PATNA HIGH COURT

Jitmal Bhuramal Madhupur

Vs

Commissioner of Income-tax

Misc. Judicial Case No. 633 of 1956

(V. Ramaswami, C.J. and Kanhaiya Singh, J.)

06.10.1958

ORDER

V. Ramaswami, C.J.

1. In this case the assessee is a Hindu undivided family comprising of Hiralal, Kunjlal, Gulzarilal and Madanlal and also there sons. It appears that Gulzarilal and Mandalal were employed in a partnership business, called Hiralal Gulzarilal, in which the assessee through its karta had twelve annas share. It appears that there were two agreements between Hiralal, the karia and Gulzarilal and Madanlal, who agreed to render services to the Hindu undivided family by looking after the business on the remuneration mentioned in the agreements. Copies of these documents are Annexures-A and A-1 of the statement of the case. In the assessment for the year 1953-54 the assessee claimed that the sum of Rs. 6600/- should be deducted under Section 10 (2)(xv) of the Income-tax Act as the remuneration paid to the two coparceners for a period of 11 months. The Income-tax Officer disallowed the whole claim except the sum of Rs. 600 on the ground that the payment of salary to the members of the Hindu undivided family had been claimed only for the purpose of reducing the incidence of taxation and not on any principle of commercial expediency. An appeal was taken before the Appellate Assistant Commissioner against the order of the Income-tax Officer, but the appeal was dismissed. The matter was again taken by the assessee before the Appellate Tribunal, and it was contended before it that the salaries paid must be allowed as services had been rendered to the partnership business according to the agreements entered into between the karta and the coparcerners of the family. The Tribunal held that the assessee was entitled to a deduction so far as the payments made to Kunjlal and Gobardhanlal were concerned, but it was not entitled to a deduction with regard to the payments to Gulzarilal and Madanlal. The view taken by the Tribunal was that Kunjlal and Gobardhanlal had rendered service to the Hindu undivided family and the payments made to Kunjlal at the rate of Rs. 150/- per month and to Gobardhanlal at the rate of Rs. 100 per month were justified. But with regard to the payments made to Gulzarilal and Madanlal the Tribunal considered that the assessee was not entitled to any deduction on that account.

2. As required by the High Court, the Income-tax Appellate Tribunal has stated a case on the following question of law :

> "Whether in the facts and circumstances of the case, the assessee, namely, the Hindu undivided family who is a partner in the partnership business of Hiralal Gulzarilal, is entitled to a deduction of Rs. 3850 from the assessment of Income-tax for the relevant year under Section 10 (2)(xv) of the Income-tax Act ?"

3. On behalf of the assesses Mr. S.N. Dutta put forward the argument that the Appellate Tribunal was wrong as a matter of law in holding that for the services rendered to the partnership business the assessee was not entitled to claim any deduction of the salaries paid to Gulzarilal and Madanlal. The submission of learned Counsel was that the Hindu undivided family owned twelve annas share in the partnership business, called Hiralal Gulzarilal, and for earning profits under the partnership the assessee had to employ the two coparceners, Gulzarilal and Madanlal, and therefore it was entitled under Section 10 (2)(xv) of the Income-tax Act to claim the expenses incurred in payment of the salaries to the two coparceners from the profits derived from the partnership business as its share. In support of this proposition, learned Counsel referred to *Tata Sons Ltd. v. Commissioner of Income-tax, Bombay*[1], and *Shantikumar Narottam Morarji v. Commissioner of Income-tax, Bombay*[2], We think the proposition of law for which learned Counsel contends is correct, and if the assesses is able to show in this case that the expenditure incurred upon the payment of salaries to Gulzarilal and Madanlal was incurred as a matter of commercial expediency and for the purpose of earning profits from the partnership business, then the assessee would be entitled to claim the deduction of the amount claimed on account of payment of salaries to these two members of the Hindu undivided family. But the difficulty in this case is that the finding of fact is against the assessee. It was found by the Income-tax Officer that the two members, Gulzarilal and Madanlal, did not render any service to the partnership business or to the earning of profits to the Hindu undivided family from, the share of the partnership business. The same view has been taken by the Appellate Assistant Commissioner in appeal. In the course of his order, the Appellate Assistant Commissioner has stated as follows :

> "In support of the claim for the salary to the junior members of the family, the learned Counsel for the appellant has cited the case of the *Commissioner of Income-tax, B. and O. v. Jainarain Jagannath*[3], In this case it has been held by their Lordships that whether an amount paid to a member of the Hindu undivided family by way of remuneration for services rendered in the business of the family can, be legitimately deducted in computing the profit of the business will very largely depend on the facts of each case, but the amount paid can be legitimately deducted if it is found to be a *bona fide* payment to a *bona fide* employee for services actually rendered and is not excessive or unreasonable and is not a device to escape the Income-tax.

The point therefore for determination is whether the payments have been made to the members of the family as a *bona fide* remuneration for the services rendered by them and are not excessive or unreasonable or they are merely a device to escape the income-tax. A scrutiny of the appellant's past records shows that the establishment expenses which include salary payments debited in the various assessment years were as follows :

Assessment year.	**Salary.**	**Gross profit.**

	Rs. as. p.	Rs. as. p.
1950-51	1476-0-0.	13153-0-0.
1951-52	2971-0-0.	16089-0-0.
1952-53	2486-0 0.	15378-0-0.
1953-54	8472-0-0.	12898 0-0.

The above table shows clearly that the payment of Rs. 6600 for salary to the members of the Hindu Undivided Family which is included in the establishment expenses of Rs. 8372 for the previous year is highly excessive and reasonable when viewed in the light of the decreasing gross profits, made by the appellant family. The only conclusion that can be drawn is that the payment has been made merely with a view to reduce the incidence of taxation. The Income-tax Officer was therefore justified in adding back the salary payment to the tune of Rs. 6000." It is obvious that the Appellate Assistant Commissioner considered that in view of the decreasing profits of the Hindu undivided family and the establishment expenses for the years 1950 to 1954 being excessive and unreasonable, the only conclusion was that the payment had been made with a view to reduce the incidence of taxation. It was pointed out by learned Counsel on behalf of the assessee that the view of the Appellate Assistant Commissioner with regard to payment to Kunjilal and Gobardhanlal has been set aside by the appellate Tribunal. But the finding of the Appellate Assistant Commissioner as to the payment of Gulzarilal and Madanlal has not been upset by the appellate Tribunal, and it must be taken that it affirmed the view taken by the Appellate Assistant Commissioner on this point. We, therefore, proceeded upon the footing that the finding of fact of the Income-tax Authorities in this case is that neither Gulzarilal nor Madanlal has rendered any service to the partnership business nor contributed to the earning of profits to the Hindu undivided family from the share of the partnership business. In other words, there is no nexus between the payments made by the Hindu undivided family to the family members and the profits of the Hindu undivided family derived from this partnership business. If this finding is correct, then it follows that the assessee is not entitled to deduct this amount as expenditure laid out wholly and exclusively for the purpose of the partnership business, and his claim under Section 10 (2)(xv) of the Income-tax Act must be rejected as unfounded.

4. In this connection we should point out that the question whether payment was made wholly and exclusively for the purposes of trade is essentially a question of fact for the determination of the Income-tax Authorities. It is not right to contend that merely because there is an agreement between the employer and the employee and merely because there is the fact of actual payment that the Income-tax authorities must necessarily hold that the payment was made wholly and exclusively for the purposes of the business. Although the payment was actually made and there might be an agreement in existence, it would still be open to the Income-tax authorities to take into consideration various factors which would go to show whether the payment comes within the language of the section. It is open to the Income-tax Officer to take into consideration whether the money was paid to a near relation of the employer and also consider the quantum of payment, the extent of the business and the particular services rendered by the employee which

called for a special remuneration at the hand of the employer. It is open to the Income-tax authorities, after taking all these matters into consideration, to reach the conclusion that the payment has not been wholly and exclusively for the purposes of the business of the assessee. That is the principle laid down by the Bombay High Court in *Jethabhai Hirji and Co. v. Commissioner of Income-tax, Bombay*[4] It is manifest, therefore, that the question whether the amount was expended wholly and exclusively for the purposes of the business is primarily a question of fact to be determined by the Income-tax authorities. It is contended on behalf of the assessee in this case that there is no evidence to support the finding of the Income-tax authorities on this question of fact. We do not accept this contention as correct. On the other hand, there are materials to support the finding that there was no nexus between the payments made to the two coparceners, Gulzarilal and Madanlal, and the profits of the partnership derived by the Hindu undivided family, and so the payments made were not justified on any principle of commercial expediency.

5. We hold, therefore, that on the facts and circumstances of this case the assessee is not entitled to deduction of Rs. 3850 from the assessment of Income-tax for the relevant years under Section 10 (2)(xv) of the Income-tax Act. Accordingly, the question of law must be answered against the assessee and in favour of the Income-tax Department. The assessee must pay the costs of the reference. Hearing fee Rs. 250/-.

Reference answered.

Cases Referred.

[1](1950)-18 ITR 460
[2]1955-27 ITR 69
[3]1945-13 ITR 410
[4](1949) 17 ITR 533