
(1983) 02 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 142 of 1981

Central Paints Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 01-02-1983

Acts Referred:

Income Tax Act, 1961 — Section 37(2B)

Citation : (1983) 34 CTR 287 : (1984) 146 ITR 212

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : J.W. Mahajan, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Vijayvargiya, J.—By this reference u/s 256(1) of the I.T. Act, 1961 (for short "the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following questions of law for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in interpreting the provisions of Section 37(2B) and maintaining disallowance of Rs. 14,462 out of sales promotion expenses ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in disallowing the sum of Rs. 37,206 being balance of actual payment made in respect of bonus ? "

2. The facts giving rise to this reference as set out in the statement of the case are as follows :

The assessee is a limited company and is carrying on the business of manufacture and sale of insecticides and paints. During the accounting year relevant to the assessment year 1974-75, the assessee claimed deduction of a sum of Rs. 50,962 under the head "Sales Promotion Expenses". The ITO disallowed the entire amount. On appeal, the Commissioner (Appeals) allowed a sum of Rs. 36,500 and sustained a disallowance of Rs. 14,462 holding that the

same is hit by the provisions of Section 37(2B) of the Act. On further appeal by the assessee, the Tribunal maintained the order passed by the Commissioner (Appeals).

The assessee claimed deduction of Rs. 80,112 on account of the actual payment of bonus during the accounting year 1973-74, and a sum of Rs. 1,06,026 on account of provision for bonus as a statutory liability under the Payment of Bonus Act, for the year 1973-74. The ITO allowed bonus on actual payment basis. However, out of the amount of bonus actually paid, the ITO allowed only a sum of Rs. 42,906 and did not allow Rs. 37,206, which was actually paid by debit to provision account. On appeal, the Commissioner (Appeals) allowed the claim in respect of statutory liability under the Payment of Bonus Act, amounting to Rs. 1,06,026. He also allowed the sum of Rs. 37,206, being balance of the sum actually paid by the assessee. On appeal, the Tribunal confirmed the order passed by the Commissioner (Appeals) in allowing the bonus amounting to Rs. 1,06,206, being statutory liability under the Payment of Bonus Act. The Tribunal, however, disallowed the amount of Rs. 37,206 allowed by the Commissioner (Appeals). At the instance of the assessee, the Tribunal has referred the aforesaid questions of law for the opinion of this court.

3. As regards the first question, the learned counsel for the assessee contended that the deduction of the amount of Rs. 14,462 claimed by the assessee related to the expenses incurred by the assessee in extending hospitality in the sense of providing meals, drinks or other wants of guests as part and parcel of the express or implied terms and conditions of the business of the assessee and, therefore, cannot be termed as entertainment in the context of Section 37(2B) of the Act, and, therefore, the Tribunal was not justified in disallowing the said deduction. He placed reliance upon a Division Bench decision of this court in CIT v. Lakhmichand Muchhal [1982] 134 ITR 234.

4. The contention cannot be upheld. In the present case, the Commissioner (Appeals) held that this expenditure has been incurred on entertaining the customers and business constituents to lunches and dinners in posh hotels. This expenditure is not in the nature of routine working refreshments given to the customers and business constituents within the premises of the appellant-company. This finding is confirmed by the Tribunal. In view of the finding recorded by the Tribunal it cannot be said that the deductions claimed by the assessee related to the extending of hospitality in the sense of providing meals, drinks or other wants of guests as part and parcel of the express or implied terms and conditions of business or on account of longstanding custom in such trade and, therefore, the ratio of Lakhmichand Muchhal's case [1982] 134 ITR 234 is not applicable to the present case. On the finding recorded by the Tribunal, it was justified in disallowing the said amount of Rs. 14,462. Our answer to question No. 1, referred to us, therefore, is in the affirmative and against the assessee.

5. As regards the second question, the ITO has allowed the deduction on account

of payment of bonus on actual payment basis. However, he disallowed the amount of Rs. 37,206, which was the liability in respect of the year 1972-73, and was paid in the year 1973-74, by debit to provision account. While allowing the said deduction the Commissioner (Appeals) observed as follows:

"This relates to the objection that on the basis of the actual payment the Income Tax Officer should have allowed a further sum of Rs. 37,206 which represented the payments made during the year of account and debited to the provision account. This claim appears to be in order. The ITO has not given a deduction for this sum through possible oversight. On this account, therefore, the assessment is reduced by Rs. 37,206."

6. The Tribunal reversed the order passed by the Commissioner (Appeals) on the ground that even if the assessee had bona fide changed its system of accounting it can claim deduction for payment of bonus either on accrual or on actual payment basis. It cannot possibly have the benefit of both payment as well as accrual in any particular year. In fact the assessee should have switched on to provision basis from the year 1965 itself when under the Payment of Bonus Act bonus became an enforceable liability against the assessee. It did not choose to do so at that time and, therefore, while it is open to it to change the method in any particular year if the same is bona fide, it should not get the benefit of both payment and accrual basis in any particular year.

7. It is difficult to appreciate the reasoning adopted by the Tribunal. The Tribunal has found that the aforesaid amount of Rs. 37,206 was actually paid by the assessee as bonus in the relevant accounting year. It is not the case of the Revenue that this amount has been claimed by the assessee on accrual basis in any previous year.

8. In the circumstances, we are of the opinion that the Tribunal was not justified in reversing the order passed by the Commissioner (Appeals) allowing the said amount as deduction. Our answer to question No. 2, referred to us, therefore, is in the negative and in favour of the assessee.

9. The reference is answered accordingly.

10. In the circumstances, the parties shall bear their own costs of this reference.