

PETITIONER:
COMMISSIONER OF INCOME-TAX, BOMBAY

Vs.

RESPONDENT:
M/S. WALCHAND & CO. (PVT.) LTD., BOMBAY

DATE OF JUDGMENT:
17/03/1967

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SIKRI, S.M.
RAMASWAMI, V.

CITATION:
1967 AIR 1435 1967 SCR (3) 214
CITATOR INFO :
F 1969 SC 609 (5)
RF 1970 SC1076 (8)
R 1973 SC 520 (9)
F 1976 SC 640 (11)

ACT:
Indian Income-tax Act (11 of 1922), ss. 10(2)(xv) and 33(4)-
Increase in Director's remuneration not reflected in
assessee's profits--If allowable.
Appellate Tribunal-Jurisdiction-Reasons in support of
decisions, if necessary.

HEADNOTE:

The Income-tax Officer disallowed the increase in the remuneration off the Directors and Officers of the assessee-company since the increase was not reflected in 'he increase in the profits of the assessee and was on that account not expenditure laid out wholly and exclusively for the purposes of the business under s. 10(2)(xv) of the Income-,tax Act. The order was modified by the Appellate Tribunal. On reference the High Court answered the question against the Revenue, holding that the Tribunal acted without evidence in partially disallowing the increase in respect of certain officers.

In appeal to this Court,

HELD : The appeal must be dismissed.

The practice of recording a decision without reasons in support cannot but be severely deprecated. Though the Tribunal is not a Court, it is invested with judicial power to lie exercised in manner similar to the procedure. Authority to "pass such orders thereon as it thinks fit" in s. 33(4) of the Income-tax Act, 1922 is not arbitrary; the expression is intended to define the jurisdiction or the Tribunal to deal with and determine questions which arise out of the subject-matter of the appeal in the light of the evidence, and consistently with the justice of the case. In the hierarchy of authorities the Appellate Tribunal is the final factfinding body : its decisions on questions of fact are not liable to be questioned before the High Court.

[216H-217C]

When a claim for allowance under s. 10(2)(xv) of the Income

tax Act is made, the income-tax authorities have to decide whether the expenditure claimed as an allowance was incurred voluntarily and on grounds of commercial expediency. In applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of -the business, reasonableness, of tile expenditure must be adjudged from the point of view of the businessman and not of the Revenue. An employer in, fixing the remuneration of his employees is entitled to consider the extent of his business, the nature of the duties to be performed, and the special altitude of the employee, future Prospects of extension of the business and a host of other related circumstances. The rule that increased remuneration can only be justified if there be corresponding increase in the profits of the employer is erroneous. [217F-218B] 218B]

JUDGMENT:

CIVIL APPELLATE, ARE JURISDICTION : Civil Appeals Nos. 279 and 280 of 1966,
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Appeals by special leave from the judgment and order dated September 4, 1962 of the Bombay High Court in Income-tax Reference No. 23 of 1961.

S. K. Mitra, T. A. Ramachandran, S. P. Nayyar for R. N. Sachthey, for the appellants (in both the appeals).

J. B. Dadachanji and O. C. Math r, for the respondent (in both the appeals).

The Judgment of the Court was delivered by Shah, J. The respondent (hereinafter called 'the assessee') is a private limited Company registered under the Companies Act, 1913. The assessee carries on the business of acting as Managing Agents for nine public limited Companies. The business of the assessee was managed by three Directors. Each Director was paid a remuneration of Rs. 2,500 per month. The assessee had employed three executive officers to administer its affairs. By resolution dated July 9, 1952, the remuneration of each of the Directors of the assessee was increased with retrospective effect from April 1, 1952 by Rs. 1,000 per month and of two out of the three officers by Rs. 500 per month and of the remaining officer by Rs. 750 per month. In the year 1953 the remuneration of each of the Directors was increased by Rs. 500 per month and of each of the officers by Rs. 250 per month.

In proceedings for assessment of income for the years 1953-54 and 1954-55 the Income-tax Officer called upon the assessee to show cause why the increase in the remuneration of the Directors and officers should not be disallowed in the computation of the taxable income of the assessee. The assessee submitted that the managed Companies had considerably increased the area and activities of the business and they had undertaken new lines which entailed greater burden on the Directors and officers of the assessee. The Income-tax Officer disallowed the increase in the remuneration of the Directors and officers of the assessee. He was of the view that since the increase in the remuneration or the salary of the officers "was not reflected in the increase in the profits of the assessee", it was not expenditure which could be justified as laid out wholly and necessarily for the purposes of the business under s. 10 (2) (xv) of the Indian Income-tax Act. In appeal, the Appellate Assistant Commissioner confirmed the order. The Income-tax Appellate Tribunal modified the order of assessment. The Tribunal observed that "it was not for

the Income-tax Officer to run the assessee's business and to fix the salary of every member of the staff. That, however, does not mean that it is open to an assessee to allow unreasonable rise in the salaries without a valid reason. It may amount to giving a gift in the garb of a salary". The Tribunal then directed that

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considering the salaries previously drawn 'by the Directors, "salary at the rate of Rs. 4,000 per month in each case be allowed as a revenue deduction". In making this order the Tribunal apparently lost sight of the fact that in the account year 1952-53 the Directors received Rs. 42,000 as remuneration for the whole year, and it was only in the year 1953-54 that the Directors received Rs. 48,000 as remuneration. The Tribunal also directed that in regard to each employee increase in salary not exceeding Rs. 3,000 per annum as compared to the preceding year's assessment be allowed as a permissible deduction. The Tribunal gave no reasons for disallowing the balance of the salary paid to the three officers.

The Tribunal submitted the following question for determination of the High Court of Bombay :-

"Whether on the facts and in the circumstances of the case the Tribunal acted without evidence in disallowing Rs. 30,000 (Rupees thirty thousand) ?"

The High Court was of the view that the Tribunal acted without evidence in partially disallowing the increase in the remuneration of the three executive officers during the assessment years 1953-54 and 1954-55. The Commissioner of Income-tax has appealed to this Court, with special leave. The assessee claimed the additional remuneration paid to the Directors and to the executive officers as a permissible allowance under s. 10(2)(xv) of the Indian Income-tax Act, 1922 which reads

"Such profits or gains shall be computed after making the following allowances, namely

(xv) any expenditure not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

The remuneration paid to the executive officers was not of the nature allowable under cls. (i) to (xiv) : nor was it of the nature of capital expenditure, or personal expenses of the assessee. The Income-tax Officer disallowed the entire increase in the remuneration holding that it was not expended "wholly and necessarily" for the purpose of such business. The Tribunal without recording 'lily reasons partially disallowed the amount as a permissible deduction. It is necessary to emphasize that though the Tribunal

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is not a Court, it is invested with judicial power to be exercised in manner similar to the exercise of power of an appellate Court acting under the Code of Civil Procedure. Authority to 'pass such orders thereon as it thinks fit" in s. 33(4) of the Income-tax Act, 1922, is not arbitrary : the expression is intended to define the jurisdiction 'of the Tribunal to deal with and determine questions which arise out of the subject-matter of the appeal in the light of the evidence, and consistently with the justice of the else. In the hierarchy of authorities the Appellate Tribunal is the final fact-finding body; its decisions on questions of fact

are not liable to be questioned before the High Court. The nature at the jurisdiction predicates that the Tribunal will approach and decide the case in a judicial spirit and for that purpose it must indicate the disputed questions before it with evidence pro and con and record its reasons in support of the decision. The practice of recording a decision without reasons in support cannot but be severely deprecated.

In paragraph 2 of their order the Tribunal correctly set out the principle applicable to claims for deduction of expenditure incurred in payment of remuneration to its employees by the assessee. But for partially rejecting the claim for allowance of the amount paid, no reasons were recorded. If the Tribunal was satisfied that the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the assessee there was no reason why the full amount expended should not have been allowed. It is open to the Tribunal to come to a conclusion either that the alleged payment is not real or that it is not incurred by the assessee in the character of a trader or that it is not laid out wholly and exclusively for the purpose of the business of the assessee and to disallow it. But it is not the function of the Tribunal to determine the remuneration which in their view should be paid to an employee of the assessee. When a claim for allowance under s. 10 (2) (xv) of the Income-tax Act is made, the Income-tax authorities have to decide whether the expenditure claimed as an allowance was incurred voluntarily and on grounds of commercial expediency. In applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the Expenditure has to be adjudged from the point of view of the businessman and not of the Revenue. The Income-tax Officer was of the view that there was no adequate increase in the earnings of the assessee, for the increase in remuneration was not reflected in the increase in profits of the assessee and that it appeared that as compared to the previous years, the business profits disclosed by the assessee had fallen by Rs. 2 lakhs and therefore the increase in expenditure could not be justified as laid out wholly and necessarily for the purposes of the business. But an employer in fixing the remuneration of his employees is entitled to consider the extent

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of his business, the nature of the duties to be performed, and the special aptitude of the employee, future prospects of extension of the business and a host of other related circumstances. The rule that increased remuneration can only be justified if there be corresponding increase in the profits of the employer is, in our judgment, erroneous.

The Tribunal did not agree with the view of the Income-tax Officer. That is clear from the observations made in paragraph 2 of their order. But, without assigning any reasons, the Tribunal allowed the claim only partially. The High Court on a careful consideration has pointed out that the work of the assessee has increased considerably and has become more strenuous by reason of the prosperity of the managed Companies and it would be reasonable and natural to infer -that "the strain on both the Directors and the top executives had increased justifying increase in their remunerations. In their view the fact that additional remuneration was not sanctioned in favour of other executive officers is by itself not a ground for regarding the expenditure incurred as otherwise than wholly and

exclusively laid out or expended for the put-pose of the business. We agree with the High Court that the order of the Tribunal disallowing the claim for allowance of the whole of the additional remuneration was not supported by any evidence.

The appeals therefore fail and are dismissed with costs. One hearing fee.

Y.P.

Appeals

dismissed.

LA Sup.C1/67--2,500, -23-1-68-GlPF.

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JUDIS