

# PUNJAB AND HARYANA HIGH COURT

Western Hosiery and General Mills

Vs

Commissioner of Income-Tax

(Harman Singh and Falshaw, JJ. Soni, C.J.)

30.12.1952

## JUDGMENT

**Harnam Singh, J.**

1. In Civil Reference No. 7 of 1950 the question that has been referred to the Full Bench for decision reads:

"Whether 'in view of the managing agency agreement read with Article 83 of the Articles of Association as altered in pursuance of resolutions Nos. I and 3 of the resolutions passed at the Extra-ordinary General Meeting on 17-10-1943, and the provisions of Section 87C, Companies Act, the Tribunal was right in directing that excess profits tax fell to be deducted before arriving at the net profit upon which a fixed percentage was allowed as managing agents' commission."

2. On 9-4-1936, the managing agency agreement, Annexure 'C' was made between the "Western Hosiery and General Mills, Limited, Delhi, hereinafter referred to as the assessee company, and Messrs. Sohan Lal and Company, hereinafter referred to as the managing agents.

3. By Clause 2 of the agreement, Annexure 'C', the remuneration of the managing agents was fixed. That provision has been altered and it is common ground between the parties that for the assessment year 1946-47 managing agents are to be paid remuneration in accordance with the provisions of revised Article 83 of the Articles of Association of the assessee-company.

4. Article 83 of the Articles of Association of the assessee-company provides 'inter alia':-

"The remuneration of the managing agents shall be an office allowance of Rs. 100 per mensem plus 15 per cent, of the net profits of the company, after deducting interest on debentures and other loans but before taking anything to depreciation, reserves, or other special accounts as the Directors may from time to time sanction. \* \*"

That is the only portion of Article 83 which is relevant.

5. In connection with the income-tax assessment for the year 1946-47 and the excess profits tax assessment for the corresponding chargeable accounting period the assessee-company claimed that excess profits tax was not to be deducted before arriving at the net profits upon which commission was to be paid to the managing agents. The Income-tax Officer, however, found that excess profits tax was to be deducted before arriving at the net profits upon which commission was to be paid to the managing agents.

6. On appeal the appellate Assistant Commissioner upheld the decision given by the Income-tax Officer.

7. In proceedings under Section 33, Income-tax Act the Income-tax Appellate Tribunal basing itself on the decision given in - '*Walchand and Co., Ltd. v. Hindustan Construction Co., Ltd.*', held that excess profits tax was to be deducted before arriving at the net profits upon which commission was to be paid to the managing agents.

8. On the application of the assessee-company under Section 66 (1), Income-tax Act, 1922, the Tribunal has referred for decision to this Court the question of law cited above.

9. From a perusal of Article 83, Annexure 'A', it is plain that the definition of the expression 'net profits' given in Article 83 does not mean 'divisible' or 'distributable' profits of the company for commission is to be paid to the managing agents before deducting depreciation. In my opinion, the parties have defined the expression 'net profits' on which commission is to be paid to the managing agents and we have to take the words of the agreement as they stand to find out the meaning of the expression 'net profits' occurring in Article 83, Annexure 'A'.

10. For the reasons given by me in - 'Civil Ref No. 18 of 1952' (B) I find that excess profits tax is not to be deducted before arriving at the net profits of the company upon which commission is to be paid to the managing agents as provided by Article 83 of the Articles of Association of the company. In - 'Civil Ref. No. 18 of 1952' (B) the construction of a document similarly worded as in this case was in question and counsel appearing for the parties did not address arguments in this case stating that the decision in - 'Civil Ref. No. 18 of 1952' (B) would govern this case.

11. In the question referred to us for decision there is a reference to the provisions of Section 87C, Companies Act, 1913. Section 87C (1), Companies Act, 1913, reads:  
"87C(1) Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936, the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provisions for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management."

In the present case the managing agents were appointed on 9-4-1936, whereas Act 22 of 1936 by which Section 87C was added to the Companies Act, 1913, came into force on 15-1-1937. Section 87C, Companies Act, 1913 provides that that provision has no application to cases where managing agents were appointed before the commencement of Act 22 of 1936.

12. For the foregoing reasons, I think that we must answer the question referred to us for decision by saying that in computing net profits of the company upon which commission is to be paid to the managing agents as provided by the managing agency agreement read with the revised Article 83 of the Articles of Association of the assessee-company excess profits tax is not to be deducted, though Section 87C, Companies Act, 1913, does not govern the case.

13. No orders as to costs.

**Soni, J.**

**14. I agree.**

**Falshaw, J.**

**15. I agree.**