(1980) 04 CAL CK 0027

In the Calcutta High Court

Case No : Income Tax Ref. No. 219 of 1977

COMMISSIONER OF INCOME TAX APPELLANT

Vs

PRAN PRASAD. RESPONDENT

Date of Decision : 28-04-1980

Acts Referred:

Citation : (1980) 19 CTR 32

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukherjee, J

Bench : Full Bench

Judgement

Sudhindra Mohan Guha, J. - In this reference u/s 256 (1) of the IT Act, 1961, at the instance of the CIT (Central-II), Calcutta, the following question was referred by the Tribunal for our opinion.

"Whether, on the facts and in the circumstances of the case, and on a correct interpretation of cl. 3(d) of the Agreements dated 27th December, 1966 between the assessee and M/s. F. W. Heligers & Co. (P) Ltd., and between the assessee and M/s. Bird & Co. (P) Ltd, the Tribunal is right in law in holding that the amount of commission receivable by the assessee from the aforesaid two companies was Rs. 18,975/- for the asst. yr. 1971-72."

In this case the assessee is an individual and the relevant asst. yr. is 1971-72. The assessee had shown Rs. 18,975/- as commission received from M/s. F. W. Heilgers & Co. (P) Ltd. During relevant period the assessee was the Managing Director of two companies, viz., M/s. Bird & Co. (P) Ltd. and M/s. F. W. Heilgers & Co. (P) Ltd. In the course of the assessment proceedings the ITO noticed that the assessee was entitled to salary and commission from aforesaid two companies in accordance with his agreements dated 27-12-66 with each of the two companies. A reference was made to cl. 3(d) of the agreement between the assessee and M/s. F. W. Heilgers & Co. (P) Ltd., and the said clause is reproduced below :

"The commission payable to the Director in the terms of this agreement shall not exceed such sum as equivalent to the percentage hereinbefore prescribed after taking into account remuneration by way of fees and commission received by the Director as a Director of any company (other than the Company and Bird & Co. (P) Ltd.) approved by the Company or as a trustee of any provident fund or other trust or for the holders of debentures created by any company (including the company and Bird & Co. (P) Ltd., and any Company approved by the Company) in so far the remuneration payable to such a trustee is expressed to be payable by the company which created such provident fund, superannuation fund or other trust or debentures."

According to the ITO, the aforesaid clause clearly laid down that the remuneration by way of fees etc. of any company (other than M/s. F. W. Heilgers & Co. (P) Ltd., and M/s. Bird & Co. (P) Ltd.) approved by M/s. F. W. Heilgers & Co. (P) Ltd. had only to be taken into account for the computation of the commission at 3/4 % in the computation for commission. He rejected the assessees interpretation of cl. 3(d) to the effect that the fees etc. from the companies in the Heligers group as well as excess fees etc. from Bird group of companies were deductible from the commission payable by those companies to the assessee. In these circumstances, the sum of Rs. 44,430/- representing excess of the fees account from Bird Group of Companies was added to Rs. 18,975/- in order to determine the amount of commission at Rs. 63,405/- which was included in the computation of the assessees total income for the relevant asst. yr.

2. The assessee came up in appeal before the AAC who agreed with interpretation of cl. 3(d) of the aforesaid agreement as made out by the assessees ld. representative. Hence, the amount of commission included in the relevant assessment was reduced by Rs. 44,430/-.

3. Being aggrieved, the department preferred an appeal before the Appl. Tribunal. After hearing both sides, the said appeal was dismissed with the following observations :

"After giving due consideration to the rival submissions with reference to the evidence led before us, we do not find any merits in the contentions of the Revenue. The commission of Rs. 18,976/- was determined by M/s. Bird & Co. (P) Ltd. and M/s. F. W. Heilgers & Co. (P) Ltd., as under :

Gross Comm.

Rec. etc.

Net Comm.

Bird & Co. (P) Ltd.

29,028/-

73,458/-

M/s. F. W. Heilgers & Co. (P) Ltd.

67,780/-

4,375/-

96,809/-

77,833/-

18,975/-

The said computation has been placed before us on behalf of the assessee in the course of hearing. The ITO reproduced the computation of commission of Rs. 18,975/-in his assessment order. The sum of Rs. 44,430/-represented the difference between Rs. 73,458/- and Rs. 29,028/- being fees etc. received from various companies under the management of M/s. Bird & Co.(P) Ltd. and Rs. 29,028/- as gross commission receivable @ 2 1/4% of the net profit of M/s. Bird & Co. (P) Ltd. However the bone of dispute lies in the interpretation of cl. 3(d) of the agreement dated 27-2-66 between the assessee and M/s. F. W. Heilgers & Co. (P) Ltd., and particularly on the issue as to whether the expression "approved by the company" appearing in the said clause refers to both the companies in the said clause refers to both the companies i.e. M/s. Bird & Co. (P) Ltd., and M/s. F. W. Heilgers & Co. (P) Ltd. A reference to the preamble to the Agreement dated 27-12-66 between the assessee and M/s. F. W. Heilgers & Co. (P) Ltd., would show that the expression "the company" appearing in the Agreement would refer to M/s. F. W. Heilgers & Co. (P) Ltd., would show that the expression "the company" appearing in the Agreement would refer to M/s. F. W. Heilgers & Co. (P) Ltd., in the Agreement. A similar clause with similar expression also appeared in the Agreement dated 27-12-66 between M/s. Bird & Co. (P) Ltd., and the assessee. It is an admitted position that no list of companies had been drawn out either by M/s. Bird & Co. (P) Ltd. or by M/s. F. W. Heilgers & Co. (P) Ltd., in accordance with cl. 3(d) of the respective Agreement. The assessee placed before the ITO two letters each dated 29-5-74 addressed by the aforesaid two companies. The ITO partly accepted the contents of these letters because even in the absence of any list of approved companies, he agreed with the computation of commission so far as the deductibility of fees etc. received from the companies under the management of M/s. F. W. Heilgers & Co. (P) Ltd., was concerned. This indicates clearly that the assessees interpretation of cl. 3(d) was partially acceptable to the ITO. But he refused to extend his acceptance in respect of the companies falling under the management of M/s. Bird & Co. (P) Ltd. From the letter dated 29-5-74 addressed by M/s. Bird & Co. (P) Ltd., to the ITO we find that any company in which a Director of this Company became a Director with the knowledge of this Companys Board was taken to be an Approved Company. The ITO had simply rejected this contention without bringing on record any evidence to the contrary. M/s. F. W. Heilgers & Co. (P) Ltd., had also written to the ITO that according to their interpretation of the Agreement and the practice adopted by them, fees etc. from companies under their management as also excess of fees etc. from the companies falling under the management of M/s. Bird & Co. (P) Ltd., were deductible from the commission payable to the assessee. This was also simply rejected by the ITO, without bringing any evidence to the contrary. But two companies were liable to pay commission to the assessee and they joined hands to interpret the provisions of their respective agreement in a manner which was beneficial to them and impliedly they set up in practice of deducting fees etc. received from companies under the respective management from the commission payable to the assessee at the rate of 2 1/4% of the agreements had not only specified an outer limit of the commission payable to the assessee but the said provision also goes to determine the exact sum of commission payable by those companies to the assessee. Considering all these facts and circumstances of the case, we do not find any reason to interfere with the AACs decision in the matter".

4. Copies of letter dated 29-5-74 addressed by M/s. F. W. Heilgers & Co. (P) Ltd., to the ITO, of the letter dated 29-5-74 addressed by M/s. Bird & Co. (P) Ltd. to the ITO, and of the Tribunals order marked respectively annexure C-1, C-2 and C-3 form part of the statement of case.

5. The findings of facts by the Appl. Tribunal have not been challenged. We are of the view that the Tribunal was perfectly justified in affirming the order of the AAC. In this view of the matter we answer the question in the affirmative and in favour of the assessee.

There will be no order as to costs.

Sabyasachi Mukherjee, J. - I agree.