(1986) 05 CAL CK 0036

In the Calcutta High Court

Case No : Income-tax Reference No. 402 of 1980

Commissioner of Income Tax APPELLANT

Vs

Agarpara Co. Ltd. RESPONDENT

Date of Decision : 13-05-1986

Acts Referred:
Income Tax Act, 1961 — Section 261, 41(1)

Citation : (1986) 55 CTR 218 : (1989) 175 ITR 445

Hon'ble Judges : Shyamal Kumar Sen, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : A.C. Moitra and Sunil Mukherjee, for the Appellant; D. Pal and M. Seal, for the Respondent

Judgement

Dipak Kumar Sen, J.—In this application, the Commissioner of Income Tax, West Bengal-V, Calcutta, seeks a certificate that the case in which a judgment dated February 18, 1985, has been delivered by this court in Commissioner of Income Tax Vs. M. Nath, , is a fit one for appeal to the Supreme Court.

2. The following questions are stated to be substantial questions of law involved in the case :

"(i) Whether, on the facts and in the circumstances of the case, the sum of Rs. 50,061 representing the amount of unpaid bonus written back in the accounts could be assessed u/s 41(1) of the Income Tax Act, 1961, in the assessment year 1971-72 ?

(ii) Whether, in view of the specific provisions of the Payment of Bonus Act, such unclaimed bonus can be regarded as a liability beyond two years ?"

3. We are unable to accept the contentions of the Revenue. In fact, it has been held in the judgment that the liability to pay bonus by the assessee to its employees cannot continue indefinitely and as the assessee had provided for payment of bonus, the liability under the statute, viz., the Payment of Bonus Act, stood discharged. If the concerned employees did not claim such bonus as

provided, even after lapse of a substantial period, it cannot be held that the liability of the employer would continue. By the said judgment, the Tribunal has been directed to investigate whether the unclaimed bonus represents the excess of the requirement to be provided for payment of such bonus and why bonus had not been claimed by the employees in the past years. The Tribunal has been directed to dispose of the case in the light of the principles laid down in the judgment. The Tribunal has been given liberty to take additional evidence while disposing of the case u/s 260 of the Act.

4. For the above reasons, we are of the view that this is a case not fit for appeal to the Supreme Court. The application is rejected. There will be no order as to costs.

Shyamal Kumar Sen, J.

5. I agree.

