

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Bipin Silk Mills, Ltd

(L Stone, Kt., C.J. Kania, J.)

03.11.1944

JUDGMENT

Kania, J.

1. This reference deals with, two applications made by the Commissioner of Income-tax in respect of the assessment of the assessees, for two accounting periods, viz. September 1, 1939, to December 31, 1939, and the calender year 1940. The relevant facts are these: The assessee company is a joint stock company with a share capital divided into 100 shares of Rs. 5,000 each. Forty-three shares are held by the directors admittedly in their own right and in their individual names. Twenty shares stand in the name of Mr. Nanji Kalidas, Mrs. Nanji, Sirdar Tribhowandas Jagjivandas, Raja Pandit Anandpuriyaji and Rajya Ratna H. M. Wadia. It is stated in the reference that these shares are held by Nanji Kalidas not in his individual capacity but "as a trustee".

2. On behalf of the Commissioner it is contended that as these twenty shares are held by five persons in their capacity as trustees, it is improper to construe that they have an interest in these shares within the meaning of Section 2(22) (a) read with Clause (c) and the last proviso to that sub-section of the Excess Profits Tax Act. It was argued that the interest there contemplated must be beneficial interest and not merely the interest of a trustee. Before the Tribunal the parties referred to *The Commissioners of Inland Revenue v. B. W. Hon'ble Ltd¹*. and *British American Tobacco Co. v. Inl. Rev. Commissioners²*. The Tribunal rejected the contention of the Commissioner and held that it was not necessary that the interest should be beneficial interest. From the application made by the Commissioner for a reference it appears that the decision of Mr. Justice Macnaghten in *J. Bibby & Sons, Ltd. v. The Commissioners of Inland Revenue*, which was briefly reported in one of the Taxation magazine reports, was noticed. That is now reported in [1943] 2 All E.R. 419. It was there held that the interest contemplated by the corresponding section of the English Act must be beneficial interest. That matter went in appeal and in All England Law Reports [1944] Vol. I, p. 548, Lord Green M.R., in delivering the

judgment of the Court of Appeal, reversed the decision of the lower Court, and held that except in the case of a bare trustee, perhaps, the question of the holder having a beneficial interest did not arise. It was held that the trustee's interest was sufficient to bring the case within the meaning of that sub-section. That sets at rest the first part of the argument of the Commissioner.

3. It was next contended that when there are more than one trustee the management has to be according to the vote of the majority. From that it was argued that if the five trustees at a meeting decided that the voting should be in a particular way, Nanji Kalidas, the director, will not have an authority to vote otherwise, and therefore it cannot be considered that he had a controlling interest in respect of the twenty shares. Before considering this argument, it is first necessary to look at the provisions of the trust deed, Mr. Setalvad was given the trust deed and after perusing the same he frankly conceded that under its provisions Nanji had an overriding power to decide questions in the management of the trust and it was further provided in the deed that the trustees must act as directed by Nanji. In view of these provisions in the trust deed the contention that the vote of the majority must prevail must fail. It must be left to the sole discretion of Nanji to vote as he directed. Under the articles of association of the company it is also provided that if Nanji was present at a meeting, as between the company and the shareholders, he had a right to vote as he pleased. Under the circumstances there is no doubt that in the case of the respondents the controlling interest within the meaning of Section 2(1) (a) of the Excess Profits Tax Act is in the directors. The question submitted to us is: Whether in the circumstances of the case and in view of the fact that the twenty shares were held jointly by Nanji Kalidas, a director of the company, with four other persons, it has been rightly held that the appellant company is a director controlled company within the meaning of Section 2(1) (a) of the Excess Profits Tax Act? Having regard to what is stated above, the answer to the question is in the affirmative. The Commissioner to pay the costs of the reference.

Cases Referred.

1 (1926) 12 T. C. 911

2(1942) 10 I. T. R. (Sup.) 67