
(1995) 08 MAD CK 0059

In the Madras High Court

Case No : Tax Cases No's. 1109, 1110 and 1180 of 1979

Amalgamations (P) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1995) 08 MAD CK 0059

Hon'ble Judges : K.A. Thanikkachalam, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : Ramamani, for the Appellant; N.V. Balasubramanian, for the Respondent

Judgement

Gulab C. Gupta, J.—At the instance of the assessee, the following question was referred to us for our opinion for the asst. yrs. 1969-70 to

1971-72 :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in disallowing a sum of Rs. 60,000 representing pension paid to

the widow of late Sri Anantharamakrishnan ?

2. The assessee is a private limited company. The facts which are necessary for decision of this Court on the aforesaid question are as under : The

late Anantharamakrishnan was the founder director of the assessee-company and it stopped charging any salary w.e.f. 1st April, 1952. It appears

that prior to the aforesaid date he was a petty contractor involved in the management of the company. After 1st April, 1952, he became the

chairman of the company and did not get any salary. The assessee-company, after his death, passed a resolution and decided to pay a pension of

Rs. 5,000 per month to the widow of the said Anantharamakrishnan as ex gratia

payment. This amount which was paid to the widow was claimed as deduction in the assessments in question. Since the said deduction has been disallowed by the ITO and the said order having been confirmed in appeal by the AAC, the assessee thereafter went in appeal before the Tribunal. The Tribunal confirmed the order passed by the AAC.

3. The submission of learned counsel for the assessee is that the payment to the widow was not an ex gratia payment as normally understood, but

was the beginning of a scheme under which the employees get such pension during their lifetime and their widows after their death. The Tribunal

has, however, not accepted the submission on the ground that the payment to the widow was not the beginning of a scheme making similar benefit

available to other employees and their widows. According to the learned Tribunal, if such was the intention the scheme should have been prepared

at the earliest possible opportunity. Having so held, the Tribunal also held that the payment did not have any commercial consideration. Since this

payment was made in the absence of any contract with the late director, it could not be allowed as an expenditure relatable to the business. Since

the argument of learned counsel envisaged continuance of similar payment to other employees and their widows under a scheme prepared in 1974

which required learned counsel to produce the scheme before us and show the portion under which similar benefit is available to others dying

during their employment. The scheme does not contain any such provision. Clause 11(c) of the scheme deals with a case where an employee is

entitled to pensionary benefit while dying in harness. The pensionary benefit to an employee is limited to a maximum period of fifteen years only. In

case the employee dies within this period of fifteen years enabling the widow to get some pensionary benefits, that is made available only for the

remainder of the period and not for the whole lifetime of the widow. This scheme does not cover any payment made directly by the assessee-

company to the widow as pension and that too for the whole of her lifetime extending beyond the period of fifteen years after the date of retirement

of an employee. If this scheme is taken into consideration, it will be difficult to hold that the payment made to the late director's widow marked the

beginning of the implementation of a scheme. In the absence of a similar provision in the scheme subsequently, it is reasonable to hold that the

payment was made by the company as a mark of respect to the late director and to provide omnibus facilities to his widow during her lifetime. This

scheme has nothing to do with the commercial consideration of the company and for that reason we would not find any difficulty in the ITO

disallowing the claim and the appellate authorities accepting the said decision as legal and valid. In the circumstances, we would answer the

question against the assessee and in the affirmative.