

(2013) 05 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : ITA No"s. 28 and 29 of 2012-B

Commissioner, Income Tax	Vs	APPELLANT
H.P. Tourism Development Corporation Ltd.		RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Income Tax Act, 1961 — Section 115JB

Citation : (2013) 05 SHI CK 0100

Hon'ble Judges : A.M. Khanwilkar, C.J;R.B. Misra, J

Bench : Division Bench

Advocate : Vinay Kuthiala and Mrs. Vandana Kuthiala, for the Appellant; Vishal Mohan and Mr. Rattan Thakur, for the Respondent

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. These appeals have been filed by the Department on the assertion that it raises substantial question of law as follows:-

Whether the provision made by the assessee for leave encashment is not an ascertained liability and is thus liable to be added to the "book profit" under explanation 1 to Section 115JB of the Income Tax Act, 1961?

In both these appeals, the Assessing Officer, relying on the decision of the Calcutta High Court, in the case of Commissioner of Income Tax Vs. Bharat General and Textile Industries Ltd., held that the provision made by the respondent in the books of account towards leave encashment of employees for the relevant period was unascertained liability and, therefore, was required to be disallowed. The Appellate Tribunal, however, over turned that finding recorded by the Assessing Officer. The Appellate Tribunal accepted the plea of the respondent that the provision made by the respondent in the concerned accounting year was in respect of "ascertained and definite liability" of the respondent towards leave allowance to be paid to the employees. Consistent with that finding, the Appellate Tribunal, relying on the decision of the Apex Court in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, allowed the appeal

and was pleased to set aside the assessment order to the extent disallowing the amount towards leave allowance to be paid to the employees. The Appellate Tribunal allowed the claim of the respondent assessee. It is not open for this Court to over turn the finding of fact so recorded by the Appellate Tribunal and, moreso, when the issue is already covered by the decision of the Apex Court in the case of Bharat Earth Movers. It will be apposite to advert to the exposition of the Apex Court in the said decision, which reads thus:-

The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.

(Emphasis supplied)

2. The argument of the appellant that the finding recorded by the Tribunal is inappropriate, cannot be the basis to admit these appeals and, moreso, when the substantial question, formulated by the Department, already stands answered by the decision of the Apex Court in Bharat Earth Movers (supra). Hence, dismissed.