

R. Dalmia

Vs.

Commissioner of Income-Tax, New Delhi.

Civil Appeal No. 283 of 1972

(R.S. Sarkaria, P.S. Kailasam JJ)

19.01.1977.JUDGMENT

SARKARIA J. -

This appeal by special leave is directed against a judgment dated July 12, 1971, of the High Court of Delhi. It arises out of these facts :

The appellant (hereinafter referred to as the assessee) is an individual. The assessment year is 1955-56.

Bharat Union Agencies Pvt. Ltd. had spent Rs. 53,398 after the personal necessities of the assessee during the previous year ending September 30, 1954, without charging for the same. The assessee was not a director of the said company. He, however, was the beneficial owner of 1,800 shares out of the total of 3,000 equity shares of the said company during the previous year. Similarly, Allen Berry and Co. Pvt. Ltd. had spent a sum of Rs. 4,406 after the personal necessities of the assessee, without charging for the same.

The Income-tax Officer treated the total benefit of Rs. 57,804 received by the assessee from these two companies as his "income" under section 2(6C)(iii) of the Indian Income-tax Act, 1922, which was introduced by the Finance Act, 1955, with effect from April 1, 1955, and charged it to tax along with some other items of income.

The assessee carried an appeal to the Appellate Assistant Commissioner who found that the assessee was the beneficial owner of the shares of Bharat Union Agencies Pvt. Ltd. carrying more than 20 per cent. of the voting power. He further held on the basis of certain findings in the report of the Commission of Inquiry on the administration of Dalmia Jain companies published in 1963, that the assessee had 100 per cent. of the shareholding control of Allen Berry and Co. Pvt. Ltd. The Appellate Assistant Commissioner did not specifically deal with the question whether the assessee was "concerned in the management" of both these companies. In the result he upheld the order of the Income- tax Officer.

The assessee preferred a further appeal to the Income-tax Appellate Tribunal which held that the assessee was "concerned in the management" of the Bharat Union Agencies Pvt. Ltd., being the beneficial owner of shares carrying more than 20% of the voting power, and as such the benefit of Rs. 53,398 received by him from that company was his "income" within the letter part of clause (iii) of section 2 (6C) of the Indian Income-tax Act, 1922. On this reasoning the Tribunal dismissed the assessee's appeal in regard to the item of Rs. 53,398. However, it allowed, on a different ground, his appeal with regard to the item of Rs. 4,406 received from Allen Berry and Co. Pvt. Ltd. In this appeal we are not concerned with that item any more.

At the instance of the assessee, the Tribunal stated the case and referred the following question under section 66(1) of the Indian Income-tax Act, 1922, to the High Court :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 53,398 spent by Bharat Union Agencies Pvt. Ltd. after the personal necessities of the assessee is income within the meaning of section 2(6C)(iii) of the Indian Income-tax Act, 1922 ?"

The High Court answered this question against the assessee. Hence, this appeal.

At the outset, Shri Bishamber Lal, appearing for the appellant, tried to contend that the item of Rs. 53,398 received by the assessee from Bharat Union Agencies Pvt. Ltd. was not a "benefit or perquisite" within the contemplation of section 2(6C)(iii) of the 1922 Act, because, firstly, the constituents of this item were not cash amounts but gifts or bounties, and, secondly, the receipt of this benefit by the assessee was unauthorised and could not be claimed by him as of right on the basis of any agreement with the company.

This was altogether a new plea. It was not even indirectly raised before the authorities under the Income-tax Act or the High Court. It has not been raised even in the special leave petition under article 136 of the Constitution. It was never the case of the assessee that this amount of Rs. 53,398 was not "benefit obtained" by the assessee from the company within the meaning of section 2(6C)(iii). On the contrary it is apparent from the judgment of the Tribunal, that there was "no dispute about the fact that the assessee received benefits from both the companies to the extent stated by the authorities below", i.e., benefits to the extent of Rs. 53,398 and Rs. 4,406 were received by the assessee from Bharat Union Agencies Pvt. Ltd. and Allen Berry and Co. Pvt. Ltd., respectively. The plea now sought to be raised in regard to the item of Rs. 53,398 involves a question of fact. We, therefore, did not permit the counsel to raise this plea for the first time at the time of arguments before us.

Counsel next contended that the expression "concerned in the management of the business of the company" takes in only that person who by virtue of a position or office held by him in the company, legally and actually participates in the management of its business and not he who holds no such position or office but is in remote control of the company and its affairs merely on account of being in ownership of a certain number of shares, carrying more than 20 per cent. or even the majority of the voting power. In support of this restricted construction of the term "concerned", counsel referred to a decision of the Madras High Court in *Arya Bhavan, Madras v. M. S. Narayana Rao* AIR 1960 Mad 143, wherein Rajamannar C.J. held that the word "concerned" as used in the context of "workman" in section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, connotes a more intimate and direct relation to the matter than the word "interest" and, therefore, this term should be given a more restricted meaning than the word "interest". Mr. Bishamber Lal also referred to the meaning of the terms "concerned", "concerning", as given in the dictionary, *Words and Phrases*, Permanent edition, volume 8, pages 504- 505.

Before dealing with this contention, it will be appropriate to examine the material part of section 2(6C)(iii) of the 1922 Act, which runs as follows :

"(iii) the value of any benefit or perquisite, whether convertible into money or not, obtained from the company either by a director or by any other person who has a substantial interest in the company (that is to say, who is concerned in the management of the business of the company, being the beneficial owner of shares, not being shares entitled to a fixed rate of

dividend whether with or without a right to participate in profits, carrying not less than twenty per cent. of the voting power), and any sum paid by any such company in respect of any obligation which but for such payment would have been payable by the director or other person aforesaid."

From an analysis of clause (iii), it is clear that it falls in two distinct parts. The first part is confined to the obtaining of the value of any benefit or perquisite from a company by a director, even if he has no substantial interest in the company. The second part applies to a person who may not be a director but has a substantial interest in the company. What is "substantial interest" is further equated by the succeeding expression, "that is to say", with the co-existence of two elements, namely, (i) concern in the management of the business of the company, and (ii) beneficial ownership of shares (not being shares entitled to a fixed rate of dividend) carrying not less than twenty per cent. of the voting power. There is no dispute before us that the assessee had obtained the benefit of Rs. 53,398 from Bharat Union Agencies Pvt. Ltd. It is further admitted that he holds 1,800 shares out of the total of 3,000 equity shares in this company, carrying a voting power of 60 per cent. Thus, the existence of the second element is more than satisfied. Controversy pivots around the first element only.

The arguments which have been advanced before us on behalf of the assessee with regard to the construction and application of the expression "concerned in the management" of the business of the company, were canvassed before the Tribunal also. The Tribunal repelled these arguments. The reasoning of the Tribunal - with which the High Court found itself entirely in agreement - is as under :

"Shri Sharma conceded the position that the assessee was controlling both the companies in question... To exercise control over a company is something more than to manage the company. A person who manages the company may not necessarily be in a position to control the business or affairs of the company. He may be managing under the instructions of those who are controlling the company. But a person who controls a company also directly or indirectly through the managerial staff manages the business of the company. It is again not necessary that the person who manages the business of the company should be rightfully entitled to do it. A person who is not rightfully entitled to manage the business of the company but usurps the power by virtue of his certain position is, in our opinion, certainly a person covered by this expression. It is also not necessary... that the management should be carried on in an ostensible manner. One who carried on the management indirectly and imperceptibly through the persons who outwardly and ostensibly carry on the management is covered by the expression. It is not necessary, in our opinion, that the management should be both seen and felt; it is sufficient if it is felt, without being seen."

In our opinion, the above is a correct exposition of the law on the point. The word "concern" is not a term of art, having a precise, fixed meaning. It has several nuances, and is used to convey diverse shades of meaning over a wide spectrum. It may mean "to have a relation to, or bearing on, be of interest or importance" or "to have an anxiety, worry". "Concerned" as an adjective may mean "interested", "involved". In one context, it may mean one thing, and in a different context another. The decisions as to the meaning of this word used in a different context in another statute, are scarcely of much value in construing it in the setting of the provision with which we are concerned. The best way, therefore, to construe this word is with reference to the context in which it is used. In sub-clause (iii) of section 2(6C) of the Indian Income-tax Act, 1922, the word "concerned" takes its colour from the words "in the management of the business", in association with which it occurs. In

the context of business, "manage" means "to control, to guide, to administer, to conduct of direct affairs; carry on business" (Shorter Oxford Dictionary, Webster's New World Dictionary). "Management" includes the act of managing by direction, or regulation, or administration or control or superintendence.

Construed with reference to the context and the circumstances of a case, the expression "person concerned in the management of the business" may take in not only a person who directly participates or engages in the management of the business but also one who indirectly controls its management through the managerial staff, from behind the scenes. The assessee's admission that he is in control of the company, necessarily includes an admission of his being "concerned in the management of the business of the company". We, therefore, agree with the High Court, that the ambit of the term "concerned" in section 2(6C)(iii) cannot be restricted to a person who is an employee of the business or an office-holder of the company. In the context of "management" it is wide enough to include every person interested in the management, in the sense of having the direction and control of the managerial staff. On the facts of the case, the assessee was such a person.

We are, therefore, of opinion that the High Court was right in answering the question referred to it, against the assessee.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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