
(1968) 03 CAL CK 0023
In the Calcutta High Court
Case No : Suit No. 1505 of 1967

J.K. Industries Pvt. Ltd.

APPELLANT

Vs

Ganges Manufacturing Co. Ltd.

RESPONDENT

Date of Decision : 08-03-1968

Acts Referred:

Companies Act, 1956 — Section 349(4)(1)

Citation : (1968) 38 CompCas 603 : 72 CWN 618

Hon'ble Judges : Sankar Prasad Mitra, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri and B.N. Sen, for the Appellant;

Judgement

Sankar Prasad Mitra, J.—The plaintiff in this suit is a public limited company. The affairs of the defendant are managed by the plaintiff as its managing agents on terms and conditions contained in the managing agency agreement dated October 31, 1961. It is alleged that the plaintiff is entitled to get remuneration from the defendants in accordance with the scale of commission mentioned in the agreement on the net profits of the defendant to be computed in the manner laid down under Sections 348 and 350 of the Companies Act, 1956, subject to a minimum remuneration of Rs. 50,000. The plaintiff states that according to computations in the manner laid down in the said provisions of the Companies Act, the profit of the defendant for the year ending on March 31, 1966 was Rs. 7,48,362. The defendant, according to the plaintiff, in terms of the managing agency agreement is liable to pay to the plaintiff a remuneration for the said year amounting to Rs. 65,551. The defendant paid to the plaintiff the sum of Rs. 50,000 only being the minimum remuneration and did not pay the balance of Rs. 15,551. In this suit the plaintiff claims a decree for the said sum of Rs. 15,551 and other reliefs.

2. The defence is that the statutory auditors of the defendant in their report to the shareholders for the year in question observed that in computing the said net profit of Rs. 7,48,462 a further sum of Rs. 9,12,146 being the previous year's

loss should be deducted. The defendant referred this matter for opinion to the Company Law Board and the Board by its letter dated the 27th April, 1967, stated that the observation of the said auditors were justified. In these premises, it is alleged in the written statement that the plaintiff was entitled to the minimum remuneration of Rs. 50,000 only, which had been paid and cannot claim the further sum of Rs. 15,551.

On the basis of the pleadings, the following issues were raised.

(1) Is the defendant entitled to deduct in computing the net profit for purposes of the managing agent's remuneration for the year ended March 31, 1966, the sum of Rs. 9,13,148 being the previous year's loss ?

(2) To what relief, if any, is the plaintiff entitled ?

To answer the issue No. I my attention was drawn to Clause (1) of Section 349(4) of the Companies Act, 1956. The provisions in the said clause were substantially modified by the Amendment Act LXV of 1960. We should, therefore, look into the original provisions and then consider the amendments effected.

Now Section 349 deals with determination of net profits for the purpose of computing remuneration of managing agents. Section 349(4) as it originally stood ran thus :

" 349. (4) In making the computations aforesaid, the following sums shall be deducted :--

(1) the loss (not including any loss of a capital nature) incurred in any year which begins at or after the commencement of this Act, in so far as it has not been taken into account in arriving at the net profits of that year or any subsequent year preceding the year in respect of which the net profits have to be ascertained. "

After the Amendment Act of 1960 these provisions run thus :

" In making the computation aforesaid, the following sums shall be deducted :--

(1) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained."

3. It appears that the language of Section 349(4)(1) has been subsequently altered by the Amendment Act of 1960 and the Judicial Committee has said that when an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately : D.R. Fraser and Company Limited v. Minister of National Revenue, (1) [1949] A.C. 24, 33.

4. I am not called upon in this suit to decide whether the previous year's loss could be taken into consideration u/s 349(4)(1) as it originally stood. I have to

decide, however, if deduction of previous year's loss is permissible under the new provisions of Section 349(4)(1).

5. It is significant that the Legislature while amending this provision substituted " the excess of expenditure over income in any year " for " the loss (not including any loss of a capital nature) incurred in any year ". For the sake of curiosity I looked into the Statement of Objects and Reasons for the Amendment Act (LXV of 1960). It is stated that the object of the Act was to remove the defects and deficiencies in the working of the Companies Act of 1956, and ensure better fulfilment of the purpose underlying that Act.

6. Now, if we examine closely the new provisions in Section 349(4)(1), we find that the deduction that is intended is not a deduction of any kind of loss but a deduction of the excess of expenditure over income ; this excess is also related to the current year's working and accounts and a preceding year's accounts may be taken into consideration only in so far as the excess has not been deducted in any subsequent year. In other words, if there is an unadjusted excess of a previous year, Section 349(4)(1) is attracted to it. But when there is no such unadjusted excess this clause has no application. And in this event, it is common case that in the relevant year there was no unadjusted " excess ".

7. My construction of Section 349(4)(1) can be supported from another point of view : in this clause it is expressly provided that deduction is permissible only of the excess which has not been deducted in any subsequent year preceding the year of which the net profits are to be determined. This express enactment, in my view, shuts the door to further implications (expression unius est exclusio alterius) and in the computation of net profits the previous year's losses, on the facts of this case, cannot be taken into account. It is unnecessary for us to discuss the argument of learned counsel for the defendant because the view expressed above was not seriously disputed by him. He even said that he was finding it difficult to support the written statement. He has stated further that it is possible to argue that Section 349 makes a distinction between "property" and "trading" and the provisions indicate that the managing agents are being remunerated for the management of the business for a particular period, their remuneration depends on good or bad management, and the inclusion of the previous losses (for which the managing agents concerned may not at all be responsible) in assessment of the managing agent's remuneration would be a strong deterrent to efficient management. I am generally inclined to agree with him.

8. In the result, I answer issue No. 1 in the negative.

9. There will, therefore, be a decree for Rs. 15,551, interest on judgment (sic) at the rate of 6% per annum and costs.