

Commr. Of Income-Tax, U.P. And C.P. And ... vs I.D. Varshani on 8 May, 1953

Equivalent citations: AIR1954ALL58, [1953]23ITR163(ALL), AIR 1954 ALLAHABAD 58

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. In this reference under Section 66 (1) Income-tax Act, the question referred to us is as follows:

"Whether in the circumstances of this case the assessee's remuneration was rightly assessed under the head 'salaries' within the meaning of Section 7, Income-tax Act, and not as income, profits and gains of business."

2. The assessee is the Managing Agent of the U. P. Glass Works Limited. His remuneration was fixed at 15 per cent, of the net profits or a monthly pay of Rs. 1,000/- whichever he would elect at the end of each year. The duties and powers of the assessee-respondent as Managing Agent are enumerated in Article 17 of the Articles of Association, which is printed at page 12 of the Statement of the Case. The Managing Agent under the said Article is given the right to manage the business of the company and to do all that may be necessary in connection with that business. In the year of account the assessee elected to receive his remuneration at 15 per cent, of the net profits. The Income-tax Officer treated this remuneration as business profits, while the case of the assessee is that the remuneration received by him is salary and he is the servant of the company.

3. The Appellate Assistant Commissioner affirmed the Income-tax Officer's decision and held that the amount received by the assessee as commission was business profits. On appeal the Appellate Tribunal held that it was salary and not business income. The Commissioner of Income-tax then applied that a case be referred to this Court for decision whether the amount received by the assessee as Managing Agency commission was income from salary or profits and gains of business.

4. We have said in several cases that the question, whether a particular income is income from business or salary, must be decided in view of the facts and circumstances of each case. The circumstance relied on behalf of the Commissioner of Income-tax is that Articles 9 and 10 of the Articles of the Association provide that the assessee shall hold office unless and until he voluntarily

resigns or is removed by an extraordinary resolution passed at a general meeting etc. and that he shall have a right to nominate a successor. In the Statement of the case it is mentioned that as early as 1923 the Managing Agent had renounced his rights and privileges under Articles 9 and 10 of the Articles of Association, On behalf of the Commissioner it was further relied upon that the assessee was not a whole time employee of the U. P. Glass Works Ltd. and he could not, therefore, be said to be a servant.

5. In one of our recent decisions in -- 'Inder-chand Hari Ram v. Commissioner of income-tax, U. P., and C. P.', AIR 1952 All 706 (A) we discussed the distinction between a managing agent and a manager. We pointed out that a managing agent must be entitled as of right to the management of the affairs of the company, the right being granted by an agreement with the company; secondly, that a manager must always work subject to the control and direction of the directors whereas the control and direction of the directors over the managing agent may be modified by the terms of the agreement; and, thirdly, that a managing agent may be a person, a firm or a company, the manager can be only an individual, We also pointed out that no servant can claim the management of the company as of right and the manager cannot, therefore, do so, while a managing agent has the right to manage the affairs of the company by virtue of the agreement entered into by him with the company.

6. Normally, therefore, if a person is called a managing agent, he would be deemed to be carrying on the business of managing agency and would not be a servant of the company. In the case before us, however, in the appellate order the Tribunal pointed out that the duties assigned to the assessee were not such as to enable one to come to a definite conclusion as to whether he was a servant or was carrying on business of his own. The Tribunal also pointed out that, though the assessee was called a Managing Agent, the powers conferred upon him under the Articles were more in the nature of powers given to a servant and those powers could be terminated and the Managing Agency agreement itself put an end to, as was decided on by certain resolutions passed by the Board at the time when the Managing Agent was appointed. The resolutions were dated 26-3-1923, and 11-1-192d. It was urged before the Tribunal that the Managing Agent, was admitted to the benefits of the Company's Provident Fund as being an employee of the Company. The Appellate Tribunal have not said whether this contention was justified or not and before us the fact has been denied by learned counsel for the Department. Reliance, was also placed on the fact that the Income-tax Officer had added the value of the rent-free quarters occupied by the assessee as income under the head 'salary'. The Tribunal after going into the facts and circumstances held that though the assessee was called a Managing Agent he was in fact the Chief Manager of the Company.

7. It is not possible for us in this case to say that there were no materials on which the Tribunal could come to the finding that the remuneration received by the assessee was salary. We cannot say that on the facts end circumstances pointed out by the Appellate Tribunal it was not possible for it to hold that the income was not income from business. This is our answer to the question referred to us for decision.

8. The assessee is entitled to his costs which we fix at Rs. 300/-.