674

12 March 2024

In a lawsuit that we won for dismissal, the court sentenced us to pay profit sharing of the company, arguing that we did not deposit the Corporate Income Tax Return or IR-2 form. But the reality is that our company did not make a profit. We do not understand how a court can condemn us to pay profit sharing when the company did not make profits. And we did not present the IR-2 form, even though our lawyer told us that we had to deposit it in court, because we understood that this is a private document of our company; with confidential information; and that a labor lawsuit cannot force us to be presenting this non-public information. We would like to know your opinion on this matter (1 of 2).

Until 2004, the Supreme Court had established through a constant case law rule, that the burden of proof in a profit sharing claim (colloquially called "Bonificación"), was on the plaintiff worker; and that it had at its disposal the provisions of Article 225 of the Labor Code, according to which, at the request of an employee, the Ministry of Labor must require the Internal Revenue Service to issue a statement as to whether the company had profits or not. And that certificate is limited to indicate if there were profits or not; without disclosing all the confidential documentation that the IR-2 form has. Moreover, it is sufficient information for the labor judge to determine whether or not to accept the profit-sharing claim.

The last case law of the Supreme Court, establishing this criterion, was in the case of *Fibras Dominicanas vs Ricardo Linares*, 3rd SCJ, April 24, 1998.

However, in 2004 the Supreme Court changed its criteria.

(continued in next column)