

BOMBAY HIGH COURT

Commissioner of Income Tax

Vs

Chamanlal Mangaldas And Co

(Chagla, C.J.)

14.09.1955

JUDGEMENT

Chagla, C.J.

(1.) THE very short question that arises for our decision on this reference is : what was the income of the assessee company in respect of the managing agency commission earned by it for managing the managed company, the Girdhardas Harivallavdas Mills ? The assessee was appointed the managing agents under an agreement dated the September 7, 1940, and they were entitled to a commission of 3.5% on the sale proceeds of the mills. On the basis the commission of the managing agents came to Rs. 2,05,575 -3 -0 for the calendar year 1951 which is the year of account. In fact the assessee company only received Rs. 1,05,575 -3 -0 under circumstances which we will presently narrate, and the question that arose before the Tribunal was whether the assessee company was liable to pay tax on the sum of Rs. 2,05,575 -3 -0 which was the amount on the basis 3 1/2% or on Rs. 1,05,575 -3 -0 which the actual amount received by the assessee company, and the Tribunal held in favour of the assessee company that the sum of Rs. 1,00,000 which was in fact not received by the assessee company was not liable to tax. On the December 28, 1950, an extraordinary general meeting of the managed company passed a special resolution and this resolution empowered the directors of the company after considering the results of the working of the company for the years 1950 and 1951 and if they were of the opinion that a lesser remuneration than that specified in the managing agency agreement should be paid to the managing agents to fix a lesser remuneration, and the managing agents would be bound by the decision of the directors with regard to this lesser remuneration.

(2.) IT is significant to note that on that very date, December 28, 1950, the managing agents wrote to the managed company accepting this resolution and agreeing that an agreement in variation of the agreement dated September 7, 1940, in terms of the resolution passed by the extraordinary general meeting will be made between the assessee company and the managed company and pursuant to this agreement an agreement was arrived at on the March 17, 1951, a where this resolution passed by the managed company was embodied in the managing agency agreement. On the April 8, 1951, a meeting of the board of directors resolved that in accordance with the resolution passed by the extraordinary general meeting and also in accordance with the agreement of the March 17, 1951, the managing agents should accept a commission of Rs.

1,05,575 -3 -0 instead of Rs. 2,05,575 -3 -0 and there upon the managing agents received the amount of Rs. 1,05,575 -3 -0. The contention of the Advocate -General is that under the agreement 3 1/2% commission accrued to the managing agents and the most that could be said in favour of the managing agents was that they gave up Rs. 1,00,000 out of what had already accrued to them in the year 1951. Therefore when we are concerned with the year of account which is 1950, the managing agents must be assessed to tax on the basis that the managing agency commission had accrued to them on the basis of 3 1/2% and not on any lesser basis. This approach to the question, in our opinion, is erroneous. A managing agent may earn a commission, but in all questions of managing agency commission the question is not when was the managing agency commission earned according to the agreement, but the real question is what was the commission to which the managing agents became entitled. By reason of the letter written by the managing agents on the December 28, 1950, their right to claim commission was no longer on the basis of 3 1/2% but their right was to claim such commission as the directors decide after considering the working of the managed company. Therefore, it was clear on the December 28, 1950, both by reason of the resolution passed by the managed company and by reason of the letter written by the assessee company that their right to commission was no longer under the agreement of the September 7, 1940, at the rate of 3 1/2% but their right depended upon the opinion of the directors which would be based upon the working of the managed company. Therefore, it is only on the April 8, 1951, when the board of directors decided after considering the working of the managed company that the assessee company should receive Rs. 1,05,575 -3 -0 and not Rs. 2,05,575 -3 -0 that the right of the assessee company to their commission arose. It would be fallacious to suggest that till the board of directors resolved what commission the managing agents should receive there was any right in the managing agents to receive bay specific amount. Undoubtedly if no resolution of the December 28, 1950, had been passed and the managing agents had not agreed by their letter of the December 28, 1950, then the right of the managing agents would have been to receive the 3 1/2% under the agreement, but by reason of this variation of the agreement which was arrived at in the year of account the right which the managing agents had was not to receive 3 1/2% but such amount as the directors might determine after considering the working of the managed company. Therefore, in our opinion, no question here arises as to any deduction to which the assessee company is entitled. The reference is capable of being decided on the narrow question that the income of the assessee company was not Rs. 2,05,575 -3 -0 but only Rs. 1,05,575 -3 -0. If that was the income of the assessee company, that income alone can be brought to tax and not any hypothetical income which they might have earned if the old agreement might have continued to subsist. The answer to the question therefore is in the negative. Commissioner to pay the costs.

(3.) REFERENCE answered in the negative. ;