Karam Chand Thapar and Bros. P. Ltd.

Vs

Commissioner of Income-Tax, (Central), Calcutta

Civil Appeal No. 1286 of 1967

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

21.01.1971

JUDGMENT

HEGDE J. -

This is an assessee's appeal by certificate. The concerned assessment year is 1952-53, and the relevant accounting year is the year ended on 31st March, 1952.

From the statement of the case submitted by the Income-tax Appellate Tribunal, "A" Bench, Calcutta, to the High Court of Calcutta under section 66(2) of the Indian Income-tax Act, 1922, (in short "the Act"), the following facts are available.

The assessee is a private limited company (which will hereinafter be referred to as "the company"). It was functioning as the managing agent of 27 companies including M/s. Greaves Cotton & Co. Ltd. M/s. Greaves Cotton Co. Ltd. was incorporated as a private company in about 1922, and its managing agent was the firm styled M/s. Greaves Cotton Co. The company acquired a large block of shares in the managed company. M/s. Greaves Cotton Co. released their managing agency right in favour of the company on receiving Rs. 27,34,325. On May 8, 1950, the managed-company, viz., M/s. Greaves Cotton Co. Ltd., was converted into a public company. Thereafter, the company was not entitled to any commission on sales, etc., in view of the provisions of the Indian Companies Act, 1913, as amended in 1939. Hence, a fresh agreement was entered into between the company and the managed-company on May 10, 1960, under which the company was entitled to an office allowance of Rs. 5,000 per month and a commission of 10 per cent. of the net profits. The view managing agency agreement was to subsist for a period of 20 years with effect from May 8, 1950. On February 28, 1951, the directors of the managed-company appointed a sub-committee to enquire into the question whether the managing agency of the company should be terminated leaving the management of the managed-company to the board of directors. The sub-committee reported on March 16, 1951, that the managing agency of the company should be terminated. On March 17, 1951, the board of directors of the managed company approved the recommendations. An extraordinary general meeting of the shareholders of the managed-company approved the resolution of the board of directors on March 31, 1951. That meeting also recommended a payment of Rs. 18 lakhs to the company a compensation. That resolution was communicated to the company on April 3, 1951, and the latter accepted it on April 10, 1951.

In the assessment for the assessment year 1952-53, the Income-tax Officer included a sum of Rs. 18 lakhs in the total income of the company. He took the view that the payment of Rs. 18 lakhs by the managed-company was an advance remuneration and not a compensation on account of loss of employment. On appeal by the company, the Appellant Assistant Commissioner differed from the

view taken by the Income-tax Officer and held that the amount in question represented compensation received by the company for the termination of its managing agency. The Income-tax Officer took the matter in appeal to the Tribunal. On his behalf, two contentions were advanced before the Tribunal, viz., (1) that the transaction leading to the termination of the managing agency were not genuine transactions but were mere manipulations, and (2) that in view of the fact that, as the company was the managing agent of 27 managed-companies, it must be held that the managing agencies were the stock-in-trade of the company and the amount received as a result of the termination of one of the agencies must be considered as revenue receipt. The Tribunal negatived both these contentions. It held that the transactions whereby the managing agency of the company was terminated were genuine and real business transactions. It further held that the managing agencies held by the company represented source from which it received its income by way of commission and, therefore, the termination of managing agency would represent destruction of a source of income. As a consequence of those findings, the Tribunal held that the receipt in question was a capital receipt and not a revenue receipt. The Tribunal declined to submit a statement to the High Court on the ground that its findings are findings of fact. But the High Court directed the Tribunal to submit a statement with the following question :

> "Whether, on the facts and in the circumstances of the case, the sum of Rs. 18,00,000 paid to Messrs. Karamchand Thapar & Bros. (Private) Ltd. was a revenue receipt and as such assessable to Income-tax ?"

The question as framed does not posse any challenge to the facts found by the Tribunal. It was open to the Commissioner to challenge the facts found of the Tribunal, if the findings in question were not supported by any evidence or if in reaching those findings the Tribunal committed any error of law. But the Commissioner did not challenge those finding on any of those ground. The question as framed proceeds on the basis that the facts found by the Tribunal are accepted by the Commissioner but he challenges the decision reached by the Tribunal on the basis of these findings. In other word, the question framed should be read as to whether, on the facts and in the circumstances of the case, as found by the Tribunal, the sum of Rs. 18,00,000 paid to the company was a revenue receipt and as such assessable to income-tax.

Curiously enough, despite the fact that the question referred to the High Court for its opinion did not in any manner challenge the correctness of the facts found by the Tribunal, the high Court proceeded to re-examine the material on record and reversed the findings of fact reached by the Tribunal. It came to the conclusion that all the proceedings relating to the termination of the managing agency of the company were not genuine transaction. It further came to the conclusion that the managing agencies held by the company were its stock-in-trade, and, therefore, the amount of Rs. 18 lakhs paid by the managed-company to the company must be considered as a revenue receipt.

In our opinion, it was wholly impermissible for the High Court to disturb the findings of fact reached by the Tribunal. The Tribunal was the final fact finding authority. The facts found by it could have been challenged only on certain recognised grounds. Neither the High Court nor this court has jurisdiction to reappreciate the material on record to find not whether the facts found by the Tribunal are correct or not. The High Court should not have taken upon itself the responsibility to go into the question whether the findings of fact reached by the Tribunal are correct. The only question that the High Court was called upon to determine was whether, on the facts found by the Tribunal, the receipt in question should not have been considered by the Tribunal as revenue receipt.

As held by this court in Commissioner of Income-tax v. Chari and Chari Ltd., that ordinarily compensation for loss of office or agency is regarded as a capital receipt, but this rule is subject to an exception that payment received even for termination of an agency agreement would be revenue and not capital in the case where the agency was one of many which the assessee held and its termination did not impair the profit-making structure of the assessee, but was within the framework of the business, it being a necessary incident of the business that existing agencies may be terminated and fresh agencies may be taken. But it is for the Income-tax department to clearly establish that the case fall within the exception to the ordinary rule. In the present case, according to the findings of the Tribunal, the termination of the agency in question had resulted in the destruction of a source of income of the company. The Tribunal had arrived at the conclusion that the managing agencies held by the company represented the source from which it received its income by way of commission.

In the determination of the question whether a receipt is capital or income, it is not possible to lay down any single test as infallible or any single criterion as decisive. The question must ultimately depend on the facts of the particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. That, however, is not to say that the question is one of fact, for these questions between capital and income, trading profit or non-trading profit, are questions which, though they may depend to a very great extent on the particular facts of each case, do involve a conclusion of law to be drawn from those facts see Commissioner of Income-tax v. Rai Bahadur Jairam Valji, P. H. Divecha v. Commissioner of Income-tax, Kettlewell Bullen & Co. Ltd. v. Commissioner of Income-tax, Gillanders Arbuthnot and Co. Ltd. v. Commissioner of Income-tax and Commissioner of Income-tax v. Best & Co. (P.) Ltd.

The question whether a particular income arising from the termination of one of the agencies of a multi-agency concerned is a capital receipt or a revenue receipt is undoubtedly a difficult question to be answered. The difficulty is inherent in the problem itself. Decisions on this question are numerous. But none of them have laid down a precise principle of universal application, but various workable rules have been evolved for guidance. One of us, speaking for the Court in Kettlewell Bullen & Co.'s case, had laid down the following guidelines for finding out the true nature of such a receipt. The relevant observations read thus :

"Where, on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leave him free to carry on his trade (freed from the contract terminated), the receipt is revenue; where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt."

On applying these test to the facts found by the Tribunal in this case, the receipt must be considered as a capital receipt.

Before we part with this case we deem it necessary to observe that we would be indulging in judicial impropriety if we indulged in the rhetoric in which one of the learned judges in the High Court indulged in.

For the reasons mentioned above this appeal is allowed, the answer given by the High Court is discharged and the question referred to the High Court is answered in the negative and against the department. The department shall pay the costs of the appellant both in this court as well as in the High Court.

Appeal allowed.

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