Newton Chikli Collieries Ltd. vs Commissioner Of Income-Tax, Madhya ... on 19 October, 1960

Equivalent citations: [1962]44ITR495(SC), AIRONLINE 1960 SC 8, (1962) 44 ITR 495

Author: S.K. Das

Bench: J.C. Shah, S.K. Das

JUDGMENT

S.K. Das, J.

1. Messrs. Newton Chikli Collieries Limited, a private company registered under the Indian Companies Act, is the assessee appellant before us. It carried on the business of raising coal from a group of collieries known as the Newton Chikli Collieries. The controlling interest in the assessee company was with certain Europeans till January, 1946, and one Mrs. Jackson was the managing director till January, 1946, when one K. C. Shah became the managing director. For the assessment year 1949-50 relating to the account year ending on December 31, 1948, the assessee company was assessed to income-tax as well as business profits tax. In so assessing the assessee company, the Income-tax Officer added back a sum of Rs. 50,000 on the ground that expenses under the head "wages and salaries" were inflated to that extent by the assessee company. The assessee company showed a sum of Rs. 12,18,409 as expenses under the head "wages and salaries" for the year in question as against Rs. 8,04,766 for the preceding "For such defects as were noticed in the keeping of acquittance rolls and wages record, we are of the opinion that the original addition of Rs. 50,000, made by the Income-tax Officer for inflation in wages was quite sufficient. There was no justification in making a further addition of Rs. 2 1/2 lakhs."

2. The assessee company then moved the Tribunal under section 66(1) of the Indian Income-tax Act, 1922, and section 19 of the Business Profits Tax Act, 1947, for a reference of certain questions of law arising out of the order of the Tribunal to the High Court. The Tribunal rejected the applications for reference on the ground that the finding as to inflation of wages was a finding of fact and no question of law arose out of it. It may be here stated that the application for a reference with regard to business profits tax rested on the same ground as the application with regard to income-tax. Both related to the question of inflation of wages and the adding back of Rs. 50,000. It is, therefore, not necessary to deal with the assessment of business profits tax separately from that of income-tax.

3. The assessee then moved the then High Court of Nagpur under section 66 (2) of the Indian Income-tax Act and the High Court directed the Tribunal to state a case on the following three

questions of law :

> "1. Whether there was any material before the Tribunal for the finding that the wages had been inflated ?
>
> 2. Is there any material on record supporting the estimate of Rs. 50,000 ?
>
> 3. Whether the disallowance of Rs. 50,000 was a valid deduction from expenditure under section 10 of the Act ?"

4. The Tribunal then stated a case, and by its judgment and order dated February 24, 1955, the High Court answered the first two questions against the assessee and the third question being consequently was also answered against the assessee.

5. The assessee company then asked for and obtained special leave from this court and the present appeal has been filed in pursuance of leave granted by this Court.

6. Learned counsel for the appellant has contended that the High Court was in error in answering the questions against the assessee and he has urged two main grounds in support of the appeal. His first ground is that there were no materials from which any inference, could be drawn that the expenses under the head "wages and salaries" had been inflated by the assessee company in the relevant year of account. He has pointed out that the Tribunal in its order dated April 20, 1951, had accepted the explanations which the assessee company had given with regard to the increase in the wages bill, and after having accepted these explanations the Tribunal expressed the opinion that the original addition of Rs. 50,000 made by the Income-tax Officer was sufficient without sitting any ground for holding that there was an inflation of wages. Secondly, learned counsel for the appellant has contended that the assessee company was given no opportunity of explaining the defects said to arise out of acquittance rolls. His arguments is that in the absence of such an opportunity the adding back of Rs. 50,000 was really based on no material and was, furthermore, in violation of section 23 (3) of the Income-tax Act.

7. Before we proceed to consider the aforesaid two points urged on behalf of the appellant, it is necessary to state what the precise scope of the appeal before us is. Neither the High Court nor this court sits in appeal over the assessments in question. As in the High Court so also before us, the short questions is whether there was any material before the Tribunal for the finding that the wages had been inflated. If there was such material from which a reasonable inference as to inflation of wages could be drawn, the matter is at an end. Having heard learned counsel for the appellant, we agree with the view expressed by the High Court that there was such material. Learned counsel for the appellant has taken us very carefully through the explanations which the assessee company gave for the increase in the wages. He referred to the increase in the expenses by reason of the Government resolution dated October 10, 1947, the increased cost of cutting coal and the increase in the number of workmen, and also the cost of explosives, kerosene oil etc., which was previously borne by the workers but was to be borne by the assessee company in the relevant year. He has further drawn our attention to the circumstance that the Income-tax Officer proceeded on the basis

of coal dispatched and not on coal raised during the six years for which the Income-tax Officer prepared a comparative statement. It has been pointed out to us that on a correct computation based on the tons of coal raised the increase came to Rs. 715 per 100 tons of coal raised for the year 1948 as against Rs. 526 for the year 1947. It is argued that the increase is less than what the Government itself allowed for the price increase. All these points have been fully considered by the High Court; yet the High Court has pointed out that there were materials from which the income-tax authorities could come to the conclusion that there was inflation in the expenses under the head "wages and salaries". Before the Income-tax Officer the only reason which the assessee company gave for the increase was the effect of the Government resolution dated October 10, 1947. When the assessee company was asked to file a comparative statement showing salaries paid each year department wise from 1939, it failed to do so. It filed a statement showing the increased rates. No evidence was given as to the increase made between 1939 and 1948. The monthly acquittance rolls showed a somewhat unusual state of affairs. First, many payments were acknowledged by persons other that the payees; secondly, even in the case of literate persons, payments were acknowledged by persons affixing their thumb impressions. It has been contended before us that the colliery worked in shifts, and it sometimes so happened that a workmen was working in the colliery at the time of payment of wages and, therefore, his wages were taken by some other workman. Then, there were cases of no acknowledgments at all. With regard to these, the explanation was that acknowledgments were not taken by inadvertence. Whether these explanations are correct or not do not fall for decision at this stage. It was for the income-tax authorities chose not to accept these explanations as correct, that does not mean that the finding as to inflation of wages at which they arrived was a finding based on no material. The materials were there; what happened what that the income-tax authorities did not accept as correct the explanations offered by the assessee company. We do not think that the non-acceptance of the explanations given by the assessee company converts the question of the inflation of wages, which is essentially a question of fact, into a question of law. The High Court was, therefore, right in its answer to this first question.

8. As to the second argument we do not think that the assessee company can make any grievance on the score that no opportunity was given to it as contemplated by section 23 (3) of the Act. The assessee company did not produce the comparative statement asked for by the Income-tax Officer. It filed a statement showing increased rates of salary which was of no help. It then produced the acquittance rolls of workmen on monthly wages. No acquittance rolls were produced in respect of workmen on weekly wages on the ground that such rolls did not exist. Section 23 (3) does not contemplate that with regard to every reason which the Income-tax Officer formulates for his order, the assessee must be given an opportunity to produce fresh evidence or fresh explanation. The Income-tax Officer fully considered whatever materials the assessee company produced in reply to the notices issued to it or even independently of that notice. The Appellate Assistant Commissioner also considered the explanations which the assessee company gave for the increase was the effect of the Government resolution dated October 10, 1947. When the assessee company was asked to file a comparative statement showing salaries paid each year department wise from 1939, it failed to do so. It filed a statement showing the increased rates. No evidence was given as to the increase made between 1939 and 1948. The monthly acquittance rolls showed a somewhat unusual state of affairs. First, many payments were acknowledged by persons other that the payees; secondly, even in the case of literate persons, payments were acknowledged by persons affixing their thumb impressions.

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9. Both points urged on behalf of the appellant are without substance and our considered conclusion is that the High Court rightly answered the questions referred to it. Accordingly, the appeal fails and is dismissed with costs.

10. Appeal dismissed.