

PETITIONER:
R. DALMIA

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, NEW DELHI

DATE OF JUDGMENT 19/01/1977

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
KAILASAM, P.S.

CITATION:
1977 AIR 988 1977 SCR (2) 654
1977 SCC (2) 467

ACT:

Indian Income Tax Act (XI of 1922)--s. 2(6C)(iii)--Scope of--"Person concerned in the management of business"--Meaning of.
Words and phrases--"concerned", "manage", meaning of.

HEADNOTE:

Section 2(6C)(iii) of the Income-tax Act, 1922 provides that the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by any other person who has a substantial interest in the company (that is to say, who is concerned in the management of the business of the company, being beneficial owner of shares, not being shares entitled to fixed rate of dividend carrying not less than 20% of the voting power) and any sum paid by any such company in respect of any obligation which, but for such appointment, would have been payable by the director or other person aforesaid is income.

The assessee was the beneficial owner of 1800 out of 3000 equity shares of a company. He was, however, not its director. He had a similar interest in another company. Both the companies had spent on his personal necessities a large sum of money, which the Income-tax Officer treated as his income under s. 2(6C)(iii) of the Act. The Appellate Assistant Commissioner, as also the Tribunal, dismissed his appeal against the order of the Income-tax Officer and the High Court answered the reference against the assessee.

In appeal to this Court it was contended that the expression "concerned" in the management of the business of the company takes in only the person who legally participates in the management of its business and not one who has only remote control of its business. even if he had the majority of voting power.

Dismissing the appeal,

HELD: The expression "person concerned in the management of business" may take in not only a person who directly participates or engages in the management of the business but also one who indirectly controls its management through the managerial staff from behind the scenes. [657 B]

1. (a) The term "concerned" in s. 2(6C)(iii) cannot be

restricted to a person who is an employee of the business or an office-holder of the company. In the context of "management" it is wide enough to include every person "interested" in the management, in the sense of having the direction and control of the managerial staff. [659 C-D]

(b) The word "concerned" is not a term of art, having a precise and fixed meaning. It has several nuances, and is used to convey diverse shades of meaning. It may mean "to have a relation-to. or bearing on, be of interest or importance" or "to have an anxiety, worry". "Concerned" as an adjective may mean "interested", "involved". In one context, it may mean one thing and in a different context another. [658 G-H]

(c) The word "concerned" takes its colour from the words "in the management of the business" in association with which it occurs. In the context of business, "manage" means "to control. to guide. to administer to conduct or direct affairs", carry on 'business. "Management" includes the act of managing by direction or regulation or administration or control or superintendence. [658 H, 659 A]

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(2) The first part of the clause is confined to the obtaining of the value of any benefit or perquisite from a company by a director, even if he has no substantial interest in the company. The second part applies to 2a person who may not be a director but has a substantial interest in the company. What is "substantial interest" is further equated by the succeeding expression "that is to say" with the co-existence of two elements, namely, (i) concern in the management of the business of the company and (ii) beneficial ownership of shares (not being shares entitled to a fixed rate of dividend) carrying not less than 20% of the voting power. [657 G-H]

In the instant case, the assessee, Obtained the benefit from the company holding 1800 out of 3000 shares, that is, carrying a voting power of 60% and, therefore, satisfied the second element. His own admission that he was in control of the company necessarily includes an admission of his being "concerned in the management of the business of the company". [658 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil-Appeal No. 283 of 1972.

Appeal by Special Leave from the Judgment and Order dated 12-7-1971 of the Delhi High Court in of 1967. Income Tax Reference No. 31 of 1967.

Bishamber Lal for the Appellant.

V.S. Desai, J. Ramamurthi and R.N. Sachthey for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J. This appeal by special leave is directed against a judgment, dated July 12, 1971, of the High Court out of these facts:

The appellant (hereinafter referred to as the assessee) is an individual. The assessment year is 1955-56.

Bharat Union Agencies Pvt. Ltd. had spent Rs.53,398/- after the personal necessities of the assessee during the previous year ending 30-9-1964, without charging for the same. The assessee was not a director Of the said Company. He however was the beneficial owner of 1800 shares out of the total of 3000 equity shares of the said Company during the previous year. Similarly, Alien Berry and Co. Pvt. Ltd.

had spent a sum of Rs. 4406/- after the personal necessities of the assessee, without charging for the same.

The Income-tax Officer treated the total benefit of Rs. 57,804/- received by the assessee from these two Companies, as his 'income' under s. 2(6C)(iii) of the Income-tax Act, 1922 which was introduced by the Finance Act, 1955 with effect from 1-4-1955, and charged it to tax along with some other items of income.

The assessee carried an appeal to the Appellate Assistant Commissioner who found that the assessee was beneficial owner of the shares of Bharat Union Agencies Pvt. Ltd. carrying more than 20 per cent of the voting power. He further held on the basis of certain findings in the Report of the Commission of Inquiry on the administration of Dalmia Jain Companies published in 1963, that the assessee

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had 100 per cent of the share-holding control of Allen Berry and Co. Pvt. Ltd. The Appellate Assistant Commissioner did not specifically deal with the question whether the assessee was "concerned in the management" of both these Companies. In the result he upheld the order of the Income-tax Officer.

The assessee preferred a further appeal to the Income-tax Appellate Tribunal which held that the assessee was "concerned in the management of the Bharat Union Agencies (P) Ltd., being the beneficial owner of shares carrying more than 20% of the voting power, and as such the benefit of Rs. 53,398/- received by him from that Company was his 'income' within the later part of Clause (iii) of s. 2(6C) of the Income-tax Act, 1922. On this reasoning the Tribunal dismissed the assessee's appeal in regard to the item of Rs. 53,398/-. However, it allowed, on a different ground his appeal with regard to the item of Rs. 4406/- received from Allen Berry and Co. (P) Ltd. In this appeal we are not concerned with that item any more.

At the instance of the assessee, the Tribunal stated the case and referred the following question under s. 66(1) of the Income-tax Act, 1922 to the High Court:

"Whether on the facts and in the circumstances of the case, the sum of Rs. 53,398/- spent by Bharat Union Agencies P. Ltd. after the personal necessities of the assessee is income within the meaning of section 2(6C)(iii) of the Income-tax Act, 1922".

The High Court answered this question against the assessee. Hence this appeal.

At the outset, Shri Bishamber Lal, appearing for the appellant, tried to contend that the item of Rs. 53,398/- received by the assessee from Bharat Union Agencies Pvt. Ltd. was not a "benefit or perquisite" within the contemplation of s. 2(6C)(iii) of the 1922 Act because, firstly, the constituents of this item were not cash amounts but gifts or bounties, and secondly, the receipt of this benefit by the assessee was unauthorised and could not be claimed by him as of right on the basis of any agreement with the Company.

This was altogether a new plea. It was not even indirectly raised before the authorities under the Income-tax Act or the High Court. It has not been raised even in the Special Leave Petition under Article 136 of the Constitution. It was never the case of the assessee that this amount of Rs. 53,398/- was not "benefit obtained" by the assessee from the Company within the meaning of s. 2(6C)(iii). On the contrary it is apparent from the judgment of the Tribunal, that there was "no dispute about the fact that the assessee received benefits from both the Companies to

the extent stated by the authorities below". i.e. benefits to the extent of Rs. 53,398/- and Rs. 4406/- were received by the assessee from Bharat Union Agencies P. Ltd. and Allen Berry and Co. Pvt. Ltd. respectively. The plea now sought to
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be raised in regard to the item of Rs. 53,398/- involves a question of fact. We therefore did not permit the Counsel to raise this plea for the first time at the time of arguments before us.

Counsel next contended that the expression "concerned in the management of the business of the Company" takes in only that person who by virtue of a position or office held by him in the Company, legally and actually participates in the management of its business and not he who holds no such position or office but is in remote control of the Company and its affairs merely on account of being in ownership of a certain number of shares, carrying more than 20 per cent or even the majority of the voting power. In support of this restricted construction of the term "concerned", Counsel referred to a decision of the Madras High Court in *Arya Bhavan, Madras v. M.S. Narayana Rao*(1), wherein Rajamannar C.J. held that the word "concerned" as used in the context of 'workman' in s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, connotes a more intimate and direct relation to the matter than the word "interest" and therefore this term should be given a more restricted meaning than the word "interest". Mr. Bishamber Lal also referred to the meaning of the terms "concerned", "concerning" as given in the Dictionary, "Words and Phrases", Permanent Edition pp. 504-505 Vol. 8.

Before dealing with this contention, it will be appropriate to examine the material part of s. 2(6C)(iii) of the 1922 Act, which runs as follows:

"(iii) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by any other person who has a substantial interest in the company (that is to say, who is concerned in the management of the business of the company, being the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power), and any sum paid by any such company in respect of any obligation which but for such payment would have been payable by the director or other person aforesaid."

From an analysis of Clause (iii), it is clear that it falls in two distinct parts. The first part is confined to the obtaining of the value of any benefit or perquisite from a Company by a director even if he has no substantial interest in the Company. The second part applies to a person who may not be a director but has a substantial interest in the Company. What is "substantial interest" is further equated by the succeeding expression, "that is to say", with the coexistence of two elements, namely, (i) concern in the management of the business of the Company, and (ii) beneficial ownership of shares (not being shares entitled to a fixed rate of dividend) carrying not less than twenty per cent of the voting power. There is no dispute before

(1) A.I.R. 1960 Mad. 143.

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us that the assessee had obtained the benefit of Rs. 53,398/- from Bharat Union Agencies Pvt. Ltd. It is further admitted that he holds 1800 shares out of the total of 3000 equity shares in this Company, carrying a voting power of 60 per cent. Thus, the existence of the second element is more than satisfied. Controversy pivots around the first element, only.

The arguments which have been advanced before us on behalf of the assessee with regard to the construction and application of the expression "concerned in the management" of the business of the Company, were canvassed before the Tribunal, also. The Tribunal repelled these arguments. The reasoning of the Tribunal with which the High Court found itself entirely in agreement--is as under:

"Shri Sharma conceded the position that the assessee was controlling both the Companies. in question...To exercise control over a Company is something more than to manage the Company. A person who manages the company may not necessarily be in a position to control the business or affairs of the Company. He may be managing under the instructions of those who are controlling the Company. But a person who controls a Company also directly or indirectly through the managerial staff manages the business of the Company. It is again not necessary that the person who manages the business of the Company should be rightfully entitled to do it. A person who is not rightfully entitled to manage the business of the Company but usurps the power by virtue of his certain position, is, in our opinion, certainly a person covered by this expression. It is also not necessary...that the management should be carried on in an ostensible manner. One who carried on the management indirectly and imperceptibly through the persons who outwardly and ostensibly carry on the management is covered by the expression. It is not necessary, in our opinion, that the management should be both seen, and felt; it is sufficient if it is felt, without being seen."

In our opinion, the above is a correct exposition of the law on the point. The word "concern" is not a term of art, having a precise, fixed meaning. It has several nuances, and is used to convey diverse shades of meaning over a wide spectrum. It may mean "to have a relation to, or bearing on, be of interest or, importance" or "to have an anxiety, worry". "Concerned" as an adjective may mean "interested", "involved". In one context, it may mean one thing, and in a different context another. The decisions as to the meaning of this word used in a different context in another statute, are scarcely of much value in construing it in the setting of the provision with which we are concerned. The best way therefore to construe this word is with reference to the context in which it is used. In sub-clause (iii) of s. 2(6C) of the Income-tax Act, 1922, the word "concerned" takes its colour from the words "in the management of the business" in association with which it occurs. In the context of business, "manage" means "to control, to guide, to administer, to conduct or direct affairs;

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carry on 'business' (Shorter Oxford Dictionary, Webster New

World Dictionary). "Management" includes the act of managing by direction, or regulation, or administration or control or superintendence.

Construed with reference to the context, and the circumstances of a case, the expression "person concerned in the management of the business" may take in not only a person who directly participates or engages in the management of the business but also one who indirectly controls its management through the managerial staff, from behind the scenes. The assessee's admission that he is in control of the Company necessarily includes an admission of his being "concerned in the management of the business of the Company". We, therefore, agree with the High Court, that the ambit of the term "concerned" in s. 2(6C)(iii) cannot be restricted to a person who is an employee of the business or an office-holder of the Company. In the context of "management" it is wide enough to include every person 'interested' in the management, in the sense of having the direction and control of the managerial staff. On the facts of the case, the assessee was such a person.

We are therefore, of opinion that the High Court was right in answering the question referred to it, against the assessee.

The appeal fails and is dismissed with costs.

P.B.R.

Appeal dismissed.

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