SUPREME COURT OF INDIA

Commissioner of Income-tax, Bombay North

Vs.

Chamanlal Mangaldas and Co.

C.A.Nos.162 and 210 of 1958

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

19.02.1960

JUDGEMENT

KAPUR, J.:

1. 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. 162 of 1958, the respondent is the assessee Chamanlal Mangaldas and Co., a registered firm, who are the Managing Agents of Girdhardas Harivallavdas Mills Ltd., Ahmedabad and in C. A. 210 of 1953, 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 Managed Company.

2. In C. A. 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 per cent on the sale price of all cotton yarn and cotton cloth manufactured and sold by the Company and a commission of 3 1/2 per cent 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 per cent on the profits made by the Company from its ginning or pressing operations. On December 28, 1950, the Directions 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 such lesser remuneration payable either by way of lump sum or at a reduced percentage rate. This resolution was accepted by the Managing Agents by a letter of the same date. On March 17, 1951, a supplemental agreement was entered into between the Managing Company and the Managing Agents whereby a proviso was added to the Managing Agency Agreement embodying the terms of the resolution of December 28, 1950, which had been agreed to by the Managing Agents. A meeting of the Board of Directors of the Managed Company by a resolution dated April 8, 1951, resolved that the Managing Agents should accept a commission of Rs. 1,05,575 instead of Rs. 2,05,575; in other words that they should be paid Rs. 1,00,000 less than the commission calculated at the rates mentioned in the original agreement. On December 31, 1950, in the books of the Company the following entry was made :

"Rs. 1,05,575/3/- M/s. Chamanlal Mangaldas and Company'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 per cent Rs. 2,05,575/3/- but as per resolution passed by the Board of Directors on 8-4-1951, commission of Rs. 1,05,575/- 3/- 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 which was liable to taxation. On a Reference being made to the High Court it was held that the income of the assessee company was not Rs. 2,05,575 but only Rs. 1,05,575. The High Court proceeded on the basis that there was no accrual of income as contended by the Commissioner of Income-tax who has come in appeal to this Court by special leave.

2a. 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 cl. (3) of which the Managing Agent was to be paid for services as Secretaries and Treasurers and Agents a commission of 3 per cent 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 upto 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 Agent for any of the two years the Directors shall have the right to fix such lesser remuneration either by way of a lump sum or at a reduced percentage rate and the Managing Agent be bound to accept the same. On March 17, 1951 thee was a supplemental agreement embodying the terms of this resolution and on April 8, 1951, the Directors by a resolution fixed a sum of remuneration at Rs. 4,11,875 instead of the commission calculated at the old rates which worked out at Rs. 5,11,875. In this case also the question was whether that Rs. 1,00,000 was also subject to income-tax. The tribunal decided in favour of the Managing Agent and on a case being stated to the High Court the questions of liability to income-tax were decided in favour of the Managing Agent and the Commissioner of Income Tax has come in appeal to this Court by special leave.

3. 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. 1,00,000 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. 145 of 1958* which we have

decided today, the question is one of construction of the terms of the contract and 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. 162 of 1958 the commission was payable on the sale price of all cotton yearn 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 per cent 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 sold by the Managed Company so also the commission on yarn etc. manufactured by the Managed Company from other fibres and sold by the Managed Company and all sales could only be determined at the end of the year; (2) the percentage on total profits could only be determined at the end of the year; (3) the liability to contribute towards the dividends also could only be determined at the end of the year. This is supported by the entry in the books of the Managed Company which was made on December 31, 1950, which shows that the right of the Managing Agents to receive commission at the rate stipulated in the agreement calculated on all the sales of the year was Rs. 2,05,575 but the Directors decided that they should be paid Rs. 1,05,575 and that was the amount credited to their account. This supports the contention of the Managing Agents that their right to receive the commission or its accrual was at the end of the accounting year when all the sales were and could be added up and the accounts were made up. Thus the amount which accrued or which they were entitled to receive was the latter sum i.e. Rs. 1,05,575 and not what would have been payable and there been no variations in and modification of the agreement.

* Since reported as Commr. of Income Tax Bombay North v. Harivallabhdas Kalidas and Co., AIR 1960 SC 703

4. In C. A. 210 of 1958 under Cl. 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 per cent 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 Cl. 3.

5. 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.

6. 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.

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

Appeals dismissed.

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