

Commissioner of Income-Tax, West Bengal

Vs

Edward Keventer (Private) Ltd.

Civil Appeals Nos. 1111 to 1114 of 1972

(P. N. Bhagwati V. D. Tulzapukkar, R. S. Pathak JJ)

24.08.1978

JUDGMENT

P. N. BHAGWATI J. -

1. The assessment years with which we are concerned in these appeals are 1956-57, 1957-58, 1958-59 and 1959-60, for which the relevant accounting years were the financial years ending March 12, 1956, March 31, 1957, March 31, 1958, March 31, 1959, respectively. The only question which arises for consideration in these appeals is whether the Tribunal was right in holding that the disallowance of the amounts of Rs. 46,162, Rs. 45,753, Rs. 42,967 and Rs. 46,720 out of the remuneration and commission paid to four directors of the company and one K. A. Dikshit for these for assessment years by resort to section 10(4A) of the Indian Income-tax Act, 1922, was unjustified. During the four relevant assessment years the assessee paid to its four directors and one K. A. Dikshit, who was personal assistant to Rani J. D. Devi, one of the directors of the assessee, certain remuneration and commission in consideration of to their attending to the work of the assessee. The Income-tax Officer was of the view that the amounts paid to these four directors and K. A. Dikshit by way of remuneration and commission were unreasonable and excessive having regard to the legitimate business needs of the assessee and the benefit derived by or accruing to it therefrom and he, therefore, disallowed the amounts of Rs. 46,162, Rs. 45,753, Rs. 42,967 and Rs. 46,720 out of such remuneration and commission under section 10 (4A). The view taken by the Income-tax Officer confirmed in appeal by the Appellant Assistant Commissioner but on further appeal, at the instance of the assessee, the Tribunal disagreed with the view taken by the taxing authorities and held that no part of the remuneration commission paid to the four directors and K. A. Dikshit could be regarded as excessive or unreasonable, if the legitimate business needs of the assessee and the benefit derived by or accruing to the assessee therefrom were taken into account from the point of a businessman. The revenue carried the matter to the High Court by way of a reference but the High Court also took the same view as the Tribunal and having regard to the facts and circumstances of the case, which in the view of the High Court were eloquent, the High Court held that so far as K. A. Dikshit was concerned he was neither a director nor a person having substantial interest in the assessee and hence section 10(4A) had no application in relation to him and so far as the four directors were concerned, though section 10(4A) was applicable, there was nothing to show that the payment of commission and remuneration to them was excessive or unreasonable and hence the Tribunal was right in holding that the disallowance of various amounts out of the remuneration and commission paid to them was unjustified. The revenue thereupon referred the present appeals with special leave obtained from this court.

We have carefully considered the facts and circumstances of the present case and gone through the judgment of the High Court, but we do not think any fault can be found with the reasoning of the

High Court in taking the view against the revenue on the question of disallowance of the aforesaid amounts out of the remuneration and commission paid to the four directors and K. A. Dikshit under section 10(4A). It is not necessary to reiterate the various facts and circumstances set out in the judgment of the High Court in support of the view taken by it, but it will be sufficient to state that the annual turnover of the assessee during the assessment years in question ranged between Rs. 23,66,000 to Rs. 30,86,000 and the assessee had two producing centres, one at Fatabad and the other at Ghoom in Darjeeling district, and also several other distributing centres. And despite this huge annual turnover and large number of centres to look after and supervise, the assessee incurred a total expenditure of not more than Rs. 5,000 per month at the head office and this expenditure of about Rs. 5,000 per month was inclusive of the remuneration and commission paid to the four directors and K. A. Dikshit. It is impossible to say in the circumstances that the remuneration and commission paid to the four directors and Shri K. A. Dikshit was excessive or unreasonable. The total remuneration and commission paid to the four directors and K. A. Dikshit was in the neighbourhood of Rs. 4,500 per month which means that other office expenditure by way of salary to employees and other staff was only about Rs. 500 per month. This would clearly show that the four directors and K. A. Dikshit were attending to the business of the assessee and, in fact, this was clearly borne out from the material produced on behalf of the assessee in the proceedings before the tax authorities. We fail to see how the payment of remuneration and commission to the four directors and K. A. Dikshit could, in the circumstances, be said to be excessive or unreasonable so as to warrant disallowance of any amount out of it by the Income-tax Officer under section 10(4A). The High Court was, in our opinion, right in answering the question referred to it by the Tribunal in favour of the assessee and against the revenue.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

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