
(1981) 12 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No"s. 2546 and 2547 of 1973

Dewan Gian Chand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 4

Citation : (1982) 9 TAXMAN 243

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : Bhagirath Dass, Ramesh Kumar and B.B. Aggarwal, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

M.M. Punchhi, J.—This judgment will dispose of Civil Writ Petitions Nos. 2546 and 2547 of 1973, as facts giving rise thereto are similar and can conveniently be depicted as one set. Dewan Gian Chand and Dewan Surinder Kumar, the respective petitioners, were directors of Krishna Roller Flour Mills Private Ltd. (hereinafter called "the company") up to 31st March, 1959, on which date the said company went into voluntary liquidation. Both the petitioners owned a truck each which they had given to the said company on hire and the hire charges were Rs. 2,000 per month. It stands undisputed that the period of month is to be computed from the first of every calendar month ending on the last day of the month. After the period ending 31st March, 1958, the company in one of its meetings passed a resolution on 30th April, 1958, which may with benefit be reproduced below:

Resolved unanimously that in consideration of the heavy loss sustained by the company for the year ended 31-3-1958, offers of the following directors for forgoing the benefits enjoyed during the said year be and are hereby accepted. Relevant entries may, therefore, be given effect to in the books of account relating to the said year on the 31st March, 1958; (a) Shri Dewan Radha

Kishan : Offer of acceptance of reduced remuneration of Rs. 1,000 instead of Rs. 2,000 per month, (b) Shri Dewan Gian Chand : Offer of forgoing income of his truck No. 2031 PNL as per agreement-Rs. 24,000. (c) Shri Diwan Surinder Kumar : Offer of forgoing income of his truck No. FNL 2032 as per agreement-Rs. 24,000.

2. Resolved unanimously that in view of the substantial offers made by Dewan Gian Chand and Dewan Surinder Kumar, the board of directors hereby sanction the actual expenditure done by the said directors for running their individual trucks mentioned above and the same may be charged to the expenses of the company giving effect to it under the date 31-3-1958.

2. Both the petitioners while submitting returns under the Indian income tax Act, 1922, for the assessment year 1959-60 did not include in their income, which would otherwise have fallen due to them on accrual basis of Rs. 2,000 per mensem, for the months of April, 1958, till March, 1959. Rather their account books were totally silent about these accruals despite the fact that the petitioners were following the mercantile system of accounting. At the time of the framing of the respective assessments, their counsel was confronted by the TTO with such an omission and the said counsel readily gave in that the respective petitioners be so assessed to the accrued income subject to their right of deduction for expenses and depreciation. On that basis, two respective assessment orders were framed against the petitioners, vide annex. A. They unsuccessfully appealed before the AAC where the additions were affirmed, vide annex. B. Their respective revision petitions before the Commissioner too failed. They then approached this court under art. 226 of the Constitution since the Commissioner had not afforded any opportunity to the petitioners of being heard. Those writ petitions, being C.W.P. Nos. 3006 and 3007 of 1965, were allowed by a single judge of this court, vide annex. C quashing the orders of the Commissioner. The matters were remitted to the Commissioner for rehearing. This time, after hearing the respective petitioners, the Commissioner again rejected the revision petitions, vide orders annex. D, respectively, to both the writ petitions which are now impugned. The basis of the order is common.

3. The impugned order of the Commissioner is grounded on three facts-(1) that the resolution aforementioned pertains only to the period ending March 31, 1958, and can have no applicability to the period ending March 31, 1959; (2) that the resolution appears to be collusive; and (3) that there was no fresh agreement or resolution to the contrary replacing the original agreement executed between the parties on September 13, 1956, on the strength of which the income accrued to the petitioners.

4. The facts as alleged by the petitioners are to the effect that the resolution was prospective in operation and by conduct of parties was treated to be such. It has been highlighted that in the account books of the company, no debit was made on their expenses account with regard to the hire charges payable for the use of the trucks. And similarly those charges were not credited to the accounts of the

petitioners as hire accrued to them. As a sequel to that conduct, it has been asserted that neither of the petitioners in their respective returns returned the said accruals as part of their income as in fact none had accrued to them and rather the accrual had appropriately been forestalled. These premises are seriously challenged by the Revenue on the interpretation which has been put to the resolution as also on the assumption that the resolution is collusive in nature and without any adequate step having been taken by the petitioners to forestall the accrual.

5. The view of the Commissioner as being the final court of fact is normally sacrosanct for this court, more so in a petition under arts. 226/227 of the Constitution of India, though this court is not debarred from going into the questions of fact if its conscience is otherwise pricked. If the court finds that there is non-application of the mind or there is a perfunctory discharge of the duty of interpretation, then as a corrective the court can step in, point out the error and leave the mending process to the quasi-judicial authority whose order is under challenge before it. And, in proper cases, the court can undertake the process by itself and complete the mending in exercise of its powers, without much ado.

6. A cursory look at the resolution points out two glaring facts-(a) that out of the three paragraphs which embody the resolution, the first and the third paragraph undoubtedly pertain to the period ending March 31, 1958, wherein the benefits already accrued to the directors heretofore and therein mentioned were forgone but simultaneously a compensatory measure was adopted in sanctioning the actual expenditure incurred by the directors for running their individual trucks to be charged by them as expenses from the company up till March 31, 1958; and (b) that in the second paragraph, out of the directors so mentioned, one of them had reduced the remuneration from Rs. 2,000 per mensem to Rs. 1,000 whereas the remaining two had forgone the income of their respective trucks altogether. It obviously means that even the director who had forgone the entire accrued income for the period ending March 31, 1958, had in future only forgone half of it and not the full, whereas the remaining directors had, for future, forgone the entire. On this analysis, the conclusion, as it appears to me, is inescapable that the second paragraph (to be precise, 1A) was meant to operate from April 30, 1958, onwards. It would be worthy of recalling that concededly the accrual was from month to month and on April 30, 1958, even the accrual for the month of April had not taken place. It had to take place on the 1st of May, 1958. That date was adequately forestalled and the event was not allowed to occur. That precisely appears to be the reason as to why for the period commencing from April 1, 1958, to March 31, 1959, the petitioners did not return any income on the said trucks. Thus, it appears to me that these glaring facts escaped the notice of the Commissioner and with a little extra scrutiny, they could have easily been deciphered. That process in the peculiar circumstances of the case had now to be done at this court's end, all the more so when once the matter was remitted to him for reconsideration, and it would now be futile to send it back to him for the

purpose.

7. With regard to the finding by the Commissioner that the resolution was collusive, there seems to be no basis for such a deduction. No facts are forthcoming from the orders of the officers of the Revenue; be it the ITO, the AAC or the Commissioner to suggest that the resolution was an act of fraud or deceit. It is a sin to evade tax but the same cannot be said when one lawfully can avoid it. It requires two or more than two people to enter into a contract and an equal number to get out of it or to modify it. It cannot be said that what is good in the first instance is positively bad in the second instance. By the original agreement of September 13, 1956, the petitioners had respectively agreed to accept Rs. 2,000 per mensem as hire charges of the truck without any collusiveness involved in it, and in the same manner could forego the accruing income well in hand without any collusiveness involved in it. Thus, it appears to me that the stray sentence appearing in the impugned order was not based on any factual data but was reflective of an unfounded suspicion.

8. With regard to the third contention that no fresh agreement or resolution in deviation or substitution of the original agreement dated September 13, 1956, was passed by the petitioners, all that can be said would be repetitive as it stands dealt with earlier at some length. Nothing needs to be added thereto.

9. Before parting with the judgment, I must put on record an amusing factor, that, surprisingly, the company did not in its account books-let, the accrual of hire charges to go into the accounts of the petitioners and thus it is not understandable as to how accrual could visit the petitioners. I am conscious that the scope of total income u/s 4 of the Act is either accrual of income, or deemed accrual of the said income. I am also cognizant, on the strength of CIT v. Shoorji Vallabhdas and Co. (1962) 46 ITR 144 (SC), that the substance of the matter, despite being accrual, is the income, and if income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income" which does not materialise. I am also aware on the strength of Kedarnath Jute Mfg. Co. Ltd. v. CIT (1971) 82 ITR 363 (SC), that entries in the books of account, if mistakenly not made, would not take the tax outside the ambit of law, if it is otherwise due. All these principles would come to apply in a set of facts. And the set of facts, as emerged from the present controversy, are that no income accrued to the petitioners. For the foregoing reasons, there is merit in these petitions which deserve acceptance. Accordingly allowing them, I quash the respective impugned orders of the Commissioner, but with no order as to costs.