

The Star Co. Ltd.

Vs

Commissioner of Income Tax (Central), Calcutta

Civil Appeals Nos. 1204 and 1205 of 1968,

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

29.04.1970

JUDGMENT

SHAH, J. -

1. Explanation to section 23-A(1) of the Indian Income-tax Act, 1922, before it was amended by the Finance Act, 1955 (insofar as it is material for the purpose of these appeals) provided :

"A company shall be deemed to be a company in which the public are substantially interested if shares of the company carrying not less than 25 p.c. of the voting power have been allotted unconditionally by and are at the end of the previous year beneficially held, by the public (not including a company to which the provision of this section applies), and if any such shares have in the course of any previous year been the subject of dealings in any stock exchange in the taxable territories or are in fact freely transferable by the holders to other members of the public".

2. For a company to be deemed a company in which the public are substantially interested, two conditions must co-exist, (1) the shares of the company carrying not less than 25 p.c. of the voting power must have been allotted unconditionally to or acquired unconditionally by the public, and (2), (a) that any such shares have in the course of the previous year been the subject of dealings on any stock-exchange, or (b) that the shares are in fact freely transferable by the holders to other members of the public.

3. It is common ground that condition (1) is satisfied in this case. In respect of condition (2), there was controversy and this court by order, dated February 11, 1969 directed the Income-tax Appellate Tribunal to submit a supplementary statement of case on the following four points :

(i) whether the shares were quoted in the Calcutta Stock Exchange in the "cash section" or the "forward section";

(ii) whether the heading of the bulletin of the Calcutta Stock Exchange represents the actual transactions which have already taken place;

(iii) whether there was any fluctuation in the price of the shares; and

(iv) the number of quotations in the two years of account.

4. The Tribunal has submitted a statement of case (1) that the shares were quoted in the "cash section", (2) that the heading in the bulletin represents actual transactions which have taken place

(3) that there were fluctuations in the price of the shares and (4) that transactions in share took place daily. In view of these findings it must be held that the first part of condition (2) is satisfied. Since the two parts of condition (2) are alternative, it is unnecessary to consider whether the second part of condition (2) is satisfied in this case. In the view we take, both the conditions, on the satisfaction of which a company may be deemed a company in which the public are substantially interested, are satisfied.

5. The appeals must, therefore, be allowed and the question submitted by the Tribunal will be answered in the negative. The Commissioner will pay the costs of the company in this court. One hearing fee.

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