(1989) 02 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : IT Reference No. 79 of 1981 & Income-tax Reference No. 79 of 1981

Bitoni Lamps Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 40A(7)(a), 40A(7)(b)(i)

Citation : (1989) 45 TAXMAN 397

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : O.P. Hoshiarpuri, for the Appellant; Ashok Bhan and Ajay Mittal, for the Respondent

Judgement

Gokal Chand Mital, J.—In the accounting year relevant to the assessment year 1976-77, the assessee made a provision of Rs. 5,666 towards gratuity which, may be found payable in future to its employees and during the assessment, claimed deduction. The ITO did not allow deduction as there was no liability for the payment of gratuity during the accounting year, nor approved gratuity fund had been created. The order was upheld by the AAC. By the time the matter came up in appeal before the Tribunal, Delhi, the Commissioner had granted the approval for gratuity fund with effect from 18-8-1980. The assessee pressed into service this fact for claiming deduction but the Tribunal rejected the appeal with the observation that the gratuity fund had not been approved during the relevant previous year and, thus, the matter was not covered by section 40A(7)(b) (i) of the income tax Act, 1961 (''the Act''). On these facts, the assessee got the following question referred for the opinion of this Court. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in disallowing the provision of Rs. 5,666 on account of gratuity?

Section 40A(7)(a) provides that no deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity of its employees on their retirement or on termination of the employment but this is subject to the provision of clause (b). Clause (b) falls for our determination and the relevant portion of the same deserves to be reproduced:

(b) Nothing in clause (a) shall apply in relation to-

(i) any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year;

The exceptions contained in the aforesaid provision are two : (1) when provision is made for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, and (2) when provision is made for the purpose of any gratuity that has become payable during the previous year. For meeting the liability in future no deduction is permissible. In this case during the relevant period there was no approved gratuity fund and the question of contributing towards that fund did not arise nor there was any liability created during the previous year so as to make a provision for payment of gratuity. Both the ingredients being absent in this case, deduction could not be allowed. The view we have taken finds support from a decision of the Apex Court in Shree Sajjan Mills Ltd. v. CIT (1985) 156 ITR 585 (SC). The relevant observations are as follows:

...The embargo under clause (a) is on deduction of amounts provided for future use in the year of account for meeting the ultimate liability to payment of gratuity. Clause (b) (i) excludes from the operation of clause (a) contribution to an approved gratuity fund and amount provided for or set apart for payment of gratuity which would be payable during the year of account...." (p. 586)

2. Accordingly, we answer the referred question in favour of the revenue in the affirmative, leaving the parties to bear their own costs.