

CASE NO.:
Appeal (civil) 4399 of 2005

PETITIONER:
Mahila Vikas Mandal Colaba and Ors.

RESPONDENT:
The State of Maharashtra and Anr.

DATE OF JUDGMENT: 21/07/2005

BENCH:
Arijit Pasayat & H.K. Sema

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Bombay High Court upholding the demand made by the Collector, Mumbai City from the appellant No. 1. The writ petition filed by the appellants questioning the demand was dismissed by the impugned order of the High Court. The demand was made for commercial use of the land leased out to the appellant No. 1.

Factual position is almost undisputed and needs to be noted in brief. The Maharashtra State Government in the Revenue at Forest Department, leased out 2250 square meters of land (plot No.1 Queens Barrack Area) to the appellant No.1 for construction of a women's hostel for working women and its allied activities. The grant was made for 30 years from the date of handing over possession and the memorandum dated 18th May, 1984. It was clearly stipulated in Condition No. (iii) that if lessee utilizes any areas specifically set up for non-remunerative activities for any remunerative purposes, it has to take prior approval of the Collector of Bombay and if granted the same will be subject to payment of 50% of the "net profit". Alleging that the appellant No.1 was letting out the premises for commercial purposes and using the premises for commercial purposes, a demand was made for an amount of Rs. 19,03,103 stated to be 50% of the net income. It was alleged that there was violation of the land grant terms and conditions. In the Notice dated 15.2.2003 the appellants were notified that since there was violation of the terms and conditions of the land grant, action was to be taken and in addition the defaulted amount i.e. Rs. 19,03,103 was to be recovered. It was also indicated that coercive action shall be taken if payment is not made within three days of the receipt of the notice. Reply was submitted by the appellants on 20.2.2003 stating that there was no violation as alleged, and further the demand as raised was without any basis. After receipt of the reply notice of recovery as land revenue as per Section 267 of the Maharashtra Land Revenue Code, 1966 (in short the Code) was issued granting 20 days' time for making payment. Writ petition was filed before the Bombay High Court questioning legality of the demand. After notice the respondents filed counter affidavit justifying the action and demand raised. Essentially, two stands were taken by the writ petitioner before the High Court. Firstly, it was contented that due and proper opportunity was not given to the writ petitioners to present their case. Secondly, it was submitted that the quantum as demanded has no basis of computation. The High Court by the impugned judgment held after taking note of the counter affidavit that the demand was in order. High Court noted that an amount of Rs. 73,82,055 was received in respect of 690 programmes as rental. Aforesaid amount of Rs. 73,82,055 included a sum of Rs. 35,75,850 as security deposit and the balance of Rs. 38,06,205 was earned as income, and 50% thereof came to Rs. 19,03,103 which was demanded.

It was held that adequate opportunity was granted to the appellant to have their say. The writ petition was accordingly dismissed.

In support of the appeal, learned counsel for the appellants submitted that the authorities and the High Court have fallen into grave errors by holding that 50% of the receipts were to be paid. What was required to be paid was 50% of the "net profit". Materials on record show that there was no profit.

In response, learned counsel for the respondents submitted that undisputedly the appellants had carried on remunerative activities and received Rs. 38,06,205 which was earned as income. Therefore, the demand of 50% thereof is in order.

In order to appreciate rival submissions the condition in the Grant dated 18.5.1984 needs to be noted. The dispute revolves round Condition No. (iii) which reads as follows :-

"The lessees shall utilize the land for construction of two buildings, one for the women's hostel providing necessary facilities like recreation, library cum reading room, indoor games etc. and another building with a built up area of 6000 square feet out of which a portion of 3000 square feet should be allowed to be let out to a bank or showrooms as permissible under the Development Control Rules for the area and 1500 square feet to be used for diagnostic centre and another 1500 square feet to be used for Mandal's other activities.

Provided further that the permission to utilize 4500 square feet built up area for commercial purpose is granted subject to the condition that the lessees undertake to pay to Government 50% of the net income derived by them from the source.

Provided further that if the Mandal utilizes any other area specifically set apart for its non-remunerative activities for any remunerative purpose, it shall take prior approval of the Collector of Bombay, which if granted, will be subject to payment of 50% of the net profit."

A bare perusal of the condition shows that requirement was to pay 50% of "net profit". What would constitute net profit has not been spelt out in the Grant. Obviously therefore, the expression "net profit" as commercially understood had to be adopted.

The fundamental meaning of the expression "profit" is the amount of gain made during a particular period. (See : Spanish Prospecting Company Ltd., in Re 1911 (1) Ch. 92 (CA)).

This Court in Commissioner of Income Tax v. Delhi Flour Mills Company Ltd., (1959) 35 ITR 15 SC held that when question arises regarding the meaning to be assigned to the expression "net profit", the question is to be determined on the construction of the relevant agreement, which is to be construed according to the words contained in it and the circumstances in which it was made.

"Income" and "profits" are not synonymous in all cases. In certain statutes "income" and "profits" are treated differently. While considering a case under the Income-tax Act, 1961 (in short the 'I.T. Act') this Court held that in the ordinary economic sense the expression "income" includes not merely what is received or what comes in by exploiting the use of the property but also what one saves by using it oneself. That which can be converted into income can be reasonably regarded as giving rise to income (See Bhagwan Dass Jain v. Union of India and Ors., [1981] 2 SCC 135).

In the popular sense the two words "receipts" and "profit" are very different expressions. Profits are pointed out as the surplus by which the

receipts exceed the expenditure (See: Russel v. Town and Country Bank, (1889) 13 A.C. 418).

As observed by the Privy Council in The King v. B.C. Fir and Cedar Lumber Company, AIR (1932) PC 121, monies which are not really profits of a business may yet be income. The Privy Council in Secretary of State v. Saroj Kumar, AIR (1935) PC 49, held that profit means the difference between the amount realized and the expenses incurred in realizing it. As noted by this Court in E.D. Sassoon and Company Ltd. v. Commissioner of Income Tax, Bombay city, [1955] 1 SCR 313 the word "profit" has well defined legal meaning, which coincides with the fundamental conception of profits in general parlance, although in mercantile phraseology the word may at times bear meanings indicated by the special context, which deviate in some respects from this fundamental significance.

Above being the position we allow this appeal, set aside the judgment of the High Court and remit the matter to the Collector for a fresh adjudication. In order to avoid unnecessary delay, let the appellants appear before the concerned Collector on 24.8.2005 at 10.30 a.m. without further notice. The Collector shall grant opportunity to the appellants to place materials necessary for the purpose of determining the net profits, as required under Condition No. (iii). The Collector shall on consideration of the materials to be placed pass necessary orders.

The appeal is allowed to the aforesaid extent without any order as to costs.