the end of six months also. But this would not affect the construction of the clause containing the terms for payment of commission nor the reduction made therein as a result of the modified arrangement. The amount which would arise or accrue and the managing agent would have the right to receive cannot be affected by the manner in which the entry was made.

Therefore, in both these appeals the amount liable to income-tax would be the amount which the respective managing agents were entitled to receive as commission; for, that would be the amount which would accrue or arise in each case and the amounts they were entitled to were Rs. 1,00,000 less than what they would have received had the terms of the managing agency agreements not been varied.

In our opinion the appeals must fail and we dismiss them with costs.

Appeals dismissed.

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