Management Of Central Coal Washery vs Workmen & Anr on 21 July, 1978

Equivalent citations: 1978 AIR 1424, 1978 SCR (3)1023, AIR 1978 SUPREME COURT 1424, 1978 3 SCC 342, 1978 LAB. I. C. 1252, 1978 U J (SC) 598, 1978 2 LABLN 284, 53 FJR 281, 37 FACLR 138, 1978 2 LABLJ 350

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, V.D. Tulzapurkar

PETITIONER:
MANAGEMENT OF CENTRAL COAL WASHERY

Vs.

RESPONDENT:
WORKMEN & ANR.

DATE OF JUDGMENT21/07/1978

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
TULZAPURKAR, V.D.

CITATION:
1978 AIR 1424 1978 SCR (3)1023
1978 SCC (3) 332

ACT:
Payment of Bonus Act, 1965, S. 16(1) (a) and Explanation II thereto, interpretation of-Meaning and connotation of the word 'Profit' from the establishment within the meaning of clause (a) of Sub-section (1) of S. 16.

HEADNOTE:
The appellant Organisation, set up as an independent Organisation separate from the Hindustan Steel Ltd. to manage the three Coal Washeries at Dugda, Bhojudih and Patherdih, maintained separate accounts in respect of its establishment and also prepared a separate balance sheet and profit and loss account showing theaggregate financial result of the operation of these three coal washeries. The appellant adopted the straight line method of calculation of

depreciationwith the result that the Balance-sheets and Profits and Loss accounts for the years 1964-65, 1965-66 to 1968-69 showed profits. On this basis the Workmen of the Bhojudih Coal washery pressed their claim for bonus from the year 1964-65. The appellant disputed the claim of the workmen and contended that by reason of sub-section (1) of s. 16, the workmen were not entitled to be paid bonus under the Act. The industrial dispute arising out of the claim of the workmen was referred for adjudication and the Tribunal took the view that since the appellant denied from its three coal washeries in the year 196465, the workmen were entitled to be paid bonus under the Act from that year, but it was held that since the profits were inadequate to warrant payment of a larger bonus, the workmen were entitled to receive the minimum bonus of 4% of the wages as provided in section 10. The Tribunal thus awarded the minimum bonus at 4% of the wages to the workmen of the Bhojudh Coal Washery for the years 1964-65 to 1968-69.

The appellant being aggrieved by the award preferred an appeal to this Court after obtaining special leave. During the pendency of the appeal a settlement was arrived at for ex-gratia payment of 4% of the wages for the years 1965-66 to 1967-68. In accordance with the terms of this settlement every workman whether a member or not of the Hindustan Coal Washeries Workers' Union received payment. The appellant did not, therefore, Press the appeal, and it was dismissed. Though the appeal was, dismissed and the award of the Industrial Tribunal which was in favour of the workmen stood in tact. another union called the Hindustan Steel Coal Washeries Employees Union which is a minority Union filed C.M.P. No. 3382/78 claiming that the workmen represented by it were not party to the settlement and therefore, it was not binding and prayed for setting aside the order of dismissal of the appeal and rehearing of the appeal.

Allowing the appeal and answering against the respondents, the Court

HELD (1) Where an establishment is newly set-up, the workmen employed in such establishment are entitled to be paid bonus under the Act only from the accounting year in which the employer derives profit from such establishment or from the sixth accounting year following the accounting year in which the employer sells goods produced or manufactured by him from such establishment, whichever, is earlier. So long as the employer does not start deriving profit from the establishment, he is exempt from liability to pay bonus to the workmen under the Act. But, even if he is not able to derive profit from the establishment the does not enjoy perpetual immunity, because in any event from the sixth accounting year following the accounting year in which he starts selling goods produced or manufactured by him, he becomes liable to pay bonus to the workmen. [1027 D-E]

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(2)The word "profit" within the meaning of clause (a) of

sub-section (1) of S. 16 must be construed according to its ordinary sense-a sense in which it is understood in trade and industry because the rationale behind clause (a) of sub-section (1) of section 16 is that it is only when the employer starts making profit in the commercial sense that he should become liable to pay bonus to the workmen under the Act. Now profit in the commercial sense can be ascertained only after deducting depreciation and since there are several methods' of computing depreciation the one adopted by the employer would, in the absence of any statutory provision to the contrary govern the calculation of depreciation for the purpose of arriving at the profit earned by the employer. But Explanation 11 to sub-sec.(1) of S. 16 provides that for the purpose of clause (a), an employer shall not be deemed to have derived profit in any accounting year unless he has made provision for that year's depreciation to which he is entitled under the Income-tax Act. This explanation embodies a clear legislative mandate that in determining, for the purpose of clause (a) of sub-sec.(1) of Section 16, whether the employer has made profit from the establishment in any accounting year, depreciation should be provided in accordance with the provisions of the Income-tax Act. Whatever be the method of computation of depreciation followed by the employer, depreciation should be deducted in accordance with the provisions of the Income-tax Act and it is only if any profit remains after adjusting such depreciation that the employer can be said to have derived profit for the purpose of clause (a) of sub-section (1) of S. 16. [1028 G-H, 1029 A-C]

In the instant case :-

(a) The appellant followed the straight line method of calculating depreciation and on that basis the Balance Sheets and Profits and Loss Accounts of the appellant showed profit for the year 1964-65 to 1968-69. [1029A]

(b)Clearly, the depreciation that was required to be deducted for the purpose of determining whether the appellant derived profit from the three coal washeries during the years 1964-65 to 1968-69 was not depreciation according to the straight line method followed by the appellant, but depreciation admissible under sub-section (1) of S. 32 of the Income-tax Act. [1029D]

(c)The appellant did not derive profit from the three coal washeries in any of the years 1964-65 to 1968-69 and the workmen were not entitled to be paid bonus under the Act for any of these accounting years since the quantum of depreciation admissible under Sub-section (1) of S. 32 of the Income-tax Act was clearly proved by the appellant through the evidence of its Accounts Officer and the Tribunal also conceded that if depreciation calculated on this basis were deducted there would be loss incurred by the appellant in each of the years 1964-65 to 1968-69. [1028D, 1029 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1848 of 1970.

Appeal by Special Leave from the Award dated the 20th July, 1970 of the Central Government Industrial Tribunal Calcutta in Reference No. 105 of 1969 published in the Gazette of India dated the 8th August, 1970.

L.N. Sinha, Santosh Chatterjee and G. S. Chatterjee for the Appellant.

D. L. Sen Gupta and S. K. Nandy for the Respondent. The Judgment of the Court was delivered by BHAGWATI, J.-The short question that arises for determination in this appeal is whether the workmen of the Bhojudih Coal Washery of the appellant were entitled to be paid bonus for the years 1964-65 to 1968-69 under the Payment of Bonus Act, 1965 (,for short the Act).

The Hindustan Steel Limited owns three steel plants at Rourkela, Durgapur and Bhilai. Since large quantities of the metallurgical coal are needed in the manufacture of steel, the Hindustan Steel Limited set up three coal washeries at Dugda, Bhojudih and Patherdih. These three coal washeries were started one after the other, the first to start being the Dugda Coal Washery which commenced functioning from June 1962. The management of these three coal washeries was vested in the hands of the Central Coal Washeries Organisation which was set up as an independent Organisation separate from the Hindustan Steel Limited. This Organisation which is the appellant before us maintained separate accounts in respect of its establishment which consisted of these three coal washeries and also prepared a separate Balance Sheet and Profit and Loss Account showing the aggregate financial result of the operation of these three coal washeries. Though the establishment of the appellant was set up in June 1962, the provisions of the Act did not become applicable to it until the year 1964-65 in view of sub-section (4) of section 1 of the Act. There could, therefore be no question of payment of bonus to the workmen of the Bhojudih Coal Washery under the Act until the year 1964-65. The workmen of the Bhojudih Coal Washery, accordingly, pressed their claim for payment of bonus only from the year 1964-65. The appellant disputed the claim of the workmen and contended that by reason of subsection (1) of section 16, the workmen were not entitled to be paid bonus under the Act for the years 1964-65 to 1968-69. The industrial dispute arising out of the claim of the workmen was referred for adjudication by the Government of India and by an award dated 29 July, 1970, the Industrial Tribunal took the view that the appellant derived profit from its three coal washeries in the year 1964-65 and the workmen were, therefore, entitled to be paid bonus under the Act from that year under clause (a) of subsection (1) of section 16, but since the profits were inadequate to warrant payment of a larger bonus, the workmen were entitled to re- ceive the minimum bonus of 4 per cent of the wages as provided in section 10. The Industrial Tribunal accordingly awarded minimum bonus at 4 per cent of the wages to the workmen of the Bhojudih Coal Washery for the years 1964-65 to 1968-69, The appellant being aggrieved by the award of the Industrial Tribunal, preferred an appeal to this Court after obtaining special leave. Whilst the appeal was pending, a settlement was arrived between the appellant and the Hindustan Steel Coal Washeries Workers' Union on 28th August 1973 in regard to various demands which had been made

by the Union on behalf of the workmen employed in the Bhojudih Coal Washery. One of the demands related to payment of bonus and this demand was adjusted by the following provision in the settlement.

> "Without prejudice to the respective contentions of the parties and specially with regard to the law point on which the management has filed an appeal to the Supreme Court, the management and the workmen agree that an ex-gratia amount equivalent to 4% of, the wages earned by the eligible employees during the respective years of 1965-66, 1966- 67 and 1967-68 (less amounts to those employees already paid for the year 1965-66) shall be paid. This settles satisfactorily the outstanding demand on this point".

Pursuant to this settlement, the appellant paid to the workmen in the Bhojudih Coal Washery ex-gratia amount equivalent to 4 per cent of the wages earned by them for the years 1965-66, 1966-67 and 1967-68. Not only did the workmen who were members of the Hindustan Steel Coal Washeries Worker's Union received payment under the settlement but workmen who were not members of that Union also accepted payment of bonus in terms of the settlement. The appeal thereafter came up for hearing before this Court on 2nd January, 1978, and since the dispute in regard to payment of bonus was settled, theappellant did not press the appeal and it was dismissed by this Court Subsequently, however, another Union called the Hindustan Steel Coal Washeries Employees Union, which is a minority Union, filed Civil Mise. Petition No. 3382/78, claiming that the workmen represented by it were not party to the settlement, since the settlement was arrived at only between the appellant and the Hindustan Steel Coal Washeries Workers' Union and the settlement was accordingly not binding on them. Strangely enough, though the appeal was dismissed and the award of the Industrial Tribunal which was in favour of the workmen, stood intact, the Union for some inexplicable reason submitted that since the appeal was dismissed in view of the, settlement and the settlement was not binding on the workmen represented by it, the order dismissing the appeal should be set aside and the appeal should be re-heard. This Court by an order dated 9-3-1978 acceded to this application and directed the appeal to be re-heard. That is how the appeal has now come up for hearing before us. The principal question the arises for determination in the appeal is whether the workmen of the Bhojudih Colliery were not entitled to claim bonus for the year 1964-65 to 1968-69 on the ground that until the close of the year 1968-69 the appellant did no,, derive any profit from its establishment of three coal washeries. The determination of this question depends on the true interpretation of section 16, sub- section (1) and its applicability to the case of the appellant. Section 1 6, sub-section (1) in so far as material, reads as follows "Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act only-

> (a) from the accounting year in which the employer derives profit from such establishment; or

(b) from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, whichever is earlier:

> 10 27 Provided that in the case of any such establishment the employees thereof shall not, save as otherwise provided in section 33 be entitled to be paid bonus under this Act in respect of any accounting year prior to the accounting year commencing on any day in the year 1964.

Explanation I :-For the purpose of this section, an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II :-For purpose of clause (a), an employer shall not be deemed to have derived profit in any accounting year unless:-

> (a) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law ; and
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> (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

It is clear on a plain reading of this section that where an establishment is newly set up, the workmen employed in such establishment are entitled to be paid bonus under the Act only from the accounting year in which the employer derives profit from such establishment or from the sixth accounting year following the accounting year in which the employer sells goods produced or manufactured by him from such establishment, whichever is earlier. So long as the employer does not start deriving profit from the establishment, he is exempt from liability to pay bonus to the workmen under the Act. But, even if lie is not able to derive profit from the establishment, he does not enjoy per- petual immunity, because in any event from the sixth accounting year following the accounting year in which he starts selling goods produced or manufactured by him, be becomes liable to pay bonus to the workmen. Now the contention of the workmen was, and this contention found favour with Industrial Tribunal, that the appellant started deriving profit from the three coal washeries in the year 1964-65 and the workmen, therefore, became entitled to be paid bonus from the year 1964-65 onwards under clause (a) of sub-section (1) of section 16. The workmen relied on the Balance Sheet and Profit and Loss Account of the appellant which showed that the appellant had made a profit of Rupees 23,60,000/- during the year 1964-65. The Balance Sheets and Profit Loss Accounts of the appellant for the subsequent years 1965-66 to 1968-69 also showed profit during each of those years. If, therefore, the claim of the workmen were to be decided on the basis of the Balance Sheets and Profit and Loss Accounts of the appellant there can be no doubt that the appellant would have to be held to be liable to pay bonus to the workmen of Bhojudih Coal Washery from the year 1964-65 onwards. But it was pointed out on behalf of the appellant that in arriving at the net profit shown in the Balance Sheets and Profit and Loss Accounts, depreciation had been calculated according to the straight line method, whereas under Explanation It to subsection (1) of section 16 depreciation which was liable to be taken into account in arriving at the net profit for determining liability for payment of bonus was that admissible in Accordance with the provisions of sub- section (1) of section 32 of the Income-tax Act. If depreciation calculated in accordance with the

provisions of sub-section (1) of section 32 of the Income-tax Act were taken into account, not only there would no profit but there would be actually loss in each of the years 1964-65 to 1968-

69. The appellant in fact produced, through its Accounts Officer Raja Ram, income-tax returns showing the depreciation claimed in respect of the assets of the three coal washeries in accordance with the provisions of sub- section (1) of section 32 of the Income-tax Act as also statements Exhibit 9, working out the figures showing that if depreciation were adjusted as provided in sub-section (1) of section 32 of the Income-tax Act, there would be losses to the appellant in the years 1964-65 to 1968-69. The learned counsel appearing on behalf of the workmen represented by the Hindustan Steel Coal Washeries Employees Union Faintly contended before us that the appellant had not proved what would be the depreciation admissible under sub- section (1) of 'section 32 of the Incometax Act and whether it would be larger than the depreciation calculated according to the straight line method, but this contention was futile, because, as pointed out earlier, the quantum of depreciation admissible under sub-section (1) of section 32 of the Income-tax Act was clearly proved by the appellant through the evidence of its Accounts Officer Raja Ram and in fact the Industrial Tribunal accepted the figures of depreciation given by the appellant in the statements Exhibit 9 and conceded that if depreciation calculated on this basis were deducted, there would be loss incurred by the appellant in each of the years 1964-65 to 1968-69. The facts being against them, the workmen were driven to contend that in determining whether the appellant derived any profit in the years 1964-65 to 1968-69 the figures given in the Balance Sheets and Profit and Loss Account; of the appellants were determinative and since according to the Balance Sheets and Profit and Loss Accounts, the appellant started deriving profit from the year 1964-65, the workmen were entitled to be paid bonus from that year onwards under clause (a) of sub-section (1) of section 16. This contention of the workmen is in our opinion not well-founded. Our reasons for saying 'so are as follows.

It is true that under clause (a) of sub-section (1) of section 16, the workmen employed in a new establishment are entitled to be paid bonus under the Act from the accounting year in which the employer derives profits from the establishment. 'But the question is as to what is the meaning and connotation of the word 'profit' and when can an employer be said to derive 'profit' from the establishment within the meaning of clause (a) of sub-section (1) of section 16. The word 'profit' must obviously be construed according to its ordinary sensea sense in which it is understood in trade and industry because the rationale behind clause (a) of sub-section (1) of section 16 is that it is only when the employer starts making profit in the commercial sense that he should become liable to pay bonus to the workmen under the Act. Now profit in the commercial sense can be ascertained only after deducting depreciation and since there are several methods of computing depreciation, the one adopted by the employer would, in 10 29 the absence of any statutory provision to the contrary, govern the calculation of depreciation for the purpose of ariving at the profit earned by the employer. Here in the present case the appellant followed the straight line method of calculating depreciation and on that basis the Balance Sheets and Profit and Loss Accounts of the Appellant showed profit for the years 1964-65 to 1968-69. But Explanation 11 to sub-section (1) of section 16 provides that for the purpose of clause (a), an employer shall not be deemed to have derived profit in any accounting year unless he has made provision for that year's depreciation to which he is entitled under the Income-tax Act. This Explanation embodies a clear legislative mandate that in determining. for the purpose of clause (a) of sub-section (1) of section 16, whether the employer has

made profit from the establishment in any accounting year, depreciation should be provided in accordance with the provisions of the Income-tax Act. Whatever be the method of computation of depreciation followed by the employer, depreciation should be deducted in accordance with the provisions of the Income-tax Act and it is only if any profit remains after adjusting such depreciation that the employer can be said to have derived profit for the purpose of clause (a) of sub-section (1) of section 16. Clearly, therefore the depreciation that was required to be deducted for the purpose of determining whether the appellant derived profit from the three coal washeries during the years 1964-65 to 1968-69, was not depreciation according to the straight line method followed by the appellant, but depreciation admissible under sub- section (1) of section 32 of the Income-tax Act. If this be the correct interpretation of clause (a) of sub-section (1) of section 16, as we hold it is, it is obvious from what is stated above, and indeed it can hardly be disputed, that the appellant did not derive profit from the three coal washeries in any of the years 1964-65 to 1968-69 and the workmen were not entitled to be paid bonus under the Act for any of these accounting years.

We accordingly allow the appeal and set aside the award of the Industrial Tribunal in so far as it awards bonus to the workmen for the years 1964-65 to 1968-69 and declare that the workmen are not entitled to be paid bonus under the Act in respect of any of those accounting),ears. There will be no order as to costs.

S.R. Appeal allowed.

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