

(1982) 07 CAL CK 0048

In the Calcutta High Court

Case No : Income-tax Reference No. 313 of 1975

Binani Printers (P.) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-07-1982

Acts Referred:

Income Tax Act, 1961 — Section 28, 37

Industrial Disputes Act, 1947 — Section 25F, 25FFF

Citation : (1983) 32 CTR 332 : (1983) 143 ITR 338 : (1983) 13 TAXMAN 215

Hon'ble Judges : Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : D. Pal and R.K. Murarka, for the Appellant; A.K. Sengupta and B.K. Naha, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, for the assessment year 1970-71 the following question has been referred to this court;

"Whether on a true interpretation of the provisions of Section 25FFF of the I.D. Act, 1947, the notice pay of Rs. 10,233 and retrenchment compensation of Rs. 52,121 paid by the assessee thereunder to its employees of printing business was an admissible deduction u/s 37 or Section 28 of the I.T. Act, 1961?"

2. The facts of the case are as follows :

"This reference relates to the assessment year 1969-70 only and arises out of the Tribunal's order in so far "as it related to the Department's appeal, I.T.A. No. 4650 (Cal) of (969-70. The assessee-company follows the calendar year as its accounting year. It was formerly engaged in two lines of business, one being the printing business and the other being publication of a journal called "The Eastern Metal Review." In the printing establishment the assessee was sustaining heavy losses from year to year. By a resolution dated 14th June, 1968, the board of directors of the assessee-company decided to close down the entire printing

establishment. Pursuant to the resolution the assessee-company issued a general notice to the employees that the printing establishment would be closed down and the services of all workers borne on the pay roll and attendance register of the printing establishment would be terminated with effect from the 1st July, 1968, which, it may be stated here, fell within the previous year relevant to the assessment year 1969-70. The employees were further informed that they would all be paid their dues including notice pay and compensation in accordance with Section 25FFF read with Section 25F of the I.D. Act, 1947, They were asked to collect their dues on the 1st July, 1968. Accordingly, on the 1st July, 1968, the employees borne on the printing establishment were paid Rs. 52,121 as retrenchment compensation and Rs. 10,233 as notice pay under clauses (b) and (a) of Section 25F read with Section 25FFF of the I.D. Act, 1947, and Rs. 6,495 as money value of the unavailed leave standing to their credit. In the assessment for the assessment year 1969-70 the assessee claimed deduction of these amounts aggregating to Rs. 68,849 as business expenditure. It may be pointed out here that in the relevant year of account the assessee carried on the other business, viz., the publication business. The ITO disallowed this claim for deduction on the ground that this expenditure was incurred by the assessee, not in the course of business, but after the closure of the business and was, therefore, not allowable to be deducted as an expenditure incurred in the course of business. In support of the view taken by him the ITO relied upon the ruling of the Supreme Court in Commissioner of Income Tax, Kerala Vs. Gemini Cashew Sales Corporation, Quilon, . "

3. The ITO held against the assessee.

4. The assessee went up in appeal before the AAC. The AAC observed, inter alia, as follows in disposing of the appeal:

"Moreover, from the general notice it is seen that workers were intimated that the printing business will be closed from 1st July, 1968, and the workmen were asked to collect their dues on 1st July, 1968. Therefore, the workmen were borne on the pay rolls of the appellant till 30th June, 1968, and the business was not closed down on that date. Hence, the payment of the amount due on 1st July, 1968, to the workmen were ascertained liabilities on 1st July, 1968, for periods prior to closure of the business and on this score also the amount disallowed have to be allowed. The result is that there will be a reduction by Rs. 68,849."

5. Being aggrieved by the decision of the AAC, the Revenue went up in appeal before the Tribunal and the Tribunal, considering the rival contentions, observed as follows :

"We have given due consideration to these rival submissions. The case decided by the Supreme Court in CIT v. Gemini Cashew Sales Corporation [1961] 65 ITR 643 , was one of liability of an employer to pay compensation to the employees u/s 25FFF read with Section 25F of the I.D. Act, 1947, consequent upon the employer transferring the undertaking to others. Here is, no doubt, some

difference between the employer's liability to pay compensation and pay in lieu of the notice to the employees u/s 25FF of the I.D. Act, 1947, consequent upon the transfer of undertaking and that of the employer to pay compensation u/s 25FFF consequent upon the closure of business. In the former case the Supreme Court held the liability to be not one arising in the course of the employer's business because the liability did not arise during "the period the employer carried on the business and that liability might or might not arise after the transfer of the undertaking depending upon the happening of any of the contingencies specified in the proviso to Section 25FF of the aforementioned Act, But the liability of the employer to pay to the employees u/s 25FFF compensation and pay in lieu of notice consequent upon the closure of the business is absolute and not consequent upon the happening or non-happening of any events after such closure. Such liability cannot be said to be contingent unlike the liability to pay compensation and pay in lieu of notice u/s 25FF consequent upon the transfer of undertaking. However, though it is not a contingent liability which may arise after the closure of the business, still it is not an allowable deduction since such liability is incurred by the employer for the purpose of closure of the business and not for the purpose of carrying on the business. In this connection we may refer to the decision of the Mysore High Court in Mysore Standard Bank Ltd. (In Liquidation) Vs. Commissioner of Income Tax, Mysore, . In that case the assessee-company, carrying on banking business, closed some of its branches and some time later passed a resolution to wind up the company and to pay the employees of the assessee, salary for two months for each year of service by way of compensation for termination of their services. The assessee-company claimed deduction of the compensation paid to the workers as business expenditure. Rejecting this claim, the High Court of Mysore observed that the amounts payable to the employees in pursuance of the company's resolution were not amounts which it was bound to pay u/s 25FFF of the I.D. Act, 1947, but were ex gratia payments. The above observation cannot be understood as implying that if the amounts were paid in compliance with the statutory obligation u/s 25FFF, they would constitute business expenditure. The main reasons given by their Lordships of the High Court for holding that the payments did not constitute a business expenditure was that the expenditure incurred at the time of or for the purpose of closing down a business could not be considered as expenditure incurred for the purpose of the business within the meaning Section 10(2)(xv) of the I.T. Act, 1922. It is now settled law that "for the purpose of business" means for the purpose of enabling the assessee to carry on business: vide the decision of the Supreme Court in the The Liquidators of Pursa Limited Vs. Commissioner of Income Tax, Bihar, . Retrenchment compensation and pay in lieu of notice were paid by the assessee u/s 25FFF of the I.D. Act, 1947 not for the purpose of carrying on the business but with a view to the winding up or the closing down the business. Such repayments cannot, therefore, be regarded as business expenditure. We, therefore, reverse the order of the AAC and restore that of the ITO disallowing the deduction claimed by the assessee in the assessment for the assessment year 1969-70 in respect of the

sum of Rs. 52,121 paid as retrenchment compensation and Rs. 10,233 paid as pay in lieu of notice u/s 25FFF of the I.D. Act, 1947. We confirm the order of the AAC allowing the assessee's claim in the assessment for the assessment year 1969-70 for deduction of Rs. 6,495 paid to the employees as the money value of the leave which the employees were prevented from availing. The Accountant Member, while agreeing with the Judicial Member, added that Rs. 62,121 and Rs. 10,233 were not allowable because the liabilities arose at the closure of the business and did not represent any pre-existing liability and it was for that reason that he was agreeing that these amounts stood to be disallowed. A copy of the order of the Tribunal forms part of the statement of the case."

6. We are of the opinion that so far as the Tribunal held that as the payment was made on the closure of the business, such a payment could not be considered to be a payment necessary for carrying on the business, in view of the principles laid down by the Supreme Court in the case of Commissioner of Income Tax, Kerala Vs. Gemini Cashew Sales Corporation, Quilon, , the decision arrived at by the Tribunal was correct.

7. In that view of the matter the question must be answered in the negative and in favour of the Revenue.

8. Parties will pay and bear their own costs.

Suhas Chandra Sen, J.

9. I agree.