

## **Commissioner Of Income Tax, West Bengal vs Edward Keventer (Private) Ltd. on 24 August, 1978**

**Equivalent citations: AIR1978SC1586, [1978]115ITR149(SC), (1979)1SCC19, 1978(10)UJ682(SC), AIR 1978 SUPREME COURT 1586, 1978 TAX. L. R. 1098**

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**Bench: P.N. Bhagwati, R.S. Pathak, V.D. Tulzapurkar**

### **JUDGMENT**

P.N. Bhagwati, J.

1. The assessment years with which we are concerned are these appeals are 1956-57, 1957-58, 1958-59 and 1959-60 for the relevant accounting years were the financial years ending 31st March, 1956, 31st March, 1958, 31st March, 1959 respectively. The only question which arises for consideration in these appeals is whether the Tribunal was right in holding that the disallowance of the amounts of Rs. 40,162/-, Rs. 45,753/-, Rs. 42,967/-, and Rs. 46,720/- out of the remuneration and commission paid to four directors of the Company and one K.A. Dikshit in these four assessment years by resort to Section 10(4A) of the Indian I.T. Act, 1922 was unjustified. During the four relevant assessment years the assessee paid to its four directors and one K.A. Dikshit who was Personal Assistant to Rani J.D. Devi, one of the directors of the assessee, certain remuneration and commission in consideration of their attending to the work of the assessee. The I.T.O. was of the view that the amounts paid to these four directors and K.A. Dikshit by way of remuneration and commission were unreasonable and excessive having regard to the legitimate business needs of the assessee and the benefit derived by or accruing to it therefrom and he, therefore, disallowed the amounts of Rs. 40,162/-, Rs. 45,753/-, Rs. 42,967/- and Rs. 46,720/- out of such remuneration and commission under Section 10(4A). The view taken by the Income Tax Officer was confirmed in appeal by the Appellate Assistant Commissioner but on further appeal at the instance of the assessee, the Tribunal disagreed with the view taken by the taxing authorities and held that no part of the remuneration or commission paid to the four directors and Shri A.K. Dikshit could be regarded as 'excessive or unreasonable, if the legitimate business needs of the assessee and the benefit derived by or accruing to the assessee therefrom were taken into account from the point of view of a businessman. The Revenue carried the matter to the High Court by way of a Reference but the High Court also took the same view as the Tribunal and having regard to the facts and circumstances of the case, which in the view of the High Court were eloquent, the High Court held that so far as K.A. Dikshit was concerned he was neither a director nor person having any substantial interest in the assessee and hence Section 10(4A) had no application in relation to him and so far as the four directors were concerned, though Section 10(4A) was applicable, there was

nothing to show that the payment of commission and remuneration to them was right in holding that the disallowance of various amounts out of the remuneration and commission paid to them was unjustified. The Revenue thereupon preferred the present appeals with special leave obtained from this Court.

2. We have carefully considered the facts and circumstances of the present case and gone through the judgment of the High Court, but we do not think any fault can be found with the reasoning of the High Court in taking the view against the Revenue on the question of disallowance of the aforesaid amounts out of the remuneration and commission paid to the four directors and Shri K.A. Dikshit. Under Section 10(4A). It is not necessary to reiterate the various facts & circumstance set out in the judgment of the High Court in support of the view taken by it but it will be sufficient to state that the annual turnover of the assessee during the assessment years in question ranged between Rs. 23,66,000/- to Rs. 30,86,000/- and the assessee had two producing centers, one at Fatteabad and the other at Chum in Darjeeling district, and also several other distributing centers. And despite this huge annual turnover and large number of centers to look after and supervise, the assessee incurred a total expenditure of not more than Rs. 5,000/- per month at the head office and this expenditure of about Rs. 5,000/- per month was inclusive of the remuneration and commission paid to the four directors and Shri K.A. Dikshit. It is impossible to say in the circumstances that the remuneration and commission paid to the four directors and Shri K.A. Dikshit was excessive or unreasonable. The total remuneration and commission paid to the four directors and Shri K.A. Dikshit was in the neighbourhood of Rs. 4,500/- per month which means that other office expenditure by way of salary to employees and other staff was only about Rs. 500/- per month. This would clearly show that the four directors and Shri K.A. Dikshit were attending to the business of the assessee and in fact, this was clearly borne out from the material produced on behalf of the assessee in the proceedings before the tax authorities. We fail to see how the payment of remuneration and commission to the four directors and Shri K.A. Dikshit could in the circumstances be said to be excessive or unreasonable so as to warrant disallowing of any amount out of it by the Income Tax Officer Under Section 10(4A). The High Court was, in our opinion, right in answering the question referred to it by the Tribunal in favour of the assessee and against the Revenue.

3. We accordingly dismiss the appeal with costs.