Delhi Cloth and General Mills Co. Ltd.

Vs

Workmen

Civil Appeal No. 622 of 1967

(G.K. Mitter, C.A. Vaidialingam, P. Jagmohan Reddy JJ)

02.09.1971

JUDGMENT

MITTER, J. -

1. The only point of dispute between the parties to this appeal by special leave from an order of an Industrial Tribunal relates to the quantum of direct taxes deductible under Section 6 of the payment of Bonus Act, 1965.

2. The appellant is a public limited company owing and running various industrial units situate at different places in India. These are engaged in the manufacture of different kinds of article such as cotton textile, artificial silk fabrics, sugar, industrial alcohol, vanaspati, chemicals, polyvinyl chloride and rayon tyrecord, etc. Two of these unites i.e. The Delhi Cloth Mills and the Swatantra Bharat Mills are cotton textile mills each registered as a factory under the Factories Act. The award under appeal relate to these two mills alone. The appellant prepares and publishes one consolidated balance-sheet and profit and loss account of the company showing the final results of the working of all the units for its shareholders. It had however for many years past, prepared and maintained separate balance-sheets and profit and loss accounts for some of is units individually and some grouped together. Although separate balance-sheets and profit and loss accounts were prepared for each of these two mills hereinafter referred to as D.C.M. and S.B.M. for abbreviation) their workmen have always been paid bonus calculated on the basis of pooled profits of the two units treating them as on unit. This is borne out by the award of the Tribunal in Paragraph 29.

3. The reference herein was made by notifications, dated March 4, 1966, under Sections 10(1)(d) and 12(5) of the Industrial Disputes act for adjudication of specified matters of which the first two read as follows :

1. Whether in calculating the bonus table for the accounting year endings June 30, 1956 the allocation separately made by the Delhi Cloth and General Mills Co. Ltd., towards the Capital and Reserves of the Delhi Cloth Mills and Swatantra Bharat Mills, the two units of the Company, is fair and reasonable ? If not, what directions are necessary in the regard ?

2. Whether the workmen of these Mills are entitled to bonus at a rate higher than 6 per cent. of the wages for the accounting year ending June 30, 1956 ? If so, what directions are necessary in this regard ?

After prolonged proceedings before the Tribunal a settlement was arrived at between the management and the Labour Unions which were parties to the reference and agreed directions given

in accordance therewith in regard to issue No. 1, were as follows :

1. Balance-sheets of D.C.M. and S.B.M. will be taken together for calculation of available surplus in accordance with the formula laid down in the Payment of Bonus Act, 1965.

2. Interest has been charged in the profit and loss account of D.C.M. and S.B.M. units of the head-officer current account. Hence, no return will be claimed thereon.

3. Interest has not been charge don the fixed capital expenditure accounts and the gratuity reserves appearing in the balance-sheets of the D.C.M. and S.B.M., therefore, return on such amounts will be claimed.

4. The following method will be followed in making a claim for return on the following amounts -

(a) The fixed capital expenditure account in the D.C.M. and S.B.M. as represented by the written down value of the fixed assets appearing in the balance-sheet of these two units will be treated as paid up share capital of the company allocated to and invested in these two units and return at the rate of 8 1/2% or as provided in the Payment of Bonus Act, 1965, from times to time will be charged thereon as provide under the Payment of Bonus Act, 1965.

(b) The gratuity reserves of these two units will be treated as reserves and return at the rate of 8% will be charged thereon as provide under the Payment of Bonus Act, 1965.

5. The method and basis of casting balance-sheets will not be unilateral altered or changed.

6. The above method of charging return on paid up share capital and reserved of the above two units will be followed in future also.

4. Thereafter the parties filed a large number of documents waiving formal proof thereof. Those filed on behalf of the Management were Exs. M to M-352 while there other opposite parties filed some documents each. On the basis of the documents before the Tribunal the Management and the workers made their respective calculations which were summed up in a chart, a copy whereof was handed over to us by learned counsel for the appellants. The same reads as follows :

#CHART---Management WorkersM-330 (Paper Book p. 200) W-84 (Paper Book p. 213)--Ref. of Details Ext. D.C.M. S.B.M. Total LakhsBonus Act Gross Profits Rs.156.09---

DEDUCTIONSGross Sch. 2 As per Ext. 1 107.14 48.93 156.09 Depreciationprofit deductions under Section6(a) 35.83Prior Sch. 6(a) Statutory 35.83 Developmentcharge depreciation rebate underSection 6(b) 2.72(b) Development 2.72 Direct taxesrebate 2 under Section6(c) as inEx. M-15 10.09(c) Direct taxes Return oncapital(a) Income-tax 3 52.24 under Section6(d) 22.47(b) Surtax 3 5.48(d) ReturnSch. 3 (a) Dividend onPref. 4 27.17capital(b) on enquiry capital }(c) on reserve } 4 1.30--------118.74Available surplus Sch. 5 37.35 Available surplus is 84.98Allocate surplus Sch. 2 (a) Payable as bonus 22.40 Allocable surplus is 84.98(b) 60% 60% of Rs. 84.98 50.99Annual wage bill 5 201.78 plus 101.54 306.22 Annual wage 306.32of all the eligi-ble of employeesRate of bonus to each employee 7.31% Rate of bonus 16.64%##

The above bring out the wide divergence between the parties as to the figure of direct taxes.

According to the appellant direct taxes which have to be deducted for computation of allocable surplus for payment of bonus are : Rs. 52.24 lakhs by way of income-tax and Rs. 5.48 lakhs by way of surtax making a total of 57.72 lakhs, while according to the calculation of the workers direct taxes should be no more than Rs. 10.09 lakhs on the basis of Ex. M-15, one of the documents produced by the Management itself. If the computation of the Management is accepted, then the allocable surplus in terms of Section 2(4) of the Bonus Act is Rs. 22.40 lakhs and the rate of bonus to each employee is 7.31 per cent. While according to the computation of the workers the allocable surplus is Rs. 50.99 lakhs and the rate of bonus should be 16.6 per cent.

5. In order to appreciate the view-points of the two parties, it is necessary to refer to some provisions of the Act. It is unnecessary to state that before the enactment of the Bonus Act of 1965 bonus used to be awarded by Industrial Tribunal whenever there was a dispute between the Management and the workers, by applying the Labour appellate Tribunal Full Bench formula formulated as far back as 1950 and approved of an explained in several decisions of this Court. The Act of 1965 was passed for creating a statutory liability "for payment of bonus to person employed in certain establishments and for matters connected therewith". Subject to certain exception it was made applicable to every factory or other establishment in which twenty or more persons were employed on any day during an accounting year. The accounting year in the present case is July 1, 1964 to June 30, 1965. Under Section 8 every employee is entitled to be paid by the employer in an accounting year, bonus in accordance with the provisions of the Act. The amount of bonus is to be specified percentages of the allocable surplus of the establishment which is defined in Section 2, sub-section (4) of the Act. Establishments may be of two kinds. They are either establishments in public sector or establishments in private sector. Although 'establishment' by itself has not been defined in the Act separately, Section 3 gives clue to the meaning thereof. The said section runs as follows :

> "Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act :
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> Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under the Act for that year, unless such department of undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus."

Gross profits of each establishment have to be computed in term of Section 4 which in its turns refer to two Schedules the first to be applicable to a banking company and the other to any other case. After the ascertainment of gross profit Section 5 lays down the method of computation of available surplus. Before the amendment introduced by act 8 of 1969 the available surplus in respect of any accounting year was to be the gross profit for the year after deducting therefrom the sums referred to in Section 6. Section 6 provided for the deduction of certain amounts from the gross profit as prior charges. These are, namely, (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, as the case may be (the provision is irrelevant for our purpose); (b) any amount by way of development rebate or development allowance which the

employer is entitled to deduct from his income under the Income-tax Act; (c) subject to the provisions of Section 7 any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year; and (d) such further sums as are specified in respect of the employer in the Third Schedule. Before the amendment of the Act in 1969, Section 7 read as follows :

> "For the purpose of clause (c) of Section 6, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely -
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> (a) in calculating such tax no account shall be taken of -
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> (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
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> (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
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> (iii) any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of the Act, as in force immediately before the commencement of the Finance Act, 1965;
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> (b) where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
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> (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax act shall be calculated on the basis that the income derived by him from the establishment is his only income;
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> (d) Where the income from any employer includes any profit and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
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> (e) no account shall be taken of any rebate (other than development rebate of development allowance) or credit or relief for deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry."

6. Section 3 is the key to the Act in that it fixes the res or the property which is to provide the allocable surplus for the distribution of bonus in terms of the Act. This must be an establishment and a question directly arise when there are a number of establishment in common ownership as to how the allocable surplus is to be found out. If Section 3 had no proviso to it, all departments, undertakings or branches, be they complete factories or not, for turning out commercial products

under common ship could be treated as one establishment for the purpose of computation of bonus. A company which is a legal entity owning and running factories of diverse characters whether situate at the same place or located at different places would in such eventuality, form one establishment for the purpose of the Act. The proviso to the section however shows that the legislature intended that each of these factories is to be treated as a separate establishment for the propose of computation of bonus is a separate balance-sheet and profit and loss account were prepared in respect thereof unless such a factory was, immediately before the commencement of the accounting year, treated as a part and parcel of the company, i.e., the establishment. In other words, if different units or branches or department had been treated separately for the purpose of computation of bonus and separate balance-sheet and profit and loss accounts had been prepared in respect thereof, they were not to lose their separate identity as establishments because of the main provision of Section 3. Once it is ascertained that a branch, department or a factory is an establishment by itself under the Act, Section 4 to 7 are to have effect in respect of that establishment by themselves without the impact or connection with other branches, departments or factories even if they subserve a common cause. Gross profits of such an establishment like the two mills before us would have to be calculated in terms of the Second Schedule to the Act by taking the net profit as per profit and loss account and adding thereto the various amounts therein mentioned and educating the amounts like capital receipts, profits of and receipts relating to business outside India, etc. The gross profits to be computed for the purpose of bonus would not be the same as to be computed under the Indian Companies Act or the Income-tax Act. Under Section 5 of the Act the available surplus in respect of the two units would be the gross profits computed under Section 4 as reduced by the prior charges mentioned in sub-clause (a) to (d) of Section 6. All these amounts, i.e., gross profit available surplus and sums deductible from gross profits would be notional amounts in that they would not be the amount which would be computed under the Companies Act for submission to the shareholders or for assessment under the Income-tax Act to the taxing authorities. Section 7, clause (a) of the Act further illustrates the point that the direct taxes which are to be deducted as prior charges are not to be the same as would be assessed by the Income-tax authorities under the Income-tax Act. That the calculation of direct taxes would be on a notional basis is also emphasised by clauses (b), (c), (d), and (e) of Section 7.

7. The net result seems to be that the Legislature intended that subject to the express provisions mentioned, the employees of a particular establishment should be entitled to bonus under the Act without any consideration to facts or matters not mentioned in the Act. The employer is to be treated as a separate juristic person liable to pay bonus to the employees as if the establishment was his only venture, no matter how be fares in his other ventures. Even if the sum total of his activities in respect of his ventures resulted in a loss for the accounting year, he would have to pay bonus subject to the maximum specified in Section 10 of the Act to each employee of the establishment which was making profits. The profit and losses of other establishments, although they may form part of the composite whole in the accounting to be done under the Companies Act or the assessments to be made under the Income-tax Act, would be wholly alien to consideration and computation of bonus of the profit-making establishments in terms of the Act.

8. The balance-sheet and the profit and loss account of the Delhi Cloth and General Mills as on June 30, 1965, and for the year ended June 30, 1965, were Exs. M-5 to M-7 before the Tribunal while Exs. M-8 to M-10 are the corresponding documents for the Swatantra Bharat Mills. There is no dispute between the parties with regard to the figure of gross profits in terms of the Second Schedule to the Bonus Act as shown in the main chart Ex. M-330 of the Management. The gross profits for the Delhi Cloth Mills was Rs. 107.14 lakhs and the for Swatantra Bharat Mills Rs. 48.95 lakhs totaling Rs. 156.09 lakhs. There is also no dispute that the statutory depreciation in terms of

Section 6(a) of the act was Rs. 17,52,048 for the Delhi Cloth Mills and Rs. 18,30,969 for Swatantra Bharat Mills the total whereof comes to Rs. 35.83 lakhs. The corresponding figure for the development rebate of the two mills add up to 2.72 lakhs but whereas according to Ex. M-330 the direct tax, i.e., the sum of Income-tax and surtax in respect of these two units should be Rs. 52.24 lakhs and Rs. 5.48 lakhs totalling Rs. 57.72 lakhs, the employees claim that the figure should be no higher than Rs. 10.09 lakhs in terms of Ex. M-15.

9. It is well known that under the Income-tax Act the total profits and gains of a business are to be worked out in terms of Section 28 of the Income-tax Act, 1961. Under Section 29 the income referred to in Section 28 is to be computed in accordance with the provisions contained in Section 30 to 43-A. Section 30 shows what deductions are to be allowed in respect of rent, rats, taxes etc., for premises used for the purpose of a business of profession. Section 31 specifies the amounts deductible in respect of repairs and insurance of machinery, plant and furniture used for the purpose of the business. Section 32 deals with depreciation allowable under the Income-tax Act. It contains elaborate provisions as to how the depreciation is to be worked out. Section 33 provides for computation of development allowance. Section 33-B provides for computation of rehabilitation allowance. Section 34 lays down the conditions for the allowance of depreciation rebate. Sections 35, 35-A, 35-B, 35-C and 36 provide for special allowances. When the total income is ascertained after providing of the many allowances specified in the act, income-tax in charged in respect of the total income of the previous year or previous years, as the case may be, at rates laid down in the Finance Act for the relevant year. The Companies Act, however, is not concerned with any other allowance except the one for depreciation under Section 32 of the Income-tax Act and the amounts deductible by way of development rebate or allowance under the said Act.

10. It must follow from the above that the liability for direct tax under Section 6(c) must be the one which would have to be computed by principle followed in the Income-tax Act. In other words the liability under Section 6(c) must be the notional liability of a venture of which the gross profits are known and the prior charges by way of depreciation and development rebate and development allowance have been computed. The calculation of income-tax in Ex. M-330 proceeds on the basis that the gross profits are S. 156.09 lakhs and the depreciation and development rebate allowable under Section 6(a) and (b) are Rs. 38.55 lakhs leaving a margin of Rs. 117.54 lakhs for computation of income-tax. If this tax is quantified at 45% of the said balance it comes to Rs. 52.24 lakhs as shown in the calculation chart of the Management and surtax thereon would be Rs. 5.48 lakhs. The respondents do not dispute that the figure for income-tax and surtax would be as shown by the Management if their basis calculation is correct, but according to them the Management must accept the figure given in Ex. M-15. Ex-15 proceeds on the basis that the total liability of the company being Rs. 16.00 lakhs as shown at Page 4 of the Directors' report to the shareholders under the Indian Companies Act for the year ended June 30, 1965, the same would be allocable to the two units of Delhi Cloth Mills and Swatantra Bharat Mills in the proportion of Rs. 7.87 lakhs and Rs. 2.24 lakhs. These figures however have no bearing on the computation of the liability to tax under Section 6(c) of the Bonus Act for the two particular units involved in this case. It was argued at one stage by the respondents that clause (c) of Section 6 is not related to clauses (a) and (b) of the said section. If that were so, there is no reason why the tax liability at 45% should not be calculated on the whole of the gross profits, i.e., Rs. 156.09 lakhs. Ex. M-15 was apparently prepared on the basis that the total tax liability for income-tax purpose of all the various units under the ownership of the Delhi Cloth and General Mills Company Ltd. Being Rs. 16 lakhs, Rs. 7.85 lakhs and Rs. 2.24 lakhs would be attributable to the working results of Delhi Cloth Mills and Swatantra Bharat Mills. If the direct tax liability be as quantified by the Management in Ex. M-330 the available surplus in terms of section 5 of the act is Rs. 37.35 lakhs and allocable surplus under the act being 60% thereof is to

be quantified at Rs. 23.40 lakhs which works out to 7.31 per cent. on the annual wage bills of all the eligible employees totalling Rs. 306.32 lakhs.

11. The act being of self-contained and self-sufficient Act except in so far as it refers to the other enactments therein mentioned, and in particular the Indian Income-tax Act, it becomes irrelevant to consider the application of the full bench formula of the Labour Appellant tribunal for the computation of bonus before the act of 1965 was enacted. Equally in our view it is unnecessary to refer to the observations of this Court in The Sree Meenakshi Mills Ltd. v. Their Workmen, (1958 SCR 878 : AIR 1958 SC 153 : 1959 SCJ 557) or to M/s. Tulsidas Khimji v. Their Workmen, ((1963) 1 SCR 675 : AIR 1963 SC 1007 : (1962) 1 Lab LJ 435) relied on by learned counsel Mr. Phadke for some of the respondents. The Act is a complete Code and the provisions thereof must have effect of their own force. So far as the mills before us are concerned, the gross profits must be computed in terms of Second Schedule to the Act and the available surplus mentioned in Section 5 in terms of sections 6 and 7 of the Act Where a branch or undertaking has to be taken as an establishment under the provision to Section 3 for the purpose of the Act, the gross profits, prior charges, the available surplus and the allocable surplus have all to be found out by applying that fiction to the branch or establishment. When the fiction is to have effect with regard to all other matters, it is not possible to hold that for the purpose of computation of direct tax it has to be given a go-bye and the actual realities of the situation only in respect of the amount of tax payable under the Income-tax Act for all the establishments which have to suffer taxation together allowed to displace the fictional or notional liability.

12. In the present case, it so happens that the bulk of the profits of the company (the Delhi Cloth and General Mills Company Ltd.) came from these two units; some of the other units suffered losses while still others were not equally profit-making. If the argument raised on behalf of the workmen was to be accepted and if it so happened that the other units were greater profit-making branches than these two units, greater tax liability might fall on these units thereby reducing the percentage of bonus due to the employees of these units as a whole. Treat certainly was not the object with which the enactment was passed. Section 7 of the Act itself shows that matters extraneous to the working of the establishment in the particular year were not to be taken into account although they could not be ignored for computing tax liability under the Indian Income-tax Act.

13. Strong reliance was placed by learned counsel for the appellant on the decision of this court in Metal Box Co. v. Workmen. ((1959) 1 SCR 750 : AIR 1969 SC 612 : (1969) 2 SCJ 160) Counsel for the respondents made valiant efforts to persuade us to hold that many of the observations therein were obiter and as such the case should either be distinguished or be not followed as a precedent for the determination of the question before us. While no doubt the dispute in that case was somewhat different from the one which we have to resolve and there are some distinguishing features in that case, namely, that the Court was not called upon to examine the computation of the figures of gross profits etc., for the establishment which came within the proviso to section 3 of the observations bearing on the question of the computation of direct tax under Section 6(c) of the Act are certainly in point. It was pointed out there at P. 775.

> "What Section 7 really means is that the Tribunal has to compute the direct taxes at the rates at which the income, gains and profits of the employer are taxed under the Income-tax Act and other such Acts during the accounting year in question. That is the reason why Section 6(c) has the words "is liable for" and the words "income, gain and profits." These words do not, however, mean that the Tribunal while computing direct taxes as a prior charge has to assess the actual taxable income and the taxes

thereon."

With respect, we entirely agree with the above observation and in our view no useful purpose will be served by referring to the other observations bearing on a question with which we are not directly concerned.

14. In M/S. Alloy Steel Project v. The Workmen, (1971 (1) SCC 536) where the project was owned, controlled and managed by a Government Company, viz., Messrs. Hindustan Steel Ltd., and separate balance-sheet and profit and loss accounts of the undertaking were maintained, it was held that the claim of the workmen that the project was a part of the Hindustan Steel Ltd. should be upheld and its employees placed on the same footing as the other employees of the steel company was rejected inasmuch as the project which was started in the year 1964-65 made no profits right up to the year 1967-68.

15. In the result, we hold that the direct taxes under Section 6(c) of the Act were properly quantified by the appellants in their calculation shown in Ex. M-330 and the Tribunal went wrong in assessing that liability on the basis of Ex. M-15. The award will therefore be set aside and modified to provide for bonus being given to the workers at 7.31 per cent. of their annual wage bill. The appeal is therefore allowed as indicated above, but, in the circumstances of the case, we make no order as to costs.

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