

(1990) 11 CAL CK 0003

Calcutta High Court

Case No: IT Reference No. 582 of 1979 R.A. No. 555 of 1974-75

Commissioner of Income Tax

APPELLANT

Vs

Marshall Sons and Co. (I) Ltd.

RESPONDENT

Date of Decision: Nov. 21, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 256(2)

Citation: (1994) 72 TAXMAN 124

Hon'ble Judges: Bhagabati Prasad Banerjee, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.

In this reference u/s 256(2) of the income tax Act, 1961 ("the Act") at the instance of the revenue, the following questions have been referred by the Tribunal for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to make necessary adjustment in his books of account after the close of the accounting year with regard to the expenditure "incurred relating to managerial remuneration in the earlier years but sanctioned by the Government after the end of the accounting year relevant to the assessment year 1963-64?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing deduction of Rs. 15,800 (Rupees fifteen thousand and eight hundred only) in the assessment year 1963-64 being the difference between the amount of managerial remuneration as sanctioned by the Government of India and ascertained after the end of accounting year relevant to the assessment year 1963-64 and the amount actually debited by the assessee in the assessment years 1959-60. 1960-61 and 1961-62?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the amount of Rs. 15,800 (Rupee fifteen thousand and eight hundred only) from the assessment for the assessment year 1963-64?

Shortly stated, the facts as found by the Tribunal are as under. In this case, the managerial remuneration was originally allowed in the sum of Rs. 1,72,646 in the previous years relevant to the assessment years 1959-60, 1960-61 and 1961-62. Since the maximum amount of managerial remuneration permissible under the Companies Act. 1956 for these years would not exceed Rs. 1,50,000, the assessee-company credited its profit and loss account with the sum of Rs. 22,646 on the advice of the auditors pending Government's permission. This excess sum of Rs. 22,646 was, accordingly, taxed in the previous year relevant to the assessment year 1962-63. The Government's approval to the managerial remuneration payable by the assessee-company came on 30-1-1963. The Government by its order dated 30-1-1963 sanctioned the payment of managerial remuneration for the said 3 years in the aggregate sum of Rs. 1,65,800. Since the assessee was already allowed a sum of Rs. 1,50,000 on account of managerial remuneration in the earlier years, the difference of Rs. 15,800 was debited by the assessee- company in its profit and loss account for the year ending 30-6-1962, which was then under audit at the time when the Government's approval dated 30-1-1963 was received by it. This sum of Rs. 15,800 was, accordingly, claimed as business expenditure in the income tax return filed by the assessee-company for the assessment year 1963-64.

2. The ITO disallowed the said claim on the ground that it related to the accounting year relevant to the assessment years 1959-60 to 1961-62. On appeal by the assessee, the AAC confirmed the disallowance made by the ITO. The AAC felt that the department of company law administration had approved managerial remuneration only on 30-1-1963, i.e., long after the close of accounting year relevant to the assessment year 1963-64. He, therefore, felt that the assessee was not entitled to claim deduction in respect of the said sum of Rs. 15,800 in this year.

On further appeal by the assessee, it was submitted that the provision of Rs. 11,800 on account of managerial remuneration following the Government's approval dated 30-1-1963 was made by the assessee-company keeping in view its consistent method of accounting. The assessee-company used to adjust the earlier year's expenses which were made known and/or quantified before the completion of audit for the current year. Such adjustments were being made under the heading "Adjustments in respect of previous year". In this year too, such provision under this heading was made in the sum of Rs. 71,324, which was disallowed by the ITO. but the AAC deleted such disallowances on the ground that such adjustments were permissible following the consistent method of accounting adopted by the assessee. The order of the AAC on this point was accepted by the department and no further appeal was taken to the Tribunal on this issue. As regards the sum of Rs. 15,800, it was further submitted that the assessee originally claimed a sum of Rs. 1,72,646 on

account of managerial remuneration relating to the assessment years 1959-60 to 1961-62. This amount was duly allowed to the assessee-company in the relevant years. Subsequently, the assessee-company on Its own offered for taxation a sum of Rs. 22,646, being the excess over Rs. 1,50,000 which, according to the assessee, could at best be sanctioned by the Government under the Companies Act, 1956. This was done on the advice of the auditors and notwithstanding that the Government's approval was pending then, this sum of Rs. 22,646 was duly offered for taxation and was taxed in the assessment year 1962-63. Since the Government approved payment of managerial remuneration of Rs. 1,65,800 by its order dated 30-1-1962, the assessee-company, on the advice of its auditors, debited its accounts for the year ending 30-6-1962 which were then under audit at the time when the Government's approval came. This sum was, accordingly, allowable in the assessment year 1963-64. The Tribunal felt that the assessee was perfectly justified in making necessary adjustments in its accounts for the year ending 30-6-1962, which were then under audit at the time when the Government's approval came having regard to the past practice and the consistent method of accounting followed by it. The Tribunal relied on the judgment of the Supreme Court in [Commissioner of Income Tax, West Bengal II Vs. Birla Gwalior \(P\) Ltd.](#), for allowing this deduction to the assessee-company in the year under reference.

3. Mr. A.C. Moitra, appearing for the revenue, supported the orders of the ITO on the ground that since the Government's approval came only on 30-1-1963, the sum of Rs. 15,800 cannot be allowed in the assessment year 1963-64, particularly when the expenditure related to the earlier years.

4. We have examined the facts relied on by the Tribunal. The adjustment of Rs. 15,800 made by the assessee-company in the previous year relevant to the assessment year 1963-64 was consistent with the regular method of accounting followed by the assessee-company. Similar adjustments in respect of Rs. 71,324 which expenditures related to the earlier years, but which were claimed in the year under reference, were allowed by the AAC. It was even if a technical view was taken, there was no doubt that the assessee was entitled to claim deduction in respect of Rs. 15,800 which was a genuine business expenditure in the next year, i.e., the previous year relevant to the assessment year 1964-65 having regard to the fact that the Government's approval came on 30-1-1963. If a too technical view was taken, the entire managerial remuneration of Rs. 1,65,800 was allowable only in the assessment year 1964-65, although such remuneration related to the assessment years 1959-60 to 1961-62. But in this case. Mr. Poddar, the learned counsel for the assessee, submitted that such managerial allowance was already allowed in the sum of Rs. 1,72,646 in the earlier years without waiting for Government's approval and again the excess of Rs. 22,646 as determined by the assessee, on the advice of the auditors, was duly taxed, as offered by the assessee-company in the assessment year 1962-63. This was again done without considering the Government's approval. As such, the Tribunal was fully justified in the background of these facts and

particularly having regard to the consistent method of accounting followed by the assessee-company in this respect to allow the sum of Rs. 15,800 in the assessment for the assessment year 1963-64 even when the Government's approval came after the close of the relevant previous year on 30-1-1963.

5. The ITO in his assessment order dated 25-3-1968, passed in respect of the assessment year 1963-64, computed the total business loss at Rs. 10,80,779, which included unabsorbed depreciation of Rs. 88,185. This entire loss was directed to be carried forward by the ITO to the subsequent year. On appeal before the AAC, the quantum of loss was further increased by Rs. 99,521 and some further relief was allowed by the Tribunal on second appeal by the assessee. In other words, the assessee-company was ultimately assessed for this year at a substantial loss which was directed to be carried forward to the subsequent year. Technically, this sum of Rs. 15,800 was, in any event, allowable in the assessment year 1964-65 having regard to the fact that the Government's approval came on 30-1-1963 and the assessee's accounting year ended on 30th June every year. The Tribunal has allowed this sum of Rs. 15,800 as business expenditure in the assessment year 1963-64 itself. This sum of Rs. 15,800 is, thus, a part of carried forward business loss computed for the assessment year 1963-64 and would actually get adjusted in the assessment year 1964-65. In other words, factually, the deduction of Rs. 15,800 which was part of such business loss can be allowed only in the assessment year 1964-65 and not earlier. Mr. Poddar drew our attention to the decision of this Court in CIT v. Rajendra Trading Co. (P.) Ltd. [1984 1146 ITR 637 (Cal.)]. The controversy in this case related to the claim of business expenditure of Rs. 23,206. This expenditure was claimed by the assessee-company in the assessment year 1966-67 although the same was actually incurred in the immediately preceding year. One of the submissions made before the Tribunal, which was reiterated before this Court on behalf of the assessee, was that in the immediately previous year, the assessed profit of the assessee was Rs. 1,814 and if the assessee had claimed the expenditure of Rs. 23,206 in the last year, the assessee would have been entitled to carry forward the loss in this year, i.e., in the assessment year 1966-67. This submission appealed to this Court and it was observed that if the earlier year's assessed profit was Rs. 1,814 only and on allowing the said expenditure of Rs. 23,206, the result had been that the loss was carried forward to this year, there would have been no difference in the net result and the expenditure could have been allowed in this year. In that event, the controversy involved would have been wholly academic. The Court felt that the Tribunal did not give any finding as to what was the profit last year and whether such profit was negligible so that on allowing the expenditure of Rs. 23,206, the net loss would have been carried forward to this year. The matter was, therefore, remanded by this Court to the Tribunal for ascertaining the correct factual position. In this case, the facts are already on record which clearly show that the assessee-company had been duly assessed at a net business loss of Rs. 10,80,779 in the assessment year 1963-64 by the ITO himself and such loss was computed after disallowing the impugned sum

of Rs. 15,800. The assessed business loss, as computed by the ITO, got further increased as a result of appellate orders passed by the AAC as well as by the Tribunal. In other words, the sum of Rs. 15,800 when allowed in this year under reference, only goes to increase the business loss for the assessment year 1963-64 and ultimately the amount is carried forward to the next year for allowance in 1964-65. Mr. Poddar submits, in our view rightly, that the controversy raised by the department in this reference is wholly academic since there is no tax effect and no loss of revenue is involved.

6. Our attention has also been drawn to the decision of the Allahabad High Court in [Commissioner of Income Tax Vs. U.B.S. Publishers and Distributors](#), . In this case, the devaluation of Indian rupee took place on 6-6-1966, six days after the close of the relevant previous year. As a result of such devaluation, the assessee's liability to make payment in foreign currency increased. The assessee-company claimed this additional liability in the assessment year 1967-68 itself although the devaluation took place on 6-6-1966, which fell within the previous year relevant to the assessment year 1968-69. The Allahabad High Court allowed deduction of such additional liability in the earlier year itself on the ground that the assessee was justified in determining its liability on the basis of the actual figure available, particularly when the accounts for the earlier year had not been finalised at the time when the devaluation took place.

7. Mr. Poddar also drew our attention to the observations of the Supreme Court in [Saroj Aggarwal Vs. Commissioner of Income Tax, U.P.](#), . In this case, the Supreme Court observed that facts should be viewed in natural perspective, having regard to the compulsion of the circumstances of the case. Where it is possible to draw two inferences from the facts and where there is no evidence of any dishonest or improper motive on the part of the assessee, it would be just and equitable to draw such inference in such a manner that would lead to equity and justice. Too hyper-technical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered.

8. Again in [Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri](#), , the Supreme Court further observed that if a strict and literal construction of the statute leads to an absurd result, i.e., a result not intended to be subserved by the object of the legislation ascertained from the scheme of the legislation, then, if another construction is possible apart from the strictly literal construction, that construction should be preferred to the strict liberal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.

9. For the foregoing reasons we answer all the three questions referred in this case in the affirmative and in favour of the assessee. There will be no order as to costs.

Banerjee, J.

I agree.