

A COMMISSIONER OF INCOME TAX, GUJARAT-I
v
NAVNIT LAL SAKAR LAL ETC.

NOVEMBER 15, 2000

B [S.P. BHARUCHA AND D.P. MOHAPATRA, JJ.]

C *Income Tax Act, 1961—Section 17—Commission payable to employee—
Assessee expended in purchase of Deferred Annuity Policy from life Insurance
Corporation by the employer for the benefit of assessee—Whether includible
in the hands of assessee as income chargeable under the head Salaries—
Held, yes.*

D **Assessee-respondents are Managing Directors of employer-company.
Under the terms of agreement, they are entitled to remuneration. Later, a
resolution was passed by the Board of Directors of the company to expend the
commission payable to the assesseees in purchase of Deferred Annuity Policies
from Life Insurance Corporation on the life of the concerned assesseees. The
Income Tax Officer included the amounts expended under the head Salaries
in their assessments for the reason that the payment was made out of the
remuneration payable to the assesseees. In appeal, the Appellate Assistant
E Commissioner agreed with the Income Tax Officer while the Tribunal and
the High Court accepted the contention of the assesseees. Hence these appeals
by the Revenue.**

F **The assesseees contended that the amount expended for purchase of
annuities did not form part of remuneration payable to them as per the
agreement entered into and, therefore, they are not includible as part of
Income from salary. The assesseees further contended that the resolutions
must be so read as to deny the obligation to pay to the assesseees that particular
part of their remuneration utilised in purchase of policies and, therefore, there
was no accrual to them.**

G **Allowing the appeals, the Court**

H **HELD: The Resolutions set out the format of Resolutions to be passed
by the Extraordinary General Meetings of the Mills; they are exactly the same
terms. The resolutions do not refer to the clauses of the Agreements. They
do not say that the Managing Directors shall not be paid any remuneration
or any part of such remuneration. In fact, they refer specifically to the**

“amount of commission payable to each of the Managing Directors” and resolve that that commission payable to each of the Managing Directors shall be “expended in the purchase of annuity policies on the life of the concerned managing director”. It is impossible, in the circumstances, to conclude that the amounts of the commission that were expended to purchase the policies had been diverted and had not accrued to the Managing Directors. A proper construction would be that such commission had accrued to them at the end of the relevant financial years and that thereafter the sums thereof were resolved to be spent to purchase annuity policies for each of them. [657-C-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7723 of 1997.

From the Judgment and Order dated 10.7.96 of the Gujarat High Court in M.C.A. No. 17 of 1996.

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Civil Appeal Nos. 7724-26 of 1997.

From the Judgment and Order dated 13.7.93 of the Gujarat High Court in I.T.R. Nos. 445/80, 212 and 213 of 1982.

Ranbir Chandra, Ms. Sushma Suri and Shail Kumar Dwivedi for the Appellant.

S.K. Dholakia, M.N. Shroff and Chirag M. Shroff for the Respondents.

The Judgment of the Court was delivered by

BHARUCHA, J. We are concerned with the Assessment Years 1973-74 and 1974-75 in these appeals. Common questions of law arise. They read:

“1. Whether the amount of Rs. 26,221 being 1/3rd of the sum of Rs. 78,663 paid to Life Insurance Corporation by Sarangpur Mills for purchase of Deferred Annuity Policy is includible in the hands of the assessee as income chargeable under the head Salaries?

2. Whether on the facts, circumstances and the evidence on record, the Income-tax Appellate Tribunal was right in law in coming to the conclusion that the amount of Rs. 26,221 utilised by Sarangpur Mills towards purchase of Single Premium for obtaining the Deferred Annuity Policy did not form part of remuneration payable to the assessee for the calendar year 1972 relevant to the assessment year 1973-74 in question?”

The assessee-respondents are Managing Directors of a public limited

A Company called Sarangpur Mills Limited. They had entered into agreements with the Mills. Under the terms thereof they were, *inter alia*, entitled to receive remuneration from the company. The relevant clause in that behalf was clause (6). Clause 6 (d) permitted the company to pay to the Managing Directors additional remuneration. Clause 6(e) reads thus:

B “(e) Notwithstanding anything to the contrary, the Directors may in respect of any year resolve that the Managing Director shall not be paid any remuneration mentioned in sub-clause (a) or (b) or the perquisites mentioned in the sub-clause (a) hereof for that year or that he shall be paid such lesser remuneration or benefits than these mentioned in sub-clause (a) and/or sub-clause (b) hereof in respect of that year as they may think fit in their absolute discretion in respect of such year and the Managing Director shall refund any sum as may be necessary as a consequence of such resolution of the Directors from any sum on account of remuneration for that year drawn by him during the year.”

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D On 12th April, 1973 a resolution was passed by the Board of Directors of the Mills relating to the Financial Year 1972, which in the case of the Mills ended on 31st December, 1972. The resolution reads thus :

“EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE SARANGPUR COTTON MFG. CO. LTD. HELD ON 12.4.73.

E Resolution No. 2

F “RESOLVED that subject to the approval of the Company in General Meeting to be obtained by way of abundant safety and caution, or the financial year 1972, the amount of commission payable to each of the Managing Directors Shri Navnitlal Sakarlal, Shri Nandkishore Sakarlal and Shri Saurabh Navnitlal under the respective Managing Director Agreements executed with each of them should be expended in the purchase of single premium deferred Annuity Policies from the Life Insurance Corporation of India on the life of the concerned Managing Director so as to provide for the Payment of annuity to each of them for his life and upon his death to his dependants, such payments to commence from the date of his retirement as Managing Directors of the Company or such other date as may be mutually agreed upon between the Company and the concerned Managing Director or from the date of his death whichever shall occur first provided always that no benefit shall occur to any of the said Managing Directors or his dependants as the case may be nor shall any of the

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said Managing Director or his dependants be entitled to any benefit or have any right, lien or interest in any of the aforesaid Policies until the date of the first payment of annuity and the Balance Sheet and Profit & Loss Account of the Company for the Year 1972 be prepared accordingly. FURTHER RESOLVED that the following Resolution which is hereby approved and proposed to be passed as an Ordinary Resolution at an Extra Ordinary General Meeting of the members of the Company to be convened for the purpose and the Secretary is authorised to send the relevant notice and explanatory statement to the member of the Company.”

ORDINARY RESOLUTION

“RESOLVED that for the sake of safety and caution the Company hereby approves and confirms that the amount of commission on the net profits payable by the Company to each of the Managing Director Shri Navnitlal Sakarlal, Shri Nandkishore Sakarlal and Shri Saurabhbhai Navnitlal in accordance with provisions of law, for the financial year 1972, be expended by the Company for such year towards the purchase of single premium deferred payment Annuity Policies from the Life Insurance Corporation of Managing Directors concerned so as to provide for the payment of annuity to each of them for his life and upon his death to his dependants, such payments to commence from the date of his retirement from the Company as a Managing Director or such other date as may be mutually agreed upon between the Company and the concerned Managing Director, it being clarified that the re-appointment of a Managing Director on the expiry of his present tenure of office will not amount to his having retired as Managing Director or having ceased to be a Managing Director of the Company or from the date of his death whichever shall occur first provided always that no benefit shall occur to any of the said Managing Director or his dependants as the case may be nor shall any one of the said Managing Directors or his dependants be entitled to any benefit or have any right, lien or interest in the aforesaid Annuity Policies until the date of the first payment of the annuity.

Directors Shri Navnitlal Sakarlal, Shri Nand Kishore and Shri Saurabhbhai Navnitlal did not take part in the discussions nor did they vote on the resolution.

Certified true.
Chairman”.

A There were similar proceedings for the subsequent assessment years in regard to the Managing Directors. The assessee did not participate in the deliberations of the Board in respect of the resolutions but they did not challenge the same and their conduct shows their acquiescence therein.

B It is convenient now to refer, as illustrative, to the case of the assessee, Nandkishore.

C Nandkishore claimed that the amount of Rs. 26,221/-, that had been expended by the Mills for the purchase of a referred annuity policy for him, was not includible in his hands as a part of income from salary because it did not form part of the remuneration that was payable to him. The Income Tax Officer rejected the contention since, in his view, the payment for the purchase was made out of the remuneration that was due to Nandkishore. In appeal, the Appellate Assistant Commissioner agreed with the Income Tax Officer. Nandkishore carried the matter in appeal to the Income Tax Appellate Tribunal. The Tribunal accepted the contention on behalf of Nandkishore that if clause 6(e) of the Agreement and the Resolution of the Board were read in the proper light, it was clear that a portion of the remuneration which was utilised for the purchase of the Deferred Annuity Policy "could not be said to have accrued to the Managing Director but was diverted away before it reached the assessee. Therefore, the amount utilised for purchase of deferred annuity policy by the Sarangpur Mills was not assessable as remuneration in the hands of the assessee under the head Income from salaries."

F Arising out of the order of the Tribunal, at the behest of the Revenue, the two questions afore-stated were referred to the High Court of Gujarat. The High Court affirmed the decision of the Tribunal. In its view, the Resolutions made it quite clear that the intention was not to create any benefits either in favour of the assessee or their dependants or to create any right, lien or interest in the policy until the date of the first payment of annuity. The payments of the annuity were to commence from the date of retirement of the assessee or from the date of their death, whichever occurred earlier. Therefore, even though the deferred annuity policies which were taken were Single Premium Deferred Annuity Policies and even though they were taken out for the benefit of the assessee and in lieu of commissions payable to them, it was clearly intended by the Board that the assessee should not have any vested right in the policies. Upon this basis, it was held that the passing of the Resolutions by the Board denied the assessee the remuneration which could have become payable in those years. The intention was not to create any present right in favour of the assessee. Thus, the effect of the transaction

was to postpone accrual and receipt of income. A

We have heard learned counsel and we are inclined to take a view different from that taken by the Tribunal and the High Court.

What is most relevant is a correct interpretation of the Resolutions of Board. Shorn of unnecessary words, they resolved, for the financial years in question, that the amount of commission payable to each of the Managing Directors under the respective Managing Director Agreements executed with each of them should be expended for the purchase of single premium deferred annuity policies on the lives of the Managing Director. The Resolutions set out the format of Resolutions to be passed by the Extraordinary General Meetings of the Mills; they are in exactly the same terms. The Resolutions do not refer to clause 6(e) of the Agreements. They do not say that the Managing Directors shall not be paid any remuneration or any part of such remuneration. In fact, they refer specifically to "the amount of commission payable to each of the Managing Directors" and resolve that that commission payable to each of the Managing Directors shall be "expended in the purchase of annuity policies on the life of the concerned managing director." It is impossible, in the circumstances, to conclude that the amounts of the commission that were expended to purchase the policies had been diverted and had not accrued to the Managing Directors. A proper construction would be that such commission had accrued to them at the end of the relevant financial years and that thereafter the sums thereof were resolved to be spent to purchase annuity policies for each of them, with which resolutions, as the record shows, they concurred. B C D E

It was submitted by learned counsel for the assesseees that the Resolutions must be so read as to mean that the Board employed clause 6(e) of the Agreements to deny the obligation to pay to the assesseees the particular part of their remuneration utilised in the purchase of the annuity policies and that, therefore, there was no accrual thereof to them. On the construction that we have placed on the Resolution, which appears to be the only possible construction, the submission on behalf of the assesseees has to be rejected. F

In the circumstances, the judgment and order under challenge are set aside. The first question is answered in the affirmative and in favour of the Revenue. The second question is answered in the negative and in favour of the Revenue. The civil appeals are allowed with costs. G

B.S.

Appeals allowed. H