Qamar Shaffi Tyabji

Vs

The Commissioner, Excess Profits Tax, Hyderabad

Civil Appeals Nos. 324 and 325 of 1957

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

18.04.1960

JUDGMENT

S. K. DAS, J. -

These are two appeals with special leave from the Judgment and Order of the High Court of Hyderabad dated April 10, 1953, in two references under s. 48(3) of the Hyderabad Excess Profits Tax Act. The question which the High Court answered against the assessee in the said references was -

> "Whether in the circumstances of the case, the officers of the Excess-Profits Tax Department were right in treating the income of the assessee or the Industrial Trust Fund as income from business."

The High Court answered the question in the affirmative. The point for decision before us is if the High Court correctly answered the question.

The relevant facts which led to the question and answer are these. There were two cotton mills in the State of Hyderabad (as it was then known) called Azamjahi mills and Osmanshahi mills. They were public joint stock companies. By a Firman-e-Mubarak of 1929 issued by the then Ruler of the State was formed an institution called the Industrial Trust Fund, the purpose of which was to help large and small industries on behalf of the Government of the State. The management of the Trust was entrusted to a Committee which consisted of three members of the Government, who were called Trustees. By two agreements dated April 12, 1934, and July 27, 1934, made between the Trustees of the one part and the two mills of the other, the Trustees were appointed secretaries, treasurers and agents of the said mills. Under these agreements the Trustees were given the general conduct and management of the business and affairs of the mills and they were entitled to appoint employees and were also entitled to delegate to other persons all or any of the powers, authorities, discretions, etc., under the agreements subject to the approval of the Board of Directors of the respective mills. By two other agreements also dated April 12, 1934, and July 27, 1934, the Trustees were appointed selling agents of the mills. By two agreements both dated October 16, 1938, which were supplemental to the selling agency agreements mentioned above, the Trustees were given power to delegate all or any of their powers, authorities, etc., to other persons subject to the approval of the Board of Directors of the respective mills. Till October, 1938, the Trustees exercised their powers and performed their functions under the agreements aforesaid through an Advisory Board, and Quamar Shaffi Tyabji, appellant before us, was appointed chairman of the Advisory Board on a remuneration of Rs. 1,500 per month plus a certain commission. Sometime in 1938 the Advisory Board was dissolved, and on December 6, 1938, an agreement was entered into between

the Trustees and the appellant. Clause II of the preamble of this agreement recited :

> "The said Trustees are desirous of delegating such of the powers, authorities and discretions as such secretaries, treasurers and agents as also as such selling agents of the said two mills as aforesaid as are hereinafter mentioned to and appointing the said Quamar Shaffi Tyabjee as the managing agent of the business of the said trustees as such secretaries and treasurers and agents as also as such selling agents of the said two mills as aforesaid in and for the matters and purposes hereinafter mentioned."

The agreement then recited that the approval of the Board of Directors of the two mills having been obtained, the appellant was appointed managing agent of the business of the Trustees as secretaries, treasurers and agents and also as selling agents of the two mills. Clause 2 of the agreement detailed the powers of the appellant which were the same as those of the Trustees to conduct and manage the business of the two mills, subject however to the general control of the Trustees. In other words, the full powers of management and of the selling agency in relation to both the mills were delegated to the appellant. Clause 3 said inter alia that the appellant would hold the office of managing agent and selling agent for the remaining period of the original managing agency and selling agency agreements. The remuneration of the appellant for the managing agency was fixed at Rs. 2,000 per month and a commission of 2 1/2 per cent. out of the commission of 12 1/2 per cent. per annum on the annual profits payable to the Trustees, subject to the condition that Osmanshahi mills made an annual profits of Rs. 1,50,000 and the Azamjahi mills made an annual profits of Rs. 2,00,000. For the selling agency a separate commission was payable on the sale of different kinds of goods subject again to the condition that the annual profits of the two mills did not fall below a particular figure. Clause 6 of the agreement related to the appointment and duties of a mill expert. Clause 7 provided for the termination of the agreement and said that the agreement shall terminate on the Trustees terminating the earlier agreements in their favour, provided however that in the event of the said Trustees deciding to transfer the said respective agreements and the rights thereunder to any one they shall in the first instance offer the same to the said managing agent on the same terms and conditions as may have been offered to them and on the further term that the managing agent shall make arrangement to the satisfaction of the said Trustees for the payment to them in cash or otherwise of the moneys they have spent in purchasing the managing agency rights of the said two mills as also the balance then due of the unsecured loans (i.e., other than first debenture loan) they have and may hereafter advance to the said two mills, so that the said managing agent shall have the first refusal thereof in manner aforesaid, provided always that the said managing agent shall intimate to the said Trustees his acceptance of the said term within six weeks of the communication to him of the said offer and in the event of his omission to do so he shall be deemed to have not accepted the same. Clause 9 of the agreement is also important. It said :

> "The managing agent shall not assign the benefit of this agreement, the same being personal to himself."

Clauses 10 and 11 related to the eventuality of winding up of the mills and its effect on the appellant's rights under the agreement.

Under the terms of the agreement dated December 6, 1938, the appellant conducted the business of the mills, both as to management and selling. He was assessed to excess profits tax for the two chargeable accounting periods 1351F and 1352F, corresponding to October 1, 1941, to September 30, 1942, and October 1, 1942, to September 30, 1943, respectively. The total income assessed for 1351F was Rs. 2,37,451, which included a sum of Rs. 2,11,230 representing the appellant's

managing agency allowance and commission. The total income for 1352F was Rs. 4,90,027 which included Rs. 4,45,775 being the managing agency commission and allowance of the appellant.

Before the Excess Profits Tax authorities the appellant contended that he was only an employee of the Industrial Trust Fund and his remuneration under the agreement dated December 6, 1938, was merely salary and not income derived from business and therefore not liable to excess profits tax. The Excess Profits Tax authorities negatived this contention, and as required by the High Court the Commissioner of Income-tax, Hyderabad, referred the question of law which we have set out at the beginning of this judgment to the High Court for decision.

On behalf of the appellant it has been submitted that on a true construction of the relevant agreements the Industrial Trust Fund was the managing agent as also the selling agent of the two mills; the Trustees employed the appellant on certain terms and gave him certain powers, and therefore the appellant, an individual and not a firm, was not carrying on an independent business of his own; he was just carrying out the duties of an employee of the Trustees in spite of his being described as managing agent in the agreement of December 6, 1938. His income, therefore, was not income derived from business.

We are unable to accept this line of argument as correct. In Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad ((1955) 1 S.C.R. 393) this Court had occasion to explain the position of an agent, a servant and an independent contractor. It was there pointed out that the difference between the relations of master and servant and of principal and agent lay in this : a principal has the right to direct what work the agent has to do; but a master has the further right to direct how the work is to be done. An agent has to be distinguished on the one hand from a servant and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given in the course of his work. An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. Indeed, learned counsel for the appellant accepts as correct the distinction made above and also accepts that the true relation between the Mills and the Trustees was that of principal and agent; but he contends that as between the Trustees and the appellant the relation was one of master and servant. We consider that this contention is wholly unsound. We have examined the original agreement between the Mills and the Trustees dated April 12, 1934. Clause 9 of that agreement said that "the agents may regulate and conduct their proceedings in such manner as they may from time to time determine and may delegate all or any of their powers, authorities and discretions as secretaries, treasurers and agents of the company to such person or persons and on such terms and conditions as they may think fit, subject to the approval of the Board of Directors of the company." The delegation in favour of the appellant was made under this clause. The position was therefore this : the Trustees as agents had express authority to name another person to act for the principal in the business of the agency, and they named the appellant with the approval of the Board of Directors. Therefore, the appellant, was neither a servant nor a mere sub-agent. He was an agent of the principal for such part of the business of the agency as was entrusted to him. The position in law was as laid down in s. 194 of the Indian Contract Act.

In similar circumstances this Court has held that managing agency is business (see Lakshminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad ((1955) 1 S.C.R. 393) and J.K. Trust, Bombay v. The Commissioner of Income-tax/Excess Profits Tax, Bombay ((1958) S.C.R. 65). A consideration of the terms of the agreement of December 6, 1938, also leaves no manner of doubt in the matter. Full powers of the Trustees as managing agents were delegated to the appellant under cl.

2 of the agreement, subject only to the general control of the Trustees and the clause stated that the appellant was to conduct and manage the business and affairs of the two mills. Clause 3 relating to the tenure of the managing agency, cl. 4 relating to remuneration, cl. 7 relating to termination of business and the clauses relating to the eventuality of winding up of the mills - all these were appropriate to a business undertaking only and quite inappropriate to a relation of master and servant. The extent of the delegation of powers was also indicated by cl. 5 which said inter alia that the managing agent (meaning the appellant) must observe and perform all the terms and conditions of the earlier managing agency and selling agency agreements in favour and on the part of the Trustees; in other words, the entire managing agency business was handed over to the appellant. Learned counsel for the appellant emphasised cl. 9 which we had quoted earlier and said that it showed that the appellant could not assign any of the benefits under the agreement, which was personal to himself. We do not think that cl. 9 changed the quality of the relation between the Trustees and the appellant. The managing agency agreement must be read as a whole, and so read the conclusion which clearly emerges is that the appellant was undertaking a business of his own in accepting the duties and responsibilities of a managing agent of the two mills under the general control of the Trustees. The appellant was a man with previous business experience and held an agency of the Eastern Federal Union Insurance Co., which brought him a substantial income. Learned counsel for the appellant has relied on the decision in Inderchand Hari Ram v. Commissioner of Income-tax, U.P. & C.P. ((1952) 22 I.T.R. 108), where the distinction between the definitions of managing agent and manager under the Indian Companies Act, 1913, was pointed out. We do not think that that decision gives any help to the appellant. The question really is one of construction of the relevant agreements; what do their terms show - a relation of master and servant or an agency business ? We have no doubt in our minds that what clearly emerges from the terms of the agreement of December 6, 1938, is a business of managing agency accepted and undertaken by the appellant.

Therefore, the High Court correctly answered the question in the affirmative. The appeals fail and are dismissed with costs. As the appeals have been heard together, there will be one set of costs.

Appeals dismissed.

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