

# **BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

Marrior (India) Ltd

(R Kantawala, C.J. V Tulzapurkar , J.)

29.03.1976

## **JUDGMENT**

### **Kantawala, C.J.**

1. The question referred to us for determination is :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the dividends paid out of the general reserve had to be ignored for the purpose of capital computation as the entire general reserve was in the nature of a reserve ?"

2. This question is raised in relation to computation of capital for the purpose of surtax for the assessment years 1970-71 and 1971-72. So far as the assessment year 1970-71 is concerned, the computation of capital has to be made as on June 1, 1968, for the purpose of this case. The balance-sheet of the company as on May 31, 1968, shows that in the item, general reserve under the heading "Reserve and surplus" initially at the beginning of that year there was a balance of Rs. 4,81,501. Out of the profits during the year ending May 31, 1968, the sum of Rs. 2,44,000 was directed to be appropriated by transfer recommended that sum of Rs. 2,10,000 should be paid as final dividend, if approved by the shareholders at the annual general meeting to be held on September 30, 1968, and the same should be paid out of the general reserve. For the assessment year 1970-71, the question arises whether this sum of Rs. 2,10,000 forming part of the general reserve is includible in the capital of the company for the purpose of surtax.

3. For the assessment year 1971-72, the relevant date for computation of the capital is December 1, 1969. The position shown by the balance-sheet as on November 30, 1969, is that at the beginning of that year a sum of Rs. 5,15,501 was standing to the credit of the general reserve. Out of the profits of 18 months ending on November 30, 1969, a sum of Rs. 5,78,000 was directed by the directors to be appropriated by transfer to the general reserve. For the period ending November 30, 1969, the directors recommended that a total dividend of Rs. 2,25,000 be

paid and such dividend, if approved by the shareholders at the annual general meeting to be held on March 25, 1970, was to be paid out of general reserve. Thus, for these year the question is whether the sum of Rs. 2,25,000 directed to be paid as final dividend in respect of the period ending on November 30, 1969, is includible of computation of the capital for the purpose of surtax.

4. Mr. Mehta, on behalf of the assessee, has submitted that as there was an outstanding balance sufficient to pay the dividend for two years, the said amount ought not to be taken while computing the capital of the company for the purpose of surtax. Such a contention could be accepted only if the directors in the report had specifically stated that for the purpose of payment of dividend recommended by them the past balance standing to the credit of general reserve was only to be utilised for the payment of such dividend. However, the directors have merely-stated that the dividend recommended by them if approved by the shareholders at the annual general meeting to be held on March 25, 1970, will be paid out of general reserve. Ordinarily, from the common sense point of view and looking at the matters commercially, if the current income is sufficient to meet the expenses to be incurred and for disbursement to be made in respect of that year, the said current income should be utilised for the discharge of such expenses and disbursement and the past savings would not be touched unless it is expressly otherwise stated while doing so. This principle we have already followed earlier while doing so. This principle were have already followed earlier while deciding Income-tax Reference No. 49 of 1972 [Commissioner of Income-tax v. Bharat Bijlee Ltd. [1977] 107 ITR 30 (Bom)] to-day. Unless express provision is made while making a recommendation for utilising particular fund for payment of dividend this principle has to be allowed. Following the said principle, in both the years the sums of Rs. 2,25,000 cannot be included in the computation of capital of the company. In the result, our answer to the question referred to us in in the affirmative and in favour of the revenue.

5. There will be no order as to costs.

