
(1991) 06 CAL CK 0020

In the Calcutta High Court

Case No : Income-tax Reference No. 107 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Arcuttipore Tea Co. Ltd.

RESPONDENT

Date of Decision : 24-06-1991

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1992) 197 ITR 588 : (1993) 68 TAXMAN 398

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Khaitan, for the Appellant;

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, for the assessment year 1984-85, the following question of law has been referred to this court :

"Whether, on, the facts and in the circumstances of the case and also having regard to the specific provisions of Section 36(1)(ii) of the Income Tax Act, 1961, the Tribunal was correct in law in holding that the payment of bonus as per bipartite agreement cannot be called as bonus as it was made for the purpose of the business and deductible u/s 37(1) of the Income Tax Act, 1961?"

2. The facts relating to this reference are that, in its books of account relating to the year of accounting ending on March 31, 1983, the assessee had made a provision in respect of the minimum bonus payable to its workers for the said year under the Payment of Bonus Act. Therefore, as a result of a bipartite agreement dated September 22, 1988, the assessee paid a further sum of Rs. 56,888 to its employees. The said sum was paid over and above the minimum bonus payable under the Payment of Bonus Act. The assessee claimed revenue deduction in respect of the said sum. The Income Tax Officer disallowed the claim on the ground that any payment in excess of what is payable under the Payment of Bonus Act was not revenue deduction.

3. On his part, the Commissioner of Income Tax (Appeals) allowed the assessee's claim on the ground that the payment in question could be considered u/s 37(1) of the Income Tax Act, 1961.

4. The Tribunal declined to interfere in the matter.

5. At the hearing before us, Mr. Bagchi has relied on a decision of the Kerala High Court in the case of Commissioner of Income Tax Vs. Calicut Modern Spinning and Weaving Mills Ltd., where the Kerala High Court held as follows (headnote) :

"That ordinarily, a payment envisaged by the Payment of Bonus Act can be claimed as a deduction. But the amounts paid over and above the amount payable under the Payment of Bonus Act could be claimed as deduction u/s 36(1)(ii) of the Act, provided the following conditions are fulfilled : The amount should be reasonable with reference to (a) the pay of the employee and the conditions of his service ; (b) the profits of the business or profession for the previous year in question ; and (c) the general practice in similar business or profession. The Appellate Tribunal had found that the payment of bonus was made to the employee on the basis of an agreement between the assessee and its employees and to the managing director in view of the terms and conditions of his service. It had also found that the payment of the amount in excess of the amount payable under the Payment of Bonus Act, 1965, was a customary bonus. Whatever might be the occasion or character of the bonus paid, whether it be under an agreement or as a customary bonus, if the amount paid was in excess of the amount payable under the Payment of Bonus Act, it could be claimed as deduction only if the conditions envisaged by Section 36(1)(ii) of the Act were satisfied. This crucial aspect had not been borne in mind by the Tribunal when it allowed the payment of the amount in excess of the amount payable under the Payment of Bonus Act as a permissible deduction."

6. He has also relied on a circular of the Board, being Circular No. 414, dated 14th March, 1985 (see [1985] 152 ITR 204), addressed to all the Commissioners of Income Tax by the Under Secretary to the Government of India which has been set out hereunder :

"Sub. : Payment of bonus--Allowability u/s 36(1)(ii) of the Income Tax Act, 1961--Regarding.

Reference is invited to the Board's Circular No. 287, dated December 4, 1980-- See [1981] 128 ITR 118. Under the first proviso to Section 36(1)(ii) of the Income Tax Act, 1961, deduction for payment of bonus or commission to an employee for services rendered by him is restricted to the amount payable under the Payment of Bonus Act, 1965. Under this Act, a minimum of 8.33% and a maximum of 20% of salary is payable as bonus depending on the circumstances of the case. Deduction under the first proviso to Section 36(1)(ii) of the Income Tax Act is not necessarily restricted to the minimum of 8.33% of the salary in all cases. Whatever amount of bonus is payable in the case within these two limits under the Payment of Bonus Act, 1965, is admissible for deduction under the

first proviso to Section 36(1)(ii) of the Income Tax Act, 1961."

7. In the light of the said decision and the circular of the Board, the contention of learned counsel is that the question as framed has to be answered in favour of the Revenue, as the payment which has been made in this case, admittedly, is a bonus payment and, accordingly, it is covered by the first proviso to Section 36(1) (ii).

8. Mr. Khaitan, learned counsel appearing for the assessee, has however contended that none of the findings of the Tribunal has been challenged in this case and, accordingly, this court is not required to go into the question of applicability of the first proviso. In other words, his contention is that such payment is outside the purview of the Bonus Act and, accordingly, Section 37(1) of the Income Tax Act, 1961, does not apply. We have considered the contentions raised before us.

9. It is no doubt true that, in the bipartite settlement, it was, inter alia, recorded as follows :

"The workers demanded payment of bonus at higher rate for the accounting year 1982-83. After bipartite discussion held between the management of Arcuttipore Tea Estate and the Began Panchayats this the 22nd day of September, 1983, it has been settled and agreed that the bonus for the accounting year 1982-83 will be paid to the workers at 11% of the wages/salaries earned by the eligible employees during the accounting year ended on March 31, 1983".

10. Although the word "bonus" has been mentioned in the settlement, the nomenclature is not decisive to determine the nature of the payment. As a matter of fact, before the Tribunal a contention was raised that the extra payment was made for maintaining industrial peace and the Tribunal held as follows :

"Here, the increment amount was paid under a bipartite agree ment. The term "bipartite agreement" is merely an euphemism. Knowing the labour situation in West Bengal as we do, the payment made under the agreement is not really a bonus at all. If regard be had to the facts of life, it will be readily seen that the payment was made under duress ; for non-payment would mean the total closure of the assessee's tea manufacturing activity. In that view of the matter the payment cannot be called bonus and it was made for the purpose of the business. Hence, the Commissioner of Income Tax (Appeals) was justified in considering the revenue deductibility of the sum in question with reference to the provisions of Section 37(1) of the Income Tax Act, 1961. We, therefore, decline to interfere in the matter."

11. The aforesaid facts found by the Tribunal had not been challenged by the Revenue.

12. We may also note that the Commissioner of Income Tax (Appeals) has observed thus :

"The payment in excess made by the appellant does not come under any of these categories. However, its allowability can be examined u/s 57 as an expenditure laid out wholly and exclusively for the purposes of the appellant's business. The appellant in the present case arrived at a settlement for payment of ex gratia bonus in the interest of harmonious relations with the workers and such payments had been customary in the case of all tea gardens. In the circumstances, it could not be denied that the payment had been made by the appellant in the interests of and for the better management of the business."

13. The decision of the Kerala High Court in the case of Commissioner of Income Tax Vs. Calicut Modern Spinning and Weaving Mills Ltd., relates to the construction of the first proviso to Section 36(1)(ii) of the Act with which we are not directly concerned in this case.

14. In our view, the finding of the Tribunal is that the payment was made to maintain industrial peace without which the business would have come to a standstill. Such payment, whatever may be the term used in the agreement, must be held to be wholly and exclusively laid out for the purpose of business and commercial expediency. Had the employer not agreed to such payment to the workmen, the assessee could not have continued the business.

15. For the foregoing reasons, we are of the view that the question referred should be reframed as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the payment of bonus as per bipartite agreement cannot be called as bonus and it was made for the purpose of the business and was deductible u/s 37(1) of the Income Tax Act, 1961.?"

16. We answer the reframed question in the affirmative and in favour of the assessee.

17. There will be no order as to costs.

Shyamal Kumar Sen, J.

18. I agree.