

(1973) 02 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 461-D of 1964

Bharat Nidhi Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-02-1973

Acts Referred:

Citation : (1973) 92 ITR 1

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : V.S. Desai, K.K. Jain, B. Lal and S.C. Patel, for the Appellant; S.K. Aiyar and M.B. Lal, for the Respondent

Judgement

B.C. Misra, J.—u/s 60 of the Indian Income Tax Act of 1922, a statutory Notification No. 47 dated 9th December, 1933, has been issued granting exemption from payment of super-tax under the circumstances specified in it. A detailed reference to this notification will be made hereinafter.

2. On 9th June, 1961, the petitioner-company applied to the Central Board of Revenue for exemption from payment of super-tax in pursuance of the aforesaid notification. This has been refused by the Central Board of Revenue by its order dated 30th December, 1963 (annexure "F"), on the grounds that all the conditions laid down in the aforesaid notification had not been satisfied by the petitioner-company. Aggrieved by this order, the petitioner has filed this writ petition challenging the impugned order on the grounds, inter alia, that the order of the Board is not a speaking order and does not give reasons for refusing the exemption and, secondly, that, on the merits of the case, the order is not sustainable in law.

3. The writ petition has been contested on behalf of the respondents and a counter-affidavit has been filed by Shri Jagdish Chand Kalra, Deputy Secretary, Central Board of Direct Taxes, Ministry of Finance, dated 27th May, 1967. In this counter-affidavit, the contentions raised in the writ petition have been contested

and reasons have been given as to why the application of the petitioner was refused. In substance, in the counter-affidavit, it has been urged that the petitioner-company had failed to satisfy condition No. (ii) mentioned in the statutory notification and so the application was refused. With regard to the non-speaking nature of the order, it has been contended that the company did not co-operate with the Director of Inspection in arriving at the findings with regard to the requirements of the notification and that the matter had been thoroughly discussed orally between the Director of Inspection and the representatives of the company and the company knew the reasons for the rejection and, Therefore, it was not necessary to incorporate them in the impugned order or formally communicate them to the petitioner. A rejoinder to the return has been filed on behalf of the petitioner reiterating the contentions raised in the writ petition and controverting the contentions of the respondents.

4. Mr. V. S. Desai has challenged the impugned order on the ground that it is not a speaking order and it does not show on the face of the record that the Board had applied its mind to the question at issue. The second ground of challenge is that the reasons given in the counter-affidavit do not in law make out any sufficient ground to reject the application of the petitioner and to refuse it the exemption it had applied for.

5. I have heard the learned counsel for the parties. The impugned order is annexure "F" and it reads as follows:

"I am directed to refer to your letter dated the 9th June, 1961, on the above-mentioned subject and to say that since all the conditions laid down in Notification No. 47 dated the 9th December, 1933, are not satisfied by the company, the Board regrets it is not possible to approve the company as an investment trust company for the purpose of super-tax exemption contained in the said Notification."

6. On the face of it, the order is not sustainable. There is a logical fallacy in using the word "all" with the negative verb, and saying that all the conditions are not satisfied, leaves the position extremely vague. The order does not indicate if any of the conditions has or has not been satisfied and if any of the conditions has not been satisfied, which one it is. The order again does not give any reasons in support of its finding and certainly does not show that the Board has applied its mind to the question at issue. Reliance on behalf of the petitioner has been placed on an authority of the Supreme Court in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, . In this authority; in paragraph 11, Shah J. (as he then was), speaking for the court, observed that:

"Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious; when judicial power is exercised by an authority normally performing executive or administrative functions, this court would require to be satisfied that the

decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency; the court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved, in a proceeding before the High Court or this court, has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

7. In this case, the Supreme Court was pleased to set aside the order of the Central Government passed upon revision.

8. Mr. Aiyar, counsel for the respondents, has cited a single Bench authority of this court in *Dalmia Cement (Bharat) Ltd. an Existing Co. Vs. The Union of India and Others*, (Civil Writ Petition No. 996 of 1971 decided on 11th February, 1972), This was a case where the party had asked the Income Tax Officer for permission to change the previous year u/s 3(4) of the Income Tax Act of 1961. In repelling the contention of the petitioners, the court observed that it was not possible to accept the contention that no reasons had been given as to why the permission had been refused and, Therefore, it must follow that the decision was arbitrary; the statute did not require recording of reasons by the Income Tax Officer, nor did the Act require that the reasons for refusal ought to have been communicated to the assessed ; the matter being in the discretion of the Income Tax Officer, it was not possible to accept the suggestion that the reasons why discretion had not been exercised in favor of the assessed must be put on record and the same should be communicated to the assessed. Section 3(4) of the Income Tax Act of 1961 provides that where the assessed has once exercised the option to have a particular previous year with respect to a particular source of income, then he shall not be entitled to vary the same except with the consent of the Income Tax Officer and upon such conditions as the Income Tax Officer may think fit to impose. In the absence of such consent, the assessed had no right to alter the previous year. In the context of the statutory provisions, the observations have been made by this court on which the learned counsel for the respondents has relied. They have, however, no application to the facts and circumstances of the instant case. In view of the observations of the Supreme Court extracted above, the Central Board of Revenue, in dealing with the statutory right of the petitioner to claim exemption on the grounds specified in the statutory notification, was bound to pass a speaking order and give reasons in support of their finding that the petitioner was not entitled to the exemption. The order of the Board is, Therefore, liable to be quashed on this ground alone.

9. Mr. Aiyar has attempted to support the order on the ground that the Director of Inspection had, after discussion with the representatives of the petitioner, thoroughly examined the matter and the Board had adopted his report. In my opinion, the statutory authority is required to apply its own mind to the case and its examination by any other officer and mechanical acceptance of his report by

the statutory authority does not satisfy the Rule of law. Again, the knowledge and, for that matter, conjectures of the petitioner in respect of the reasons, is no substitute for the formal incorporation of the reasons in the impugned order. The petitioner may be entirely mistaken in its assessment of the reasons and nobody will hear (sic) it to say what the reasons were which weighed with the statutory authorities in passing the order. See the observations in *Associated Tubewells Ltd. Vs. R.B. Gujarmal Modi*, . As pointed out by the Supreme Court in the above mentioned judgment, incorporation of the reasons is necessary to demonstrate that the authority has considered the matter according to law and that its order may be subjected to judicial review. The contention of Mr. Aiyar fails.

10. Coming to the second contention, the statutory notification may be quoted in extenso :

"The Governor-General in Council is pleased to exempt from super-tax--so much of the income of any investment trust company as is derived from dividends paid by any other company which has paid or will pay super-tax in respect of the profits out of which such dividends are paid.

Explanation.--For this purpose an Investment Trust Company means a company in respect of which the Governor-General in Council is satisfied that :--

(i) it is a company having for its principal business the acquisition and holding of investments in the stocks, shares, bonds, debentures or debenture-stocks of other companies or in securities issued by public authorities ;

(ii) it is not a company formed for the purpose of, or engaged in acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control;

(iii) it is a company deemed under Clause (b) of the Explanation to Sub-section (1) of Section 23A of the said Act, to be a company in which the public are substantially interested."

11. Although the impugned order does, as shown above, not indicate the grounds of rejection, it is apparent from the counter-affidavit filed in this court that conditions Nos. (i) and (iii) had been satisfied by the petitioner-company and it was pleaded by the respondents that condition No. (ii) had not been satisfied. In respect of condition No. (ii) it has been contended that the petitioner-company was engaged in enabling other persons to acquire or exercise control over other companies or groups of companies. In support of their contention, a detailed analysis has been made in paragraph 3 of the counter-affidavit supported by various annexures. For the sake of convenience, the said paragraph is reproduced below in material parts :

"That since the petitioner company was not willing to give the facts, information was obtained from some of the companies of Sahu Jain group. That on an analysis of the petitioner's shareholding in these companies it was found that the petitioner had substantial interest in them. The result of the analysis is as

under :

Name of the company Group's holding (%) in total No. of shares Bharat Nidhi's contribution to the group Date

Rohtas Industries 39.3% 27% 30-9-1961

Ashoka Cement Ltd. 34.97% 47.6% 30-9-1961

Bharat Collieries Ltd. 28.1% 58.5% 31-1-1961

S.K.G Sugar Ltd. 31.1% 46.1% 17-3-1961

New Central jute Mills 41.1% 28.8% 31-3-1961

Jaipur Udyog Ltd. 35.6% 39.3% 31-3-1960

Ashoka Marketing Ltd. 87.3% 32.7% 31-3-1961.

The details of the groups' holdings along with the holdings of Bharat Nidhi Ltd., the petitioner, in the above companies is separately enclosed and is marked as annexure "R-7". (a) That it was found that Sahu Jain Ltd. was appointed as managing agents of the four companies mentioned below with the help of the voting power of Bharat Nidhi Limited as under ;

Name of the company Date of meeting Total voting power Petitioners voting power including in Col. 3 % of petitioner's vote out of the total voters present

Rohtas Industries

26-3-60

25,08,000

685,471

27%

Bharat Collieries

15-2-60

96,960

54,300

67.4%

S.K.G.Sugar Company

4-3-60

63,755

50,000

78.4%

Jaipur Udyog Limited

29-11-55

14,94,700

3,00,000

20.1%

(b) When the extraordinary general meeting was held on 26th March, 1960, for appointment of Sahu Jain Ltd. as managing agents of Rohtas Industries Ltd., the petitioner company was represented by Shri S. L. Aggarwal who also represented Shri S. P. Jain, a prominent member of the Sahu Jain group."

12. Assuming the averments to be correct, their perusal shows that the Sahu Jain group of companies had acquired less than 51 per cent. of the shares in various companies mentioned in column 1 (excepting Ashoka Marketing Ltd.) and the shares of the petitioner-company which have been shown in column No. 3 are also less than 51 per cent. With the assistance of the counsel, I have worked out roughly the percentage of the shares held by the petitioner-company as against the total number of shares in those companies. They respectively work out at about 10.53, 16.45, 16.24, 14.25, 11.5, 13.65 and 28.54 per cent. The petitioner-company holding such shares could scarcely be said to be in a position to control the affairs of the other companies. The shares they held vary from about 11 per cent. to 28.5 per cent. which is apparently too small to have an effective and absolute control. Even by including the shares of the petitioner-company, the group did not acquire more than 50 per cent. shares in any of the companies (excepting Ashoka Marketing Ltd.). It is, Therefore, difficult to find that by investing in the shares of the companies, the petitioner had acquired or enabled other companies to acquire control over the aforesaid companies. In the case of Ashoka Marketing Ltd., the circumstances are slightly different. The total shares held by the Sahu group was 87.3 per cent., out of which 32.7 per cent. were the contribution of the petitioner. As the analysis shows that the number of the shares held by the petitioner in proportion to the total was 28.54 per cent. and the number of shares held by that group in the company (without the aid of the petitioner-company) was about 58.8 per cent. Therefore, the absolute control of the Sahu group was held even otherwise and the contribution of the petitioner-company did, Therefore, not make any material difference. The learned counsel for the respondents has failed to satisfy me as to how possibly the petitioner-company, by investing funds in the aforesaid companies, really exercised or helped other persons to acquire or exercise control over the companies unless and until it held 50 per cent. or more shares.

13. The other ground relied upon by the respondents mentioned in the counter-affidavit is that the acquisition of the shares by the petitioner-company enabled them to influence the voting power and helped the Sahu Jain Ltd. to be appointed managing agents of a company mentioned therein. Here again, there

is a fallacy. If any company or person holds shares in any other company, it is natural that it will have a right to vote which it may exercise and thus may ultimately influence the final result in a small or large measure, but that is far from the position that the petitioner-company was in a position to exercise effective control over the whole company. The total number of shares held by the petitioner-company has been analysed and mentioned in the earlier part of the judgment. The fact that at some particular meetings the other members were not present and the petitioner's few votes helped in securing the majority of the votes for a proposal is wholly immaterial. For example, in Bharat Collieries Limited, in a meeting held where the total voting power was 97,960 and the voting power of the petitioner-company was 54,300, the result yielded a majority of 67.4 per cent., which would obviously be in excess of the total voting power of the petitioner in Bharat Collieries. In another meeting it was 28.1 per cent. including 16.24 per cent. of the petitioner-company and the result yielded is that the shareholders other than the petitioner-company did exercise their votes in favor of their proposition and if the other shareholders voted likewise, the blame could scarcely rest with the petitioner-company or its holdings. The other grounds mentioned in the counter-affidavit in paragraphs (b), (c) and (d) only illustrate that the petitioner-company did participate in some meetings, and the denial of the petitioner-company in this respect was not correct. This may or may not be so, but it hardly establishes that the petitioner-company was in law or in fact in a position to acquire or exercise control over other companies by the mere fact of acquisition of some shares. May be that even the shareholders of a small holding will be able to persuade other shareholders to vote in favor of the proposition set up by them, but no fault can be found with this process of democratically determining the questions and enabling the persons to have an opportunity to influence the minds of other voters by the impact of mind on mind or by discussions or by setting an example. The wrong which has been mentioned in the statutory notification under consideration is only acquisition of such shares for an ulterior motive of acquiring or exercising control for enabling other persons to acquire or exercise such control. Honest investment even in one or more companies, without such ulterior motive, is not exceptionable. The allegation that the very fact of acquisition of some shares by the petitioner-company in the companies where the Sahu Jain group had a voice contravenes condition No. (ii) of the statutory notification, lands the problem in a realm of suspicion and conjectures and it does not have any basis in facts. No material has been placed on the file of this court to show that the company was in fact engaged in acquiring or exercising control over any other company or enabling other persons to so acquire control over other companies or groups of companies. The material placed in the counter-affidavit is not sufficient for the Central Board of Revenue to reasonably arrive at a finding that the company had not satisfied condition No. (ii). If the Board possesses any other reasons or any other material to support its view, it is not possible for me to determine it at this stage.

14. As a result, the writ petition is allowed and the order of the Central Board of Revenue dated 30th December, 1963, is quashed and the Board is directed to reconsider the matter according to law in the light of the observations made above. The writ petition is disposed of accordingly.

15. The parties will bear their respective costs.

Petition allowed.