

Vipro Products Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jun-16-1986

Reported in : (1986)19ITD31(Mum.)

Judge : K Viswanathan, V Gandhi

Appellant : Vipro Products Ltd.

Respondent : inspecting Assistant

Judgement :

1. This is an appeal by the assessee against order of the Commissioner (Appeals) dated 19-11-1983 for the assessment year 1978-79.

2. Only issue canvassed before us was the disallowance of Rs. 17,784 paid as remuneration to professional director, Shri Nalin Thakor, by the company in the period under consideration. A sum of Rs. 37,784 was paid to the above director for the services rendered by him to the company. Above payment was claimed as deduction on the basis of agreement dated 29-11-1975 entered by the company with the above director. Under Sections 309(1) and 310 of the Companies Act, 1956, Government of India, vide its letter dated 13-12-1976, had considered payment of remuneration of Rs. 20,000 to this director as reasonable.

The IAC (Assessment), therefore, considered payment in excess of Rs. 20,000 has not been for the business of the company and disallowed the same under Section 40(c) of the Income-tax Act, 1961 ('the Act'). On appeal, above

disallowance was maintained by the Commissioner (Appeals). Hence the appeal by the assessee.

3. Before us Shri G.B. Doshi, the learned representative of the assessee, furnished biodata of the professional director, Shri Nalin Thakor, list of his clients, copy of letter dated 13-12-1976 granting approval under Section 309(1)/310 and argued that in view of professional qualifications and standing of the director amount of Rs. 37,784 paid to the director could not be said to be excessive or unreasonable. He also brought to our notice copy of the agreement dated 29-11-1975 made between the company and the director. According to the learned counsel, Government of India could only express its opinion regarding the professional qualifications of the director and could not fix his remuneration under Section 309(1)/310. Approval letter dated 13-12-1976 fixing remuneration of Rs. 20,000 as reasonable could be taken only as a piece of evidence along with other material for determining the question whether remuneration paid to the professional director was reasonable or not and could not be a decisive piece of evidence for fixing the remuneration. Shri Doshi also argued that Section 309 was applicable only to managing director or to a director, who is in the whole time employment of the company, and not to a

professional director as was the case in hand. Shri Doshi also placed reliance on page 739 of Guide to the Companies Act by A. Ramayya, Tenth edn. In view of the services rendered by Shri Nalin Thakor to the company as per the agreement, remuneration of Rs. 37,000 and odd was reasonable by every standard and should have been allowed. The departmental representative, on the other hand, pointed out that Section 309/310 was applicable to directors, including professional director, and when the Government of India approved remuneration of Rs. 20,000 only, any amount paid in excess of the above amount cannot be allowed as deduction in view of Section 37 of the Act, and, therefore, amount beyond Rs. 20,000 was rightly disallowed by the Commissioner (Appeals).

4. We have heard the parties and considered the material placed before us. We do not agree with the arguments of the learned counsel for the appellant that for fixation of remuneration of a director other than a managing director or a director in

the whole-time employment of company, Section 309 has no application. After the changes made in the Companies Act by the Companies (Amendment) Act, 1965 all directors of a company are covered. This is quite evident not only from the provisions of Sub-section (4) of Section 309, but also from notes on clauses of the Bill introducing the above amendment. Thus for monthly, quarterly or annual payment of remuneration approval of the Centre Government is necessary. In this case approval was specifically sought and was granted by the Government of India, vide letter dated 13-12-1976.

Relevant extracts of the above letter are as follows : . . . the Central Government is hereby pleased to express the opinion under proviso to Sub-section (1) of Section 309 of the Companies Act, 1956 that Shri Nalin Thakore, a director of your company, has the requisite qualification for rendering professional services to the company in respect of income-tax assessments and appeals, etc.

2. For rendering professional service to the company as aforesaid Shri Nalin Thakore shall be paid reasonable remuneration not exceeding Rs. 20,000 (Twenty thousand only) per annum, for a period of three years with effect from 29-9-1975.

Thus, Shri Nalin Thakore was approved as qualified for rendering professional services to the company in respect of income-tax assessments and appeals. His remuneration payable was also approved at a figure not exceeding Rs. 20,000 per annum. In view of the above approval, the company could not legally pay any amount exceeding Rs. 20,000 per annum to the director. The counsel for the assessee also tried to make a distinction between remuneration payable to whole-time director or a managing director on the one hand and to a professional director on the other. According to the counsel, if remuneration in excess of the limit prescribed is paid to former class, the same is recoverable from them as per Sub-section (5A) of Section 309 but above Sub-section (5A) has no application in case of a professional director.

We do not agree with the above submission as in the above Sub-section (5A) words used are 'any director' and not 'whole-time director or professional director'. In our opinion, above sub-section is equally applicable to a professional director. Thus payment made in excess of the approved amount of Rs. 20,000 must be

held to be a payment made in violation of law and, therefore, cannot be treated as an expenditure incidental to business. Thus the payment connected with illegal transaction cannot be held to be a payment connected with normal incident of business. In the above circumstances, payment in excess of Rs. 20,000 cannot be allowed as a permissible deduction. Authorities below, therefore, in our opinion, were right in making above disallowance. Order of the Commissioner (Appeals) is, therefore, upheld.

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