THE TATA OIL MILLS CO. LTD.

v.

ITS WORKMEN AND OTHERS

(S. R. DAS, C.J., N. H. BHAGWATI, S. K. DAS, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

1959

May 5.

Industrial Dispute—Bonus—Gross Profits—Extraneous income —Profit unrelated to effort of labour—Available surplus—Prior charges—Return on depreciation reserve used as working capital.

In resisting the workmen's claim for bonus for the year 1955-56 the appellant contended that in calculating gross profits for the purpose of the Full Bench formula the following items of income should be excluded :—

(i) Income earned by way of rent, light and power ;

(ii) estate revenue derived from sale of excess coconuts used in preparing oil grown in the appellant's groves;

(iii) profit from sale of empty barrels ; and

(iv) sale proceeds of tin cans, scraps, logs, planks, gunnies etc.

as they were extraneous income unrelated to the efforts of the workmen.

The appellant also claimed that a profit of Rs. 3 lacs appearing in the accounts due to a change in the method of valuation was no real profit due to the efforts of labour and should not be taken into account. In calculating the available surplus the appellant claimed that it was entitled to 4% interest on the depreciation reserve used as working capital.

Held, that the four items were earned by the appellant in the normal course of its business and could not be excluded from the gross profits on the ground that it had not been proved that they were the result of the direct efforts of labour in the bonus year. Though there must be contribution of the workmen in earning profits before they could be entitled to profit bonus, it was not necessary to establish direct connection between the efforts of the workmen and each item of profit earned. Profits earned in the normal course of business were generally the result of the joint effort of capital and labour. Income or profit may be extraneous if it either did not really arise in that year or it arose out of fortuitous circumstances altogether unconnected with the efforts of labour or arose out of sale of fixed or capital assets.

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Mill Owners Association, Bombay v. *The Rashtriya Mill Mazdoor Sangh, Bombay*, (1950) L.L.J. 1247, *Shalimar Rope Works Mazdoor Union, Howrah* v. *Shalimar Rope Works Ltd., Howrah*, (1956) 2 L.L.J. 371, referred to.

The profit of Rs. 3 lacs due to change in the method of accounting was extraneous income and had to be excluded. It was not income in the normal course of business as it was not likely to arise again. It had arisen out of fortuitous circumstances and had nothing whatsoever to do with the efforts of labour.

The appellant was entitled to a 4% return on the depreciation reserves used as working capital. If reserves were not used for this purpose the concern would have to borrow money and pay interest thereon.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 321 of 1958.

Appeal by special leave from the Award dated the September 27, 1957, of the Industrial Tribunal, Bombay, in Reference (I.T.) No. 119 of 1957.

C. K. Daphtary, Solicitor-General of India, J. B. Dadachanji and *S. N. Andley*, for the appellant.

Rajani Patel and *Janardan Sharma* for respondent No. 1.

1959. May 5. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO J.—This is an appeal by special leave against the award of the Industrial Tribunal, Bombay, in a dispute between the Tata Oil Mills Co. Ltd., Bombay (hereinafter referred to as the company) and its workmen, in the matter of profit bonus for the year 1955-56. The dispute arose over a demand made by the workmen for payment unconditionally as bonus for the year 1955-56 of a sum equivalent to four months' wages/salary for all employees drawing wages/salary of less than Rs. 500 per mensem. This dispute was referred to the Industrial Tribunal by the Government of Bombay by its order dated June 18, 1957. The company had already paid 2½ months' basic wages as bonus to its workmen and the real dispute was thus only about the remaining bonus for a month and half.

The case of the workmen was that the company had made record profits during the year and declared a dividend of 12 per centum free of income-tax, the workmen were getting much less than the living wage and the dearness allowance was not sufficient to fill the gap, and, therefore, profit bonus at the rate of four months' basic wages should be granted. The company, on the other hand, contended that it was paying graded scale of wages with annual and biennial increments and had already paid profit bonus for 2½ months. It was not possible for the company to pay more than that as bonus, as the available surplus according to the Full Bench formula did not justify it. It was also pointed out that though the company started as far back as 1917, the shareholders began to get dividends only from 1940, and, therefore, a dividend of 12 per centum free of income-tax was in the circumstances not high. The company also claimed that in making calculations for the purposes of the Full Bench formula certain items of extraneous income should not be taken into account. Next it claimed that a profit of Rs. 3 lacs appearing in the accounts due to the change in the method of valuation was no real profit due to the efforts of labour and should not be taken into account in arriving at the available surplus. Lastly, it also claimed that it was entitled to 4 per centum interest on the working capital, including the amount in the depreciation fund.

The Industrial Tribunal disallowed the claim of the company on all these three points and after making relevant calculations came to the conclusion that there was a sufficient surplus available to permit the grant of bonus for 3½ months calculated on basic wages and, therefore awarded the same. The company thereupon applied for special leave to appeal, which was granted; and that is how the matter has now come up before us for decision.

We shall first take the question of extraneous income. Six items were sought to be excluded by the company as extraneous income, and they were these:

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	In lacs Rs.
(i) Income earned by way of rent, light and power ...	0·24
(ii) Estate Revenue ...	0·08
(iii) Profit on sale of empty barrels ...	0·89
(iv) Excess provision for expenses in the previous year ...	0·31
(v) Refund of income-tax on revision of Cochin assessment of Excess Profits Tax ...	0·49
(vi) Sale proceeds of tin cans, scraps, logs, planks, gunnies &c. ...	2·11
Total ...	4·12

The Tribunal rejected the claim with respect to all these items, though in the judgment it mentioned only items (i), (ii), (iii) and (vi) as those in dispute. Apparently, items (iv) and (v) were not in dispute before it; but while making calculations, it seems to have lost sight of this and disallowed the claim with respect to these two items also. Learned counsel for the respondents appearing before us has stated that the claim with respect to items (iv) and (v) was conceded by the workmen before the Tribunal and it seems that by over-sight these items were not excluded by it. He fairly concedes that these two items may be excluded from consideration in making calculations for arriving at the available surplus. We are thus left with four items, which were disallowed by the Tribunal. The reason given by the Tribunal for disallowing these items was that they formed part of the profits earned in the course of the company's business and there was no good reason for deducting them from the profits. It further went on to say that as regards income earned by way of rent, light and power it was not disputed that expenditure in respect of buildings from which the rent was derived, such as on repairs and maintenance, is included in the expenditure side of the account, and taxes and rates for these buildings were paid by the company. There was thus no reason for deducting this amount from the profits. It did not consider the

other three items specifically and was content to include them on the general ground that they were profits earned in the course of the company's business.

Mr. Daphtary appearing for the company has drawn our attention to a number of cases decided by industrial tribunals as well as labour appellate tribunals, where such items of income have been excluded on the ground that they are extraneous income unrelated to the efforts of the workmen. We do not think it necessary to refer to all these decisions and it is sufficient to say that these decisions support the contention put forward. The main reason given in these decisions for excluding what is termed as extraneous income is that they are unrelated to the efforts of workmen. We may refer only to two of these decisions of the labour appellate tribunal in this connection. In *The Mill-Owners' Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay* (1) in which the Full Bench formula was evolved, the appellate tribunal remarked at page 1257:

"No scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to employees' efforts."

The Appellate Tribunal reiterated this in *Shalimar Rope Works Mazdoor Union, Howrah* v. *Messrs. Shalimar Rope Works Ltd., Shalimar, Howrah* (2) by observing at page 372 that "it is however too late in the day to question the view that there are profits unrelated to workers' efforts and referred to as 'extraneous profits' and that such profits must be left out of account in deciding the question whether there is available surplus in any particular year." Income received by way of rent of quarters and by sale of scrap-materials has generally been treated as extraneous income by the industrial tribunals on the basis of these decisions of the Labour Appellate Tribunal. It is the correctness of this view which has been canvassed before us in this appeal. Reliance has also been placed by some tribunals on the decision of this Court in *Muir Mills Co. Ltd.* v. *Suti Mills Mazdoor*

(1) 1950 L.L.J. 1247. (2) 1956 (II) L.L.J. 371.

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Union, Kanpur (1), in this connection. This Court observed at page 998 as follows:

"There are however two conditions which have to be satisfied before a demand for bonus can be justified, and they are, (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production."

It was further observed at page 999—

"It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus."

It is clear from these observations that this Court was not dealing with the question of extraneous income as such in the *Muir Mills Case* (1). The principles laid down in that case show that there must be profits in the particular year for which bonus is claimed, resulting in an available surplus before profit bonus can be awarded. It is only when profits are made that profit bonus can be awarded, subject to two further conditions, namely, (1) wages fall short of the living standard and (2) the industry makes large profits part of which are due to the contribution which the workmen make in production. It is this last condition which seems to have been relied upon by industrial tribunals in holding that there must be direct connection between the efforts of labour and the profits, and unless that direct connection is established the profits must be treated as unrelated to the efforts of labour and thus become extraneous income. There is no doubt that there must be contribution of the workmen in earning profits before they are entitled to profit bonus; but it was not laid down in the *Muir Mills Case* (1) that direct connection between the efforts of the workmen and the particular item of profit earned must be established before the profit can be taken into account for the purposes of arriving at the available

(1) 1955 (1) S.C.R. 991.

surplus. An industrial concern carries on a certain business. In carrying on that business it employs capital as well as labour, and generally speaking the profits earned in the normal course of business at the end of year are the result of the joint effort of capital and labour. Even so, it may be recognized that there may be instances of extraneous income for the purpose of the Full Bench formula due (i) either to some part of the profits not having been earned *in that year*, (ii) or to some part of profits arising out of fortuitous circumstances altogether unconnected with the efforts of labour. A third category may be the income arising out of sale of fixed or capital assets. Such income or profit may be called extraneous income as either it did not really arise in that year or though it has arisen in that year, labour has not contributed anything towards its accrual; it may therefore not be taken into account in calculations according to the Full Bench formula. But apart from these cases, we cannot see how income arising during the year in the normal course of business of the concern can be called extraneous income merely on the ground that no direct connection between the efforts of labour and the accrual of the income has been established. In this very case we find an instance of the first category in two items relating to return of excess provision for expenses and refund of excess profits tax. These two amounts have gone to swell the profits of this year; but they have not arisen in this year and may, therefore, properly be treated as extraneous income. An instance of the second kind is to be found in the profit of Rs. 3 lacs made in this year by a change in the method of valuation of the company's assets, which is entirely unconnected with the efforts of labour. But so far as the other four items are concerned, they are earned by the company in the normal course of its business and there is no reason why they should be excluded on the ground that it has not been proved that they are the result of direct efforts of labour in this year.

Let us take these four items one by one. The first is the item of income earned by way of rent, light and

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power. It is well known that many industrial concerns provide amenities for their workmen by building quarters, which are provided with light and power from the concern's power house. The quarters and power-house are built out of capital or profits earned in past years. If they are built out of capital, there is provision for a return which is generally at 6 per centum on the paid-up capital. Even if they are built out of past profits, the depreciation and rehabilitation charges fall on the gross profits before the available surplus is arrived at. Besides, expenditure with regard to repairs and maintenance, and rates and taxes is all paid out of the income of the concern before the gross profits are arrived at. In other words these expenses are paid out of the profits in the earning of which the workmen have contributed their labour. How can the company claim to exclude the rent etc., from the profits while meeting the expenditure relating to such assets out of the profits, part of which is attributable to the efforts of labour? In short, income by way of rent, light and power arises in the normal course of business of the concern and there is no reason why a direct contribution by labour during the year in question must be insisted upon in the case of such income. The company must also be employing some labour for purposes of maintenance and repairs of the quarters and power-house, even though the labour may not be wholly allocated to this work only. We are, therefore, of opinion that income from rent, light and power arises in the normal course of business of a concern and cannot be treated as extraneous income in the sense described above.

The next item is estate revenue. We are told that the company has coconut groves, which produce coconuts used in preparing oil which is one of the main items of the company's business. We are also told that sometimes the entire produce of these groves is not used in the manufacture of oil and therefore some part of the produce is sold. This income is out of this part sold in the market. Here again the income arises in the normal course of business and the expenses for looking after and maintaining the groves are paid

by the company and entered into its account. The company must also be employing labour to look after the groves. In these circumstances we fail to see why this income by sale of surplus coconuts should be excluded from the profits for the purpose of the Full Bench formula.

Then we come to the profit on sale of empty barrels and sale proceeds of tin cans, scraps, logs, planks, gunnies etc. These items may be taken together, for the nature of the receipt is the same, though on account of the method of accounting employed, the income in the case of barrels is shown as profit while in the case of scraps etc., it is shown as sale proceeds. It is said that this is extraneous income because it is unrelated to the efforts of labour. We cannot accept this contention, for this income again is in the normal course of business. Further when the company buys chemicals (for example), it pays for the chemicals as well as the containers, namely, the barrels. When the chemicals are used up these empty barrels are sold. Whatever is the income from the sale of these barrels is in reality a reduction in the cost price of chemicals to the company, though by the method of accounting employed it may appear as profit on the sale of barrels. We see no reason why the reduction in cost price of chemicals should not be taken into account for the purpose of arriving at gross profits in making calculations for the Full Bench formula. Some scraps are normally left over in the process of manufacture. Whatever income is derived from such scraps also goes to reduce the cost price of materials used in production and thus to increase the profits. We do not see why this income arising in the normal course of the company's business should not be taken into account on the plea that labour has not directly contributed in its accrual. We are, therefore, of opinion that all these four items were rightly taken into account by the Tribunal in arriving at the gross profits.

Then we come to the profit of Rs. 3 lacs made by a change in the method of accounting. The Tribunal did not accept this income as extraneous and in so doing it fell into error. This income of Rs. 3 lacs has

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nothing whatsoever to do with the efforts of labour, even though it has arisen this year. It has arisen out of a fortuitous circumstance inasmuch as this year there was a change in the basis of valuation of stock. It is not income in the normal course of business, because it is not likely to arise ever again. In the circumstances this income of Rs. 3 lacs must be treated as extraneous income and excluded for the purpose of calculations based on the Full Bench formula.

The last item with which we are concerned is the return on the amount of depreciation reserve used as working capital. An affidavit was made on behalf of the company that it had used its reserve funds comprising premium on ordinary shares, general reserve, depreciation reserve, workmen's compensation reserve, employees' gratuity reserve, bad and doubtful debt reserves and sales promotion reserve as working capital. The Tribunal, however, allowed return at 4 per centum on a working capital of Rs. 31·88 lacs. This excluded the depreciation reserve but included all other reserves which were claimed by the company and having been used for working capital. The Tribunal gave no reason why it excluded the amount of the depreciation reserve in arriving at the figure of working capital. A return is allowed on the reserves used as working capital on the ground that if these reserves are not used for this purpose, the concern would have to borrow money and pay interest on that. This being the basis on which a return on reserves used as working capital is allowed, there is no reason why, if there is in fact money available in the depreciation reserve and if that money is actually used during the year as working capital, a return should not be allowed on such money also. Further if the money has been converted into such assets as stock in trade and stores etc., (i.e., other than capital or fixed assets), it will be obviously available from year to year to that extent as working capital subject to adjustments on account of loans, secured or otherwise. Learned counsel for the respondents wanted to contest that the whole amount in the depreciation reserve was not available for being used as working capital. It is enough to say that the

affidavit of the Chief Accountant filed on behalf of the company was not challenged before the Industrial Tribunal on behalf of the respondents. It would, therefore, be impossible for us now to over-look that affidavit, particularly when the Tribunal gave no reason why it treated the working capital as Rs. 31·88 lacs only. So far therefore as the present year is concerned, we must accept the affidavit and hold that the working capital was Rs. 139·09 lacs. It will, however, be open to the workmen in future to show by proper cross-examination of the company's witnesses or by proper evidence that the amount shown as the depreciation reserve was not available in whole or in part to be used as working capital and that whatever may be available was not in fact so used in the sense explained above. In the present appeal, however, we must accept the affidavit of the Chief Accountant. The Tribunal allowed 4 per centum interest on the working capital and that must be allowed on the total sum of Rs. 139·09 lacs.

We now come to the calculations in accordance with the Full Bench formula, subject to what we have said above:

	Rs. in lacs	*Rs. in lacs*
Profit for the year		15·53
Add provision for -		
(i) tax	14·51	
(ii) depreciation..... ...	11·75	
(iii) bonus.....	7·76	34·02
Gross Profits.		49·55
Less extraneous income		3·80
Balance		45·75
Less notional normal depreciation		11·12
Balance		34·63
Less income-tax payable according to *Meenakshi Mills case* (1) (Per Note A Below).		15·90
Balance		18·73

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	Rs. in lacs	*Rs. in lacs*
Less dividend on paid-up capital	5·54	
Less return on Reserves used as working capital of Rs. 139·09 @ Rs. 4 per cent.	5·56	
		11·10
Available surplus		7·63
Less bonus actually paid	7·90	
Less rebate of income-tax at -/7/- in the rupee. .	3·40	4·50
Amount remaining with the Company.....		3·13

Note A.	*Rs. in lacs*
Gross Profits	49·55
Less total statutory depreciation	13·19
Balance.....	36·36
Income-tax at -/7/- in a rupee	15·90

The available surplus of profit thus works out at Rs. 7·63 lacs. The company has already paid 2½ months' bonus amounting to Rs. 7·90 lacs to the workmen. The company would be entitled to a rebate of Rs. 3·40 lacs on this sum and therefore the amount which the company has actually to pay is Rs. 4·50 lacs. This will leave a sum of Rs. 3·13 lacs out of the available surplus with the company for its use. It will be seen that more than half the available surplus has already gone to labour according to what the company has paid. There are three sharers in the available surplus, namely, the industry, share-holders and labour. In the circumstances no case has been made out for increasing the profit bonus beyond what the company has already paid, particularly when we find that the company has claimed no rehabilitation charges in this year. We, therefore, allow the appeal, set aside the order of the Industrial Tribunal and dismiss the claim of the workmen for any bonus

beyond what has already been granted by the company. In the particular circumstances of this case, we order the parties to bear their own costs.

Appeal allowed.

GREAT INDIAN MOTOR WORKS LTD., AND ANOTHER
v.
THEIR EMPLOYEES AND OTHERS

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Award against company in liquidation—Appeal by managing director and auction-purchaser not aggrieved by the award—Summary dismissal by Appellate Tribunal—Validity—Right of appeal—Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950), s. 120—Companies Act 1956 (1 of 1956), s. 457.

The discharged employees of the Company in liquidation raised an industrial dispute wherein the auction-purchaser of the Company was also impleaded as a party. The Tribunal, *inter alia*, held that no relationship of employer and employee existed between the auction-purchaser and the old staff who had been discharged prior to the purchase of the business, and the reference so far as the auction-purchaser was concerned was incompetent. The Tribunal directed the liquidators to pay compensation to the discharged employees.

The liquidators were refused sanction to appeal from the said award by the High Court whereupon the auction-purchaser who was also the managing director of the Company, prior to its liquidation, preferred an appeal in the name of the Company represented by himself as the managing director and also in his capacity as the auction-purchaser of the Company. The Appellate Tribunal dismissed the appeal *in limine* as incompetent in view of the provisions of s. 457 of the Companies Act 1956, on the ground that the appeal was not maintainable as it was not authorised by the High Court.

Held, that where a party to the Reference in an industrial dispute was exonerated from its terms, and no Award was made against him, he could not be said to be an aggrieved party, thereby attracting the provisions of s. 12 of the Industrial Disputes (Appellate Tribunal) Act 1950, and any appeal by him from the said Award will be incompetent.