National Steel Works Ltd., Bombay

Vs

Commissioner of Income-Tax, Bombay

Civil Appeal No. 544 of 1961

(J. L. Kapur, A. K. Sarkar, Raghuvar Dayal, S. K. Das, M. Hidaytullah JJ)

03.05.1962

JUDGMENT

RAGHUBAR DAYAL J. –

This is an appeal under section 66A(2) of the Indian Income-tax Act.

The appellant, the National Steel Works Ltd., Bombay, a limited liability company, hereinafter referred to as the assessee, carried on the business of a "rolling mill" prior to the partition of the country in the territory now in Pakistan. It was a member of the Steel Rolling Mills Association of India and as such was receiving a quota of coal and steel from the Government of India. After the partition, its registered officer was shifted to Bombay. It had no factory there for carrying on the business of rolling mill Though possibly not entitled to receive the quota of coal and steel, it however continued its membership of the Steel Rolling Mills Association of India and continued to receive the quota of coal and steel. In order to utilised the coal and steel so received, it entered into a partnership with one K.R. Irani, who had put up a factory in Bombay called the New Era Iron & Steel Works, but had no quota of steel and coal. The agreement of partnership entered into between Irani and the assessee on Sept

> "12. In consideration of the company taking the said Mr. Irani as partner in the partnership, it is agreed that a sum of Rs. 50 per ton on all steel received by the partnership from the company through the Steel Re-Rolling Mills Association of India, Calcutta, or Iron and Steel Controller, Calcutta, shall be paid to the company by this partnership calculated every month, and after deducting all the other expenses incidental to the business of the partnership the net profit of the partnership after providing for out-goings and interest on the current loans, if any, shall be paid over to the partners in equal shares.
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> 13. All the quota of steel and coal that the company may receive from the Iron & Steel Controller, the Government of India and from the Provincial Iron & Steel Controller, Bombay, or from the Steel Re- Rolling Mills Association of India, Calcutta, or any such other body under the quota system that may be in force from time to time for steel re-rolling mills of the company at Bombay shall be utilised solely for the purposes of the business of the partnership who shall pay for the same."

Thereafter, in 1954, the assessee and Irani entered into an agreement whereby the terms of the agreement of September 29, 1948, were modified. The amendments to clause 12 are important and they are quoted below :

"IT IS HEREBY AGREED THAT in clause 12 of the Partnership Agreement dated September 29, 1948, the Royalty which is fixed at Rs. 50 per ton shall be reduced in the manner following from 1st October, 1953.

(a) Royalty of Rs. 25 per ton shall be charged from October 1, 1953, on all rollable materials received up to June 30, 1954, except semis and perfect billets on which Royalty will be charged at Rs. 10 per ton on all the said materials received up to June 30, 1954.

(b) That cess charges payable to Steel Re-Rolling Mills Association of India, Calcutta, will be paid by the Partnership till the Partnership exists.

(c) Mr. K.R. Irani hereby agreed to pay a lump sum of Rs. 60,000 as goodwill in consideration of waiving the Royalty from the Partnership Account on the quota of re-rollable scrap materials received after June 30, 1954.

(d) Mr. K.R. Irani hereby agrees that the said amount of Rs. 60,000 be debited to his capital account in the books of the Partnership, bearing interest at 6% per annum from 1st July, 1954.

(e) No Royalty will be charged on any kind of rollable materials received after 30th June, 1954, by Company from the Partnership.

(f) The Partnership shall pay to the Company Rs. 500 per month as office allowance from October 1, 1953, till the Partnership exist."

In assessing the income-tax on the assessee, the Income-tax Officer brought the amount of Rs. 60,000 mentioned is sub-clause (d) of amended paragraph 12 of the agreement to tax. The assessees' appeal to the Appellate Assistant commissioner failed and so did its appeal to the Income-tax Appellate Tribunal. On an application by the assessee, the Income-tax Appellate Tribunal stated a case to the High Court for the decision of the question whether the sum of Rs. 60,000 received by the assessee company from Irani is a revenue receipt and liable to income-tax. The High Court decided that it was a revenue receipt and liable to tax. It is against this order that this appeal has been filed after obtainng the certificate of fitness from the High Court.

The contention of the appellant is that the sum of Rs. 60,000 was paid by Irani to the assessee company in view of the partnership getting the rights under the quota which the assessee company possessed and that therefore the sum represented a capital receipt and not a revenue receipt. We do not agree.

It is clear from the facts stated in the statement of the case that this amount represents capitalised profits of the assessee company on account of its transferring or selling the steel which the assessee company purchased under the authority given by the quota allowed to it. It is the assessee company which purchases the goods in its own name and delivers them to the partnership at cost price. Under the original agreement of 1948, the partnership was to pay to the assessee company Rs. 50 per ton on all steel it received from the assessee company, Clearly, therefore, the sum of Rs. 50 per ton represented the profit which the assessee company was getting per ton from the partnership. Under the terms of the amended agreement, no such profit was to be paid to the assessee company for the steel received from it after June 30, 1954, and it was to receive Rs. 60,000 in a lump sum. This amount, therefore, represents the capitalised value of the profits, the assessee company was to have

on supplying all the steel i

We are, therefore, of opinion that the High Court came to a correct conclusion that the sum of Rs. 60,000 was a revenue receipt and liable to tax. We accordingly dismiss the appeal with costs.

Appeal dismissed.

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