A **M/S. BASTI SUGAR MILLS CO. LTD. AND ORS.**

v.

COMMISSIONER OF INCOME-TAX, DELHI & RAJASTHAN

September 24, 1971

B [C. A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.]

Income-tax Act, 1922, *s.* 66—*Reference to High Court—Tribunal's findings of fact whether arrived at without consideration of materials on record—Tribunal need not refer in its order to insignificant evidence.*

The three appellant companies were controlled by G. Another company which was the selling agent of the three appellant companies was C also controlled by G. The question in Income-tax proceedings was whether the commission paid to the selling agent was a deductible item. In the original assessments for 1947-48 in the cases of the three appellants the Income-tax Officer allowed the deduction but later he issued notices under s. 34 of the Income-tax Act, 1922 on the footing that in the circumstances of the case the commission was not allowable since the selling agent rendered no service whatsoever so as to earn any commission. In making the assessment under s. 34 it was so held by him. In the appeals D filed by the Appellant companies, the Appellate Assistant Commissioner gave some relief by allowing deduction in respect of sums paid directly as commission to some sub-agents, but on the main question relating to the amounts paid to the selling agent he agreed with the Income-tax Officer. The contention that action could not be taken under s. 34(1)(c) was also rejected. The Appellate Tribunal took the same view. The appellants then asked the Tribunal to refer four questions to the High Court under s. 66(1) of the Act. The Tribunal rejected the applications. The E High Court under s. 66(2) directs the Tribunal to refer the fourth question relating to the applicability of s. 34 but held the other three questions to be quesetion of fact. In appeal before this Court against the order of the High Court it was contended that the Tribunal had erred in not taking into account the evidence of two witnesses produced by the appellants, as also two receipts showing payments made to some sub-agents by the selling agent. The High Court's view that it is not every piece of F evidence available on record that must be dealt with by the Tribunal was questioned.

HELD : The criticism that the evidence of the two witnesses produced by the appellants was not considered as such by the Tribunal was only technically correct. The Tribunal had not referred to witness R by name but had referred to the relationship between the selling agent and the firm of which R was a proprietor, as well as to the effect of a telegram G which was claimed to show privity of contract between the selling agent and R's firm. Therefore it could not be said that the Tribunal had not considered R's evidence. As to the other witness S, his evidence had only to be read to be rejected; the Tribunal had moreover given reasons for not acting on his evidence. The two receipts relied on by the appellants lost all significance after the rejection of the evidence of the two aforesaid witnesses. Obviously in view of the other evidence against the H appellants the Tribunal did not think it worthwhile to refer to the two receipts. [893 H; 894 E; 895 C]

It must accordingly be held that the finding of Tribunal was based on material on the record and that the finding was such which could on the

evidence be reasonably reached. The High Court was hence justified in holding that the first three questions were questions of fact and in declining to give a direction to the Tribunal to refer those questions. [895 G]

Udhavdas Kewalram v. *C.I.T., Bombay City*, [1967] 66 I.T.R. 462, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1364 to 1373 of 1967.

Appeals by special leave from the judgment and order dated March 14, 1967 of the Delhi High Court in Income-tax Cases Nos. 25-D of 1965 etc.

V. S. Desai, A. K. Verma and *B. D. Shingari*, for the appellants (in all the appeals).

R. H. Dhebar, B. B. Ahuja and *R. N. Sachthey*, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

Vaidialingam, J. These ten appeals, by special leave, are directed against the common judgment and order dated March 14, 1967 of the Delhi High Court declining to direct the Income-tax Appellate Tribunal, Delhi Bench, to refer along with the statement of case, questions Nos. 1 to 3 enumerated in their applications.

The reference was asked for by the three different Companies by whom the above appeals are filed in respect of Income-tax Case No. 20-D of 1965 connected with I.T.C. Nos. 21-D to 29-D of 1965 arising from a common order of the Income-tax Appellate Tribunal, Delhi Bench. As the facts in the case and questions of law sought to be referred were common, the following tabular statement will give an idea of the appeals filed by the three Companies, who are the appellants together with the particulars regarding the years of assessment and Income-tax case numbers :

C.A. No.	I.T.C. No.	Assessment year	Name of Company
1364/67	28-D/65	1952-53	Basti Sugar Mills
1365/67	27-D/65	1950-51	,,
1366/67	23-D/65	1948-49	,,
1367/67	21-D/65	1951-52	,,
1368/67	20-D/65	1950-51	Nawabganj Sugar Mills
1369/67	25-D/65	1948-49	,,
1370/67	26-D/65	1951-52	,,
1371/67	24-D/65	1949-50	,,
1372/67	29-D/65	1952-53	Punjab Sugar Mill
1373/67	22-D/65	1955-56	,,

A The Basti Sugar Mills Company Limited, which is the appellant in Civil Appeals Nos. 1364 to 1367 owned two sugar factories at Basti and Walthargani. It is their case that for the purpose of selling their output of sugar they appointed Selling agents at a commission of -0-12-0% of all sales of sugar effected through the agents. Their Selling agent prior to 1944 was M/s Gursarandas B Kapur & Sons at Kanpur. On July 26, 1944 by a resolution of the Board of Directors, the Company appointed M/s Gokul Nagar Sugar Mills Co. Ltd. as the Selling agents at -0-12-0% commission. In the course of the original assessment for the years 1947-48, which was completed on March 10, 1950, the Income-tax Officer called upon the said Company to furnish details of the C items of work done by M/s Gokul Nagar Sugar Mills Co. Ltd. as Selling agents. The Company informed the Income-tax Officer that the said Selling agents have been doing the work that they were expected to do and they in turn had appointed sub-agents on commission basis for effecting sales at various places. The Income-tax Officer accepted this explanation and allowed, by order D dated June 21, 1949 a deduction for Rs. 47,921/- paid as commission to the selling agents. But when the assessment proceedings for the assessment year 1952-53 in respect of Nawabganj Sugar Mills Co. Ltd. was being dealt with, the Income-tax Officer took the view that the selling commission should not be allowed and accordingly issued a notice dated March 29, 1954, under s. 34(1)(a) of the Income-tax Act, 1922 (hereinafter to be E referred as the Act). The Company filed a return under protest.

Regarding Nawabganj Sugar Mills Company Ltd., which is appellant in Civil Appeals Nos. 1368-1371 of 1967 the facts are also more or less identical except that for the assessment year 1948-49, the Income-tax Officer by his order dated February 28, F 1951 allowed a deduction of Rs. 60,980/- as the amount paid as commission to the selling agents M/s Gokul Nagar Sugar Mills Co. Ltd. For the assessment year 1949-50 also the commission paid to the said selling agent was allowed as deduction. But for the assessment year 1952-53 the Income-tax Officer issued a notice dated January 19, 1957 requiring the said Company to explain G why the amount of commission claimed to have been paid by them to the selling agents should not be disallowed. .

The facts relating to M/s Punjab Sugar Mills Company Ltd., which is the appellant in Civil Appeals Nos. 1372 and 1373 of 1967 are also identical except that in the course of assessment for H the assessment year 1947-48, the commission of Rs. 37,978/- paid to the same selling agent namely, Gokul Nagar Sugar Mills Company Ltd. was allowed as per order dated February 27, 1950. But when dealing with the case of Nawabganj Sugar Mills Co.

Ltd. for the assessment year 1952-53, the Income-tax Officer took the view that the selling agency commission claimed to be paid to the selling agents should not be allowed. Hence he issued a notice to the Company under s. 34(1)(a) of the Act and the company filed a return under protest.

It may be stated that the managing agent of all the three appellant companies are M/s Narang Brothers Ltd. and their Chairman was Dr. Gokulchand Narang. The selling agent of the three appellants is also the commission agent, namely, M/s Gokul Nagar Sugar Mills Co. Ltd.

The controversy before the Income-tax authorities related to the claim made by all the appellants for deducting, an expenditure of the business of the companies, the selling agency commission paid to M/s Gokul Nagar Sugar Mills Company Ltd. In respect of some years the jurisdiction of the Income-tax Officer to take action under s. 34 of the Act was also challenged.

In respect of the assessment year 1952-53 relating to Nawabganj Sugar Mills Co. Ltd., the evidence, both oral and documentary, was let in by the assessee that M/s Gokul Nagar Sugar Mills Co. Ltd. were the selling agents and that the commission paid to them as selling agents should be deducted as business expenditure. The evidence so let in was treated as common in respect of the claims made by all the three appellants.

The Income-tax Officer held that all the three companies were controlled and supervised by Dr. Gokulchand Narang. He further held that M/s Gokul Nagar Sugar Mills Co. Ltd., the selling agent, was also controlled and supervised by Dr. Gokulchand Narang. Though M/s Gokul Nagar Sugar Mills Co. Ltd. was appointed as selling agent by a resolution dated July 26, 1944, the latter rendered no service whatsoever so as to earn any commission. In this connection the Income-tax Officer referred to various items of evidence that were placed before him by the parties. Ultimately, he found that the amount claimed to have been paid as selling agent commission cannot be deducted as an item of business expenditure.

In all the appeals filed by the three Companies, the Appellate Assistant Commissioner gave some relief by allowing deduction in respect of sums paid directly as commission to some sub-agents. But on the main question relating to the amount paid to M/s Gokul Nagar Sugar Mills Co. Ltd., the Appellate Assistant Commissioner also agreed with the Income-tax Officer. The contention that action could not be taken under s. 34(1)(c) was also rejected.

A The Income-tax Appellate Tribunal, Delhi Bench, by its common order dated December 31, 1962 after a consideration of the materials on record and the reasons given by the Income-tax Officer and the Appellate Assistant Commissioner, rejected the claim made by the appellants in respect of the commission said to have been paid to the selling agent M/s Gokul Nagar Sugar Mills B Co. Ltd. The view of the Appellate Tribunal is that no evidence has been placed by the appellants to show that M/s Gokul Nagar Sugar Mills Co. Ltd. had really acted as selling agent and that on the other hand the appellants themselves have been directly dealing with several sub-agents. In fact, the finding of the Appellate Tribunal was that there was no privity of contract between the appel- C lants and M/s Gokul Nagar Sugar Mills Co. Ltd. On this reasoning the Appellate Tribunal also agreed with the findings recorded by the two officers that no claim for deduction in respect of selling agent commission can be allowed. The Appellate Tribunal also held that the action taken under s. 34 was justified. The result was that all the appeals filed by the three Companies were D dismissed.

The assessee companies filed applications before the Appellate Tribunal under s. 66(1) to state a case and refer the following four questions to the High Court.

> "1. Whether in the facts and circumstances of the case, the Tribunal was justified in holding that no ser- E vices were rendered by M/s Gokul Nagar Sugar Mills Co. Ltd. to M/s Nawabganj Sugar Mills Co. Ltd.
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> 2. Whether in holding as they have done, the Tribunal was justified in giving its decision without taking into account the statement of Shri Ram Sahai Dhir and the receipts showing the commission paid to M/s F Gursarandas Kapur and some sub-agents of the recipient company.
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> 3. Whether in view of the facts and in the circumstances of the case the Tribunal has rightly concluded that Dr. Sir G. C. Narang signed letters acting as the Chairman of the Nawabganj Sugar Mills Co. Ltd. when he had G no capacity to deal with the sub-agents in that capacity.
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> 4. Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the provisions of S. 34(1)(a) were rightly invoked."

By its order dated February 19, 1965 the Appellate Tribunal H rejected the said applications on the ground that no question of law arose from the order of the Tribunal and that the decision of the Tribunal was exclusively on facts.

The appellants filed applications before the Delhi High Court under s. 66(2) of the Act, to direct the Income-tax Appellate Tribunal to refer the four questions, enumerated above. The High Court, by its order dated March 14, 1967, directed the Income-tax Appellate Tribunal to state a case and refer question No. 4 alone, but rejected the applications of the appellants in so far as they related to questions Nos. 1 to 3. The view to the High Court is that the points covered by the questions Nos. 1 to 3 are all on facts and that in the face of the findings recorded by the Appellate Tribunal, no question of law arose for consideration.

Mr. V. S. Desai, learned counsel for the appellants, urged that the Income-tax Appellate Tribunal, which is the final authority on facts, has not taken into account the material evidence adduced by the parties. He further urged that the appellants had adduced the evidence of certain witnesses to establish that M/s Gokul Nagar Sugar Mills Co. Ltd. were the selling agent and the persons who gave evidence had been appointed as sub-agents by them and that commissions were also paid to them by the selling agent. Particularly, the counsel pointed out that the evidence of Ram Sahai Dhir and Shiv Nand Verma has not at all been adverted to by the Appellate Tribunal. The counsel also urged that certain receipts produced Nos. 948 dated April 24, 1946 and 298 dated February 13, 1947 showing the payments made by M/s Gokul Nagar Sugar Mills Co. Ltd. as commission to their sub-agents have not been even referred to by the Appellate Tribunal. The counsel further pointed out that even the High Court has held that the Income-tax Appellate Tribunal has made no reference to the evidence of these two witnesses, nor has it adverted to the receipts claimed to have been given by the sub-agents. The High Court's view in this regard that it is not every piece of evidence available on record that must be dealt with by the Appellate Tribunal, is strenuously criticised by Mr. V. S. Desai. The counsel relied on the decision of this Court in *Udhavdas Kewalram* v. *Commissioner of Income-tax, Bombay City*(1) where it has been held that the Tribunal has to act judicially and consider all the evidence in favour and against the assessee and that an order recorded on a review of only a part of the evidence and ignoring the remaining evidence, cannot be regarded as conclusively determining the questions of fact raised before the Tribunal. Mr. Desai, hence urged that the High Court was not justified in declining to direct the Appellate Tribunal to refer questions Nos. 1 to 3.

Mr. R. H. Dhebar, learned counsel for the Department has referred us to the findings recorded by the Income-tax Officer, the Appellate Assistant Commissioner as well as the elaborate discussion contained in the order of the Appellate Tribunal, and

(1) [1967] 66 I.T.R. 462.

A pointed out that all relevant material on record has been taken into account by all the authorities, including the Appellate Tribunal and that the appellants can have no grievance in that regard. All material facts have been considered and findings have been recorded on facts against the appellants that M/s Gokul Nagar Sugar Mills Co. Ltd. rendered no service whatsoever as selling B agent and that the materials on record conclusively establish that the appellants themselves were dealing with their sub-agents direct. The learned counsel further pointed out that the Income-tax Officer summoned Dr. Gokul Chand Narang under s. 37 of the Act to produce the correspondence with the sub-agents as well as the sugar mills. Only 13 letters spread over a period of three C years written by Dr. Gokul Chand Narang in his personal capacity and in the letter heads of M/s Gokulchand Ram Sahai were produced. None of the replies to those letters from the sub-agents were produced. The counsel finally urged that the order of the High Court declining to direct the Appellate Tribunal to refer questions Nos. 1 to 3 is correct.

D We are of the opinion that there is no substance in these appeals. We have gone through the orders of the Income-tax Officer, the Appellate Assistant Commissioner, as well as the Income-tax Appellate Tribunal. No doubt, there is a resolution produced by the appellants dated July 26, 1944 in and by which the sugar selling agency of Nawabganj Sugar Mills Co. Ltd. is E given to M/s Gokul Nagar Sugar Mills Co. Ltd. on -0-12-0%. There is no other evidence to show the nature of the arrangement or as to how exactly this resolution is to be carried out.

A reading of questions Nos. 1 to 3 clearly shows that the points raised therein are purely questions of fact. But as the contention of Mr. V. S. Desai is that certain material facts have F not been considered at all by the Tribunal and hence the findings arrived at by it cannot be conclusive, in view of this infirmity, we will refer to the evidence on record not with a view to decide whether the Tribunal has properly appreciated the evidence, but to see whether there was evidence to support the findings recorded by the Tribunal and whether that finding could on that evidence be G reasonably reached.

We have already referred to the resolution dated July 26, 1944. The first criticism of Mr. V. S. Desai is that the evidence of sub-agents appointed by the selling agent has not been considered by the Appellate Tribunal. The two witnesses in this regard are Ram Sahai Dhir and Shiv Nand Verma. The con- H tention of Mr. V. S. Desai that the evidence of Ram Sahai Dhir has not been considered, as such, by the Appellate Tribunal, is only technically correct because it is seen from the order of the Appellate Tribunal that it has referred to the relationship between

the appellants and a company known as M/s Ramdev and Company. Ram Sahai Dhir in his evidence has clearly stated that he is the sole proprietor of M/s Ramdev and Company. He has further stated that after he got the sub-agency from M/s Gokul Nagar Sugar Mills Co. Ltd. he along with his brother and son formed a partnership for this purpose in the name of M/s Ramdev and Company. The Appellate Tribunal in paragraph 7 of its order has considered a telegram sent on September 1, 1948 to M/s Ramdev and Company by the Chairman of Nawabganj Sugar Mills Co. Ltd. That telegram states that the agency of M/s Gursardndas Kapur and Sons has been terminated and M/s Ramdev and Company is asked to sell and freely secure challans. Ram Sahai Dhir in his evidence has stated that M/s Gursarandas Kapur and Sons were the selling agent of the appellants originally and that he started his own sugar business in or about 1947. Therefore, the telegram, as held by the Appellate Tribunal, clearly shows that the appellants were having direct dealings with Ramdev and Company and that M/s Gokul Nagar Sugar Mills Co. Ltd. is no where in the picture. This telegram also shows that this privity of contract between the appellants and Ramdev and Company will not be there if Ramdev and Company were the sub-agents appointed by M/s Gokul Nagar Sugar Mills Company Ltd. Therefore, it is clear that the relationship between the appellants and M/s Ramdev and Sons of which Sri Ram Sahai Dhir is the sole proprietor has been considered by the Appellate Tribunal.

Regarding Shiv Nand Verma, his evidence has only to be read to be rejected. Even according to the appellants M/s Gokul Nagar Sugar Mills Company Ltd. was appointed as Selling Agent only by the resolution dated July 26, 1944. Apart from the very contradictory answers given by this witness, he has categorically stated in answer to a specific question put by the appellants that he was appointed even in 1942 as sub-agent by M/s Gokul Nagar Sugar Mills Company Ltd. on a commission of -0-4-0%. This evidence is absolutely false and of no use to support the case of the appellants because in 1942 M/s Gokul Nagar Sugar Mills Company Ltd. was not in the picture. The evidence of this witness does not establish that M/s Gokul Nagar Sugar Mills Company Ltd. had appointed him as their sub-agents and were paying him commission, in their capacity as the selling agent of the appellants. The Appellate Tribunal has referred to the evidence of Shiv Nand Verma given before the Income-tax Officer and it has also noted the reasons for not acting on that evidence. Therefore, it is not as if that the Appellate Tribunal was not conscious of this evidence on record which is absolutely valueless so far as the appellants are concerned.

Regarding the receipts Nos. 948 dated 24-4-1946 and 298 dated February 13, 1947, it is no doubt true that they have not

A been specifically adverted to by the Appellate Tribunal. But it is rather surprising that the appellants should be able to produce only these two receipts when they claim that M/s Gokul Nagar Sugar Mills Company Ltd. has been acting as their selling agent from 1944. Further the persons who are mentioned there as sub-agents have not at all given evidence before the Income-tax B authorities. Those receipts lose all significance especially when the evidence of Ram Sahai Dhir and Shiv Nand Verma who claim to have been appointed as sub-agents by the selling agent has been rejected by the Appellate Tribunal. Obviously, in view of the other evidence against the appellants, the Appellate Tribunal did not think it worthwhile to specifically refer to these two receipts C on record. But the non-reference to these two receipts cannot be said to have in any manner vitiated the conclusion arrived at by the Appellate Tribunal. As we have stated earlier, we have only referred to these items of evidence on record to show that the finding of the Appellate Tribunal are based on the material on record and that the finding is such which could on that evidence D be reasonably reached.

The statement in the order of the High Court that the Appellate Tribunal has not referred to the evidence of Ram Sahai Dhir as such is *prima facie* correct. But the High Court missed the crucial fact that his evidence is really as proprietor of M/s Ramdev and Company and the relationship between this company and the E appellants has been considered by the Appellate Tribunal.

As laid down by this Court in *Udhavdas Kewalram* v. *Commissioner of Income-tax, Bombay City-I*(1) the Income-tax Appellate Tribunal has to act judicially in the sense that it has to consider with due care all material facts and the evidence in favour of and against the assessee and record its finding on all F the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law. From the discussion contained above it is clear that it cannot be said that the Appellate Tribunal in the case before us has omitted to consider any material fact or any material piece of evidence.

To conclude we are in agreement with the findings of the G High Court that no point of law arises out of questions Nos. 1 to 3 and the High Court was justified in declining to give direction to the Appellate Tribunal to state a case and refer those questions.

In the result the judgment and order of the High Court dated March 14, 1967 are confirmed and the appeals are dismissed with one set of costs to the respondent.

H

G.C. *Appeals dismissed.*

(1) [1967] 66 I.T.R. 462.