

Mysore Kirloskar Limited

Vs

Workers of The Mysore Kirloskar Limited

Civil Appeal No. 233 of 1960

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

15.11.1961

JUDGMENT

WANCHOO, J. –

This is an appeal by special leave in an industrial matter. There was a dispute between the appellant and its workmen as to bonus for the year 1954-55. This dispute was referred by the Government of Mysore under the Industrial Disputes (Act No. XIV of 1947) to a tribunal for adjudication. A number of objections were raised by the appellant before the tribunal; but we are not concerned with them, as the law with respect of profit bonus has been settled by this Court in the Associated Cement Companies Ltd. v. Its workmen [[1959] S.C.R. 925]. The only points urged on behalf of the appellant by the learned Attorney-General are with respect to the amount of income-tax, return on working capital and provision for rehabilitation in connection with the calculations made by the tribunal. We shall therefore confine ourselves to the three points which have been raised before us on behalf of the appellant.

The tribunal allowed Rs. 1.67 lacs for income-tax. The contention of the appellant is that this is incorrect in view of the decision of this Court in the Associated Cement Companies Ltd. [[1959] S.C.R. 925]. It appears that the gross profits of the appellant were Rs. 9.46 lacs, while the full statutory depreciation allowed to the appellant for the year in dispute was Rs. 4.30 lacs. Thus income-tax should have been deducted on the sum of Rs. 5.16 lacs at seven annas in the rupee, which was the rate prevalent in the relevant year. This amount comes to Rs. 2.25 lacs. The contention of the appellant in this behalf is in our opinion correct and the calculation made by the tribunal will have to be modified accordingly.

The next question is about return on working capital. The dispute is both as to the rate of return and the amount on which it should be allowed. The tribunal has allowed three per cent on working capital. The appellant contends that the tribunal should have allowed four per cent. As was pointed out in the Associated Cement Companies' case [[1959] S.C.R. 925] the rate allowed by tribunals on working capital is between two to four per cent. In the present case the tribunal has allowed three per cent. We do not think that there is any reason for us to interfere with the discretion of the tribunal in this matter though it is true that the recent trend of tribunals is to allow four per cent return on working capital.

Turning now to the amount of working capital on which return should have been allowed, the appellant originally claimed that the amount used as working capital was Rs. 43.85 lacs. Latter however, a revised statement was put in and the amount was reduced to Rs. 36.70 lacs. The tribunal has however calculated the working capital used in the business as Rs. 7.85 lacs. The main reason

why the tribunal arrived at this figure was that it held that the amount in the depreciation reserve could not be treated as reserve used as working capital on which a return was admissible. It therefore excluded out of consideration the entire amount in the depreciation reserve which was Rs. 36.24 lacs in considering what sum had been used as working capital. This view of the tribunal is clearly incorrect in view of this Court's decision in *The Tata Oil Mills Co. Ltd. v. Its Workmen*. [[1960] 1 S.C.R. 1]. In that case it was pointed out that -

"a return is allowed on the reserves used as working capital on the ground that if these reserves are not used for this purpose, the concern would have to borrow money and pay interest on that. This being the basis on which a return on reserves used as working capital is allowed, there is no reason why, if there is in fact money available in the depreciation reserve and if that money is actually used during the year as working capital a return should not be allowed on such money also."

The same view was taken by this Court in *Petlad Turkey Red Dye Works Ltd. v. Dyes and Chemical Workers' Union* [[1960] 2 S.C.R. 906], where it was emphasised that the balance-sheet did not by itself prove the fact of utilisation of reserve as working capital and the law required that such an important fact as the utilisation of a portion of the reserve as working capital had to be proved by the employer by evidence given on affidavit or otherwise and after giving an opportunity to the workmen to contest the correctness of such evidence by cross-examination. Therefore the tribunal in this case was not right in excluding the amount in the depreciation reserve altogether from consideration on the ground that it was a reserve for depreciation.

This brings us to the question as to what amount was actually used as working capital out of the reserve in the relevant year. On that point there was the evidence of Shri M. S. Vartak who was the Secretary of the Appellant company. That evidence as to utilisation of the reserve as working capital was accepted by the tribunal. The statement of Shri Vartak shows that the amount shown in the revised calculations as to the working capital was actually used as working capital during the year. Thus, according to this statement, Rs. 36.70 lacs were used as working capital and the appellant claims return on that amount. It may be accepted that the sum of Rs. 36.70 lacs were used as working capital by the appellant during the year; but we are of opinion that the appellant is not entitled to a return on this entire amount, for the reason that this amount includes a sum of Rs. 14.56 lacs which was either borrowed by the appellant or was in deposit with it, on which the appellant was paying interest. The appellant therefore cannot claim further interest on this borrowed amount which has been used as working capital, for it has already paid interest on it to those from whom it was borrowed and this has been taken into account as expense in arriving at the gross profits. As was pointed out in *The Tata Oil Mills Co.s' case* [[1960] 1 S.C.R. 1], the basis for giving a return on reserves used as working capital is that otherwise money would have to be borrowed for the purpose. Where borrowed money is used as working capital there is no question of giving any further return on this borrowed money. The return on reserves used at working capital can only be given on moneys belonging to the company which are used as working capital. Therefore, though Rs. 36.70 lacs might have actually been used as working capital in the relevant year, Rs. 14.56 lacs were borrowed money on which interest was paid. There is no question therefore of any further return on this amount as prior charge. Thus the amount on which the appellant is entitled to the return on working capital as a prior charge is Rs. 36.70 lacs minus Rs. 14.56 lacs, i.e. Rs. 22.14 lacs. The return on this amount at three per cent comes to .66 lacs and the calculations made by the tribunal would have to be corrected accordingly.

Turning now to the claim for rehabilitation it is enough to say that no evidence as to rehabilitation

was led in this case. It may be that this was because the appellant expected that the claim it was making on other items of prior charges would be sufficient to resist the claim for further bonus besides one month's bonus already paid. The learned Attorney General therefore submitted that the case might be remanded to enable the appellant to lead evidence on the question of rehabilitation. The dispute relates to the year 1954-55 and we think it is too late now to make a remand in order to determine this question. We should however like to make it clear that the fact that no evidence as to rehabilitation as led in this year will not preclude the appellant from leading evidence as to the amount which should be allowed to it as prior charge on account of rehabilitation, in any subsequent dispute as to bonus relating to subsequent years. In the present case, however, it is not possible to allow any amount for rehabilitation as a prior charge.

The final calculations therefore after the corrections made by us are as below :

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In Lacs Gross Profits -----	Rs. 9.46	Deduct - National normal depreciation.....	3.32	-----	Balance 6.14	Deduct - income-tax 2.25 -----	Balance 3.89	Deduct -
		return on paid up capital 1.33 -----	Balance 2.56	Deduct - return on working capital		at 3% .66 -----	Available surplus 1.90	-----##

The available surplus therefore for this year must be held to be Rs. 1.90 lacs roughly. One month's wages come to roughly Rs. .64 lacs. It seems to us therefore that it will be fair to allow 1 1/2 months' wages as bonus for this year, which would come to about Rs. .96 lacs. The appellant will get some rebate on that from the income-tax department. We are therefore of opinion that the workmen are entitled to an additional bonus for half a month for this year.

We therefore partly allow the appeal the reduce the additional bonus from one month to half a month. In the circumstances we order the parties to bear their own costs.

Appeal allowed.

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