

Commissioner of Income Tax, Gujarat

Vs

Bhavnagar Salt & Industrial Works Pvt. Ltd.

Civil Appeal No. 492 of 1978

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

14.02.1996

ORDER

1. Heard counsel for both the parties.

2. This appeal has to be allowed following the decision of this Court in Vazir Sultan Tobacco Co. Ltd. v. CIT [(1981) 4 SCC 435 : 1981 SCC (Tax) 342 : (1981) 132 ITR 559].

3. The relevant facts are the following :

For Assessment Year 1963-64, (accounting year ending June 1962), the Company had made a provision in a sum of Rs 1,62,000 towards dividends proposed to be declared. In the proceedings under the Super Profits Tax Act, the assessee contended that the said amount of Rs 1,62,000 should be treated as a reserve and should be taken into consideration while calculating the capital base. This was rejected by the Supertax Officer. On appeal, the Appellate Assistant Commissioner agreed with the assessee whose view was affirmed in appeal by the Tribunal. Thereupon, the following question was referred for the opinion of the High Court :

"Whether, on the facts and in the circumstances, the provision for proposed dividend of Rs 1,62,000 is a reserve for the purpose of computation of capital of the assessee-Company under the Super Profits Tax Act, 1963."

4. The High Court answered the said question in favour of the assessee and against the Revenue. Hence this appeal.

5. Now it is not in dispute that the said amount was set apart to meet the liability arising on account of the dividend proposed to be declared. It is, therefore, a provision made for a known and existing liability. Mr Desai, learned counsel for the assessee, however, submitted that inasmuch as by the end of the relevant accounting year, the General Body of the shareholders had not met and had not approved the proposal to declare the dividend, the amount does not become a provision but remains a reserve. In support of his submission, the learned counsel placed strong reliance upon the following observations in Vazir Sultan case [(1981) 4 SCC 435 : 1981 SCC (Tax) 342 : (1981) 132 ITR 559]. At ITR p. 584, the decision says : (SCC p. 459, para 31)

"The question relates to the Assessment Year 1974-75, the relevant previous year being the calendar year 1973 and the material date being January 1, 1973. After the accounts of the calendar year 1972 were finalised the Directors transferred out of the profits of Rs 61,03,382 of that year a sum of Rs 29,77,000 to the General Reserve.

With such transfer the General Reserve of the assessee-Company as on January 1, 1973 stood at Rs 86,07,712. At the end of the calendar year 1973, admittedly, the Directors did not make any provision for 'proposed dividend' in its accounts but there was a note on the balance-sheet to the following effect :

'The Directors have recommended dividend for the year 1972 at the rate of Rs 10 per share free of tax. The dividend, if approved by the shareholders at the forthcoming Annual General Meeting, will be paid out of General Reserve and no separate provision has been made therefor in the accounts.'

At the Annual General Meeting, held on June 30, 1973, dividend of Rs 3,10,450 was declared by the shareholders and the same was soon thereafter paid out of the said General Reserve. In the surtax assessment proceedings under the 1964 Act, the assessee claimed that the entire General Reserve which stood at Rs 86,07,712 as on January 1, 1973 should be taken into account while computing the capital of the assessee-Company. But the Taxing Officer reduced the General Reserve by the aforesaid sum of Rs 3,10,450 and only the balance of Rs 82,97,262 was added in computing the capital."

6. The contention of the assessee on the basis of the above facts was indeed rejected by the Court (see SCC p. 461 : ITR p. 586). Apart from the above, it would be noticed that the facts in the case before us are entirely different. Here, not only was there a recommendation by the Directors to declare dividend at a particular figure but the requisite amount was also set apart and shown as a provision in the balance-sheet itself. This specific circumstance was not there in the facts of the case considered in the above decision. In view of this distinguishing circumstance, we are of the opinion that no reliance can be placed upon the said judgment since the provision here was made expressly for the purpose of meeting the liability of dividend. It is a provision and not a reserve.

7. The appeal is accordingly allowed. The judgment of the High Court is set aside and the question referred is answered in favour of the Revenue and against the assessee. No costs.