

Babulal Narottamdas and Others

Vs

Commissioner of Income-tax, Bombay

Civil Appeal No.685 (NT) of 1978

(P.B. Sawant, Smt. M.S. Fathima Beevi JJ)

14.12.1990

JUDGMENT

FATHIMA BEEVI J

1. The assessee Seth Narottamdas was managing agent of M/ s. Chandulal and Co. Ltd. A resolution for the, payment of special additional remuneration to Narottamdas at the rate of Rs. 15,000/- per annum was passed on July 20, 1949. In the meantime, a representative suit was filed by the shareholders of the company on 16-7-1949 for perpetual injunction from giving such extra remuneration and for declaring the resolution as illegal. Temporary injunction granted by the trial Court was dissolved on July 20, 1949, on the assurance that the company will not make payment of extra remuneration until the disposal of the suit. The trial Court decreed the suit on 31-10-1956 but on appeal, the High Court by judgment dated 25-11-1955 reversed the decree and held that the resolution was validly passed.

2. Chandulal & Co. Ltd., debited the sum of Rs. 15,0001 - in the profit and loss account prepared by it on 22-6-1950 for the year ended 31-12-1949. For the later 1 years, the company showed the sum of Rs. 15,0001 - due under the resolution to the assessee as a contingent liability. The amounts were not paid to the assessee during the relevant years. Narottamdas died on 16-11-1952. The amount of Rs. 58,125/- was ultimately paid to his heirs in 1956.

3. The assessee was maintaining the Mercantile system of accounting. The sum of Rs. 15,000/- was brought to tax for each of the years 1950-51, 1951-52 and 1952-53. For the assessment year 1953-54, the proportionate sum of Rs. 13,125/- was brought to tax. The Income-tax Officer in making the assessment rejected the contention that no amount was due as extra remuneration in the several years and that 'no income had accrued to the assessee during the said years. The Appellate Assistant Commissioner confirmed the assessment. The appellate Tribunal, however, held the view that no income had accrued to the assessee during the said years and that the amount accrued to the assessee only in November, 1955, when the High Court pronounced the judgment and till that date the amount could not be said to have accrued to him. In this view of the matter, the assessments were set aside.

4. At the instance of the Revenue, the Tribunal referred for the opinion of the High Court, the following question of law under S.66(1) of the Income-tax Act, 1922:

"Whether on the facts and in the circumstances of the case, the sum of Rs.

58,125/was properly held by the Tribunal to have accrued to Shri Narottamdas Jethalal only in November, 1955, when the High Court's judgment was pronounced?"

5. The High Court vide judgment dated 8/9-7-1975 answered the said question in the negative against the assessee. The judgment is reported in C.I.T. v. Babulal Narottamdas (1976) 105 ITR 721 (Born). The High Court held that as there was no question of any controversy between the company on the one hand and the assessee on the other, merely because the third party raised a dispute as regards the liability of the company to pay the amount, it could not be said that the date of accrual of such income was postponed to a future date when the rights were finally adjudicated upon by a Court of law and the Tribunal was not right in holding that the sum of Rs. 58,125/- accrued only in November, 1955, when the High Court's judgment was pronounced. The judgment of the High Court' is challenged in this appeal.

6. Shri Prashant Goswamy, learned counsel, appearing for the appellants contended that in view of the assurance given by the company before Court that no extra remuneration would be paid to the managing agent until the disposal of the suit and the subsequent dismissal of the suit by the trial Court, it cannot be said that the right to receive the remuneration had accrued to the assessee in each year in spite of the fact that a resolution was passed on July 20, 1949. According to the learned counsel, until the High Court rendered the judgment holding that the resolution was validly passed, the company could not make any payment to the assessee nor could the assessee claim payment of any extra remuneration from the company and, in such a case, the entire amount became payable only on the date of judgment and could, therefore, be properly brought to tax only in the year of the judgment. Relying on the observations in C.I.T. v. Hindusthan H & L Development Trust Ltd., Calcutta (1977) 108 ITR 380 (Cal), Shri Goswami maintained that the receipt of the extra remuneration was really the receipt of a particular sum pursuant to the decree of the Court and the right to receive had accrued only when the decree was finally passed by the High Court.

7. The assessee, Natottamdas, was maintaining his account on Mercantile system, where accounts are kept on accrual basis, profits or gains are credited though they are not actually realised. The entries made in the accounts really show nothing more than an accrual. In view of the resolution passed in the annual general meeting of the company, income of Rs. 15,000/- accrued to Narottamdas in each year. This income was actually earned by him during the relevant previous years. The right to receive the extra remuneration flowed from the resolution. The income accrued or arose at the end of each accounting year irrespective of the fact whether the amount was actually paid by the company to Narottamdas or not. Though the payment was deferred on account of the pending litigation, it cannot be said that accrual of income was postponed simply because a suit was filed by the shareholders challenging the validity of the resolution passed by the company. Income can be held to accrue when the assessee acquires a right to receive that income. In E. D. Sassoon & Co. Ltd. v. C. I.T. (1954) 26 ITR 27 : (AIR 1954 SC 470), the principle that income must be held to accrue on the date when a debt becomes due has been affirmed. In C.I.T. v. K.R.M.T.T. Thiagaraja Chetty (1953) 24 ITR 525 : (AIR 1953 SC 527), it was further held that the mere fact that an amount due to the assessee has been carried to the suspense account and company was withholding payment on account of a pending dispute cannot be held to mean that the income has not accrued to the assessee. The date of accrual is the date on which the right to receive the income has been acquired by the assessee.

8. The assessee herein has acquired the right to receive the extra remuneration of Rs. 15,000/- per annum on the basis of the resolution passed on July 20, 1949. The right to receive extra remuneration cannot be said to have arisen on the date of the judgment of the High Court. The right

to receive the extra remuneration arose only on the resolution of the company. In view of the resolution, such amount had become payable to the assessee by the company at the end of the accounting year. What was deferred on account of the pending litigation was not the accrual of the right but the date of payment. Since the suit was pending during the first year, the company had made the debit entry in the accounts. For the subsequent years also, the amount had been shown in the profit and loss account as contingent liability in view of the pending litigation. There was no dispute between the company and the assessee regarding the payment of such extra remuneration. Since the resolution created the right in favour of the assessee to receive the extra remuneration at the agreed rate, the assessee acquired the right to receive that income by virtue of the resolution and not by virtue of the judgment which held the resolution to be valid. There is, therefore, no force in the contention that until the suit was finally decided by the High Court, no right is said to have accrued to the assessee.

9. In *C.I.T. v. Hindusthan H & L Development Trust Ltd.*, Calcutta (supra) relied on by Shri Goswamy enhanced compensation fixed by the order of the arbitrator was withdrawn by the assessee after furnishing a security bond during the pendency of the appeal in the High Court. The Income-tax Officer assessed the said amount as income of the assessee which ad accrued in the relevant year. The High Court held that the receipt of the sum by the assessee was really receipt of a sum pursuant to an order of the Court and was not income which accrued or arose during the relevant previous year for the reason that the right of the assessee to receive any further amount was yet to be accepted by the Court. We are unable to find any support from this decision to advance the appellant's claim, when the appellant's right to receive the extra remuneration was not unsettled.

10. The High Court, in our view, was right in answering the question against the assessee. We find no merit in the appeal which is accordingly dismissed. In the facts and circumstances of the case, we make no order as to costs.

Appeal dismissed.

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