

Maheshwari Devi Jute Mills, Kanpur vs Commissioner Of Income-Tax, U.P., ... on 2 February, 1953

Equivalent citations: AIR1953ALL617, [1953]23ITR348(ALL), AIR 1953 ALLAHABAD 617

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 21, Excess Profits Tax Act read with Section 66(1), Income-tax Act.

2. The assessee is the Maheshwari Devi Jute Mills Limited, Kanpur. The assessee claimed that, in the relevant account period, it had paid a salary of Rs. 28,850/- to one Lala Hari Shankar Bagla who had been appointed along with Munna Lal Khetan as joint general manager of the company. The assessee, therefore, claimed a deduction of this amount from its assessable income which contention, however, was overruled by the Income-tax Appellate Tribunal. On an application made by the assessee, the following question has been referred to this Court for our decision:

"Q. Whether, in the circumstances of the case, the salary paid to Lala Hari Shankar Bagla amounting to Rs. 28,850/- has rightly been treated as director's remuneration in the assessment of the payer-company under Sub-rule 2(1) of Rule 7 of Schedule I to the E. P. T. Act read with Sub-section (1) of Section 2 of the said Act?"

3. Lala Hari Shankar Bagla was one of the directors of the assessee company and, on 27-9-1941, at a directors' meeting at which he was present but did not vote, the following resolution was passed:

"R. B. Rameshwar Prasad Bagla reported that Company's work had considerably increased, and it was absolutely essential that two Joint General Managers, who should give their substantial time to the work, be appointed and they should be paid a suitable remuneration for such work.

It was resolved that Mr. Hari Shankar Bagla and Mr. Munna Lal Khetan be appointed as Joint General Managers from 1-10-1941, at Rs. 2,000/- (Rupees two thousand) per mensem each free of all taxes to look after the management of the Company."

That resolution was put up before an ordinary general meeting of the shareholders on 10-1-1942, at which the shareholders approved of the said resolution and confirmed it unanimously. Lala Hari Shankar Bagla, who was again present at the meeting, did not take part in either the discussion or the voting. The question arises whether this sum of Rs. 2,000/- free of income-tax, which was paid to Lala Hari Shankar Bagla per month after his appointment as one of the joint general managers, was director's remuneration and can, therefore, be not excluded from the taxable income.

4. The word "director" has been defined in Section 2(10), Excess Profits Tax Act as follows:

"2(10) 'Director' includes any person occupying the position of a director by whatever name called and also, includes any person, who

(i) is a manager of the company or concerned in the management of the business; and

(ii) is remunerated out of the funds of the business; and

(iii) is the beneficial owner of not less than twenty per cent of the ordinary share capital of the company."

This definition extends the meaning of the word 'director' to include not only a director as such but also a person who is a manager and is remunerated out of the funds of the business and who is a beneficial owner of not less than twenty per cent of the share capital of the company. Lala Hari Shankar Bagla admittedly owns only 9 per cent share capital of the company and, therefore, he does not come within this extended meaning of the word 'director'. He was a director as ordinarily understood under the Companies Act. As a director, he must have been entitled to and must have received the ordinary remunerations of a director. - This sum of Rs. 2,000/- paid to him per month was obviously not being paid to him for his normal work as a director but as one of the two joint general managers.

5. The resolution of the Board of Directors quoted above would show that the chairman suggested that two persons should be appointed as joint general managers and it was open to the Board to appoint any two outsiders and it was not necessary that one of the two joint general managers should be a director of the company. It is not disputed that Munna Lal Khetan was a stranger and the mere fact that Lala Hari Shankar Bagla happened to be one of the directors does not mean that he was appointed a joint general manager because he was a director of the company. His appointment as one of the two joint general managers did not depend on the fact that he was a director and was not made dependent on his continuing as such; and even if he had resigned from the directorship or he had ceased to be a director in accordance with the provisions of the Articles of Association, he would not have ceased to be a joint general manager by merely ceasing to be a director of the company. Therefore, so far as we can see, there was no difference made in the appointments of Hari Shankar Bagla and Munna Lal Khetan as joint general managers and their position vis-a-vis the company was the same, that is, of servants of the company working in the capacity of joint general managers. We have already said that Hari Shankar Bagla's appointment as joint general manager was not made dependant on his continuing to hold office as director of the

company. Further, there is nothing to show that the work of the joint general manager was entrusted to him because he was a director.

6. Learned counsel for the Department has, however, relied on Sub-rule (2) of Rule 7 of Schedule I to the Excess Profits Tax Act and has urged that 'director's remuneration' is defined in that sub-rule as meaning any remuneration paid to a director even for doing managerial or other technical work. We do not agree with learned counsel. Sub-rule (2) does not define 'director's remuneration'. It is an exception to Sub-rule (1) & provides that remuneration which I comes under that Sub-rule shall not be deemed to be director's remuneration. The remuneration should first be 'director's remuneration' before the question of its being excluded from that category can arise. Sub-rule (2) is as follows:

"Sub-rule (2) of Rule 7: In Sub-rule (1) of this rule, the expression 'director's remuneration' does not include

(a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five per cent, of the ordinary share capital of the company, or

(b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax."

Sub-rule (1) of Rule 7 of Schedule I to the Excess Profits Tax Act provides that where a company is managed by directors, no deduction shall be made in respect of directors' remuneration in computing the profits or the standard profits. This Sub-rule would apply, therefore, to a case where remuneration is paid to a director as such. The exception in Clause (a) of Sub-rule (2) is to the effect that, if a director does not own more than five per cent, of the ordinary share capital of the company, remuneration paid to him for devoting substantially the whole of his time to the service of the company in a managerial or technical capacity does not come under Sub-rule (1).

These Sub-rules have been discussed by us at some length in our judgment in the case of -- 'R. B. Seth Multani and sons, Ltd. v. Commr. of Income-tax', AIR 1953 All 31 (A). We have held in that case that, if a person holds two offices, one of a director and the other an entirely independent and separate office unconnected with his office as director, then any remuneration paid to him in the latter capacity cannot be deemed to be 'director's remuneration' under Sub-rule (1) of Rule 7. Argument on behalf of the department, however, is that whatever remuneration is paid to a person who happens to hold the office of a director comes under Sub-rule (1) of Rule 7 of Schedule I unless it is exempted by Sub-rule (2) and it is not necessary that payment should be made to him by reason of the fact that he holds the office of a director. We do not agree with learned counsel and have already dealt with the point in our judgment mentioned above.

It may be useful to give an illustration. If a person is employed say as a treasurer in a company and on a fixed salary, there can be no doubt that what he is getting is pay for work done and, if after

some years of meritorious service while still continuing to hold the post of treasurer he is also appointed a director, it cannot be said that the salary paid to him as treasurer becomes thenceforward director's remuneration. If a director, however, is paid some extra remuneration for some special work entrusted to him because he happens to be a director there can be no doubt that the amount paid is director's remuneration. The definition of a director has no doubt been widened and in a case coming under the Act the director must be understood in the sense defined in the Act. But it has nowhere been said that whatever amount is paid to a person must always be deemed to be director's remuneration even if the amount is paid to him for doing entirely independent work unconnected with his office as director. We are, therefore, of the opinion that on the facts and circumstances of this case there is no reason to make any distinction between the amounts paid to Hari Shankar Bagla and Munna Lal Khetan, and the amount paid to Hari Shankar Bagla cannot be deemed to be 'director's remuneration'.

7. We answer the reference accordingly.

The assessee is entitled to its costs which we assess at Rs. 300/-.