(1996) 12 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2387 of 1996

Bharat Containers Pvt. Ltd. APPELLANT

Vs

Engineering Workers Union and Others RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:
Payment of Bonus Act, 1965 — Section 7

Citation : (1998) 3 LLJ 932

Hon'ble Judges : M.B. Shah, J;J.N. Patel, J

Bench : Division Bench

Advocate : Mr. C.V. Pavaskar, for the Appellant; Mrs. Mhatre, for the Respondent

Judgement

1. Heard learned Counsel for the parties.

2. This petition is filed against the order dated 2nd July 1996 in Reference No. (IT) 64 of 1989 passed by the Industrial Court, Bombay.

3. By the impugned order, the company is directed to pay the balance amount of bonus of 9.67 per cent. It has been contended by the learned Counsel for the petitioners that the Tribunal materially erred in adding Rs. 2,70,460.00 which have been shown by the petitioners on notional basis while computing bonus for the year ended 31st March, 1988. The Tribunal has pointed out that no reason has been given as to why the said amount of Rs. 2,70,460.00 has been mentioned as direct taxes. Admittedly, the said tax is not required to be paid. However, the learned Counsel for the petitioners submitted that the said item is shown on notional basis in view of Section 7 of the Payment of Bonus Act, 1975 and the petitioners did not have any available surplus. With regard to the direct tax payable by the petitioners for the relevant accounting year, in the balance sheet itself, it is mentioned that the petitioners were required to pay Rs. 44,710.00. Section 7 of the Payment of Bonus Act provides the method of calculation of direct tax payable by the employer. That question does not, however, arise in this case because whatever the Company had paid by way of

tax is accepted for the purpose of calculation of bonus. The said section, inter alia, provides that while calculating direct tax payable by the employer, certain deductions admissible under the Income Tax Act are not to be taken into account. If this method is adopted for the purpose of calculation of bonus, certain deductions admissible under the income Tax Act, which the Petitioner-Company might have claimed for the purpose of Income Tax would be required to to added back.

4. However, the learned counsel relied upon the decision rendered by the Supreme Court in the case of Metal Box Company of India Ltd. v. Their Workmen and vice versa 1969 LLJ 785. In our view, the said decision has no bearing in the present case.

5. The Supreme Court, in the abovesaid decision, has observed that prima facie, it would seem that the Bonus Act could not intend an enquiry into the actual taxable income worked out under all the elaborate provisions relating to deductions, allowances, reliefs, etc. provided by the Income Tax Act and other such Acts. In the present case, it is not disputed that the petitioners have paid only Rs. 44,710.00 towards the Income Tax. If the amount of Rs. 2,70.460.00 is a reserve, the said amount has to be added back while computing the gross profit. The Tribunal has rightly discussed in its order that no reason was given by the Company for not adding the said amount in its calculation for the purpose of bonus.

6. Hence, there is no substance in this petition and it is rejected.

7. Issuance of certified copy of this order is expedited.

