
(2004) 09 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No. 62 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Bitoni Lamps Ltd.

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Income Tax Act, 1961 — Section 40A(7)

Citation : (2005) 193 CTR 423 : (2005) 277 ITR 396 : (2005) 144 TAXMAN 330

Hon'ble Judges : S.S. Grewal, J;N.K. Sud, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant;

Judgement

N.K. Sud, J.—At the instance of Revenue, Income Tax Appellate Tribunal, Delhi Bench "B", Delhi (for short the "Tribunal"), has referred the following question of law arising out of its order dt. 22nd June, 1984 relating to asst, yr. 1979-80 for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is bright in holding that the amount of gratuity paid to the gratuity trust is an allowable deduction in the absence of approval of gratuity fund ?"

2. The assessee is a resident limited company and its method of accounting is mercantile. The accounting period for the relevant asst. yr. 1979-80 ended on 31st Dec, 1980. The assessment was framed by the AO on 31st Oct., 1981. The assessee's claim for deduction of Rs. 10,428 on account of gratuity was rejected with the following observations :

"The assessee-company has claimed a sum of Rs. 10,428 as deduction u/s 40A(7) (b)(i) on account of contribution of gratuity fund created by it and approved by the CIT w.e.f. 18th Aug., 1980. The claim is not in order because the gratuity fund created by the assessee-company had not been approved during the relevant previous year when it made a provision for making contribution towards the fund. Thus, the conditions laid u/s 40A(7) are not fulfilled by the assessee-

company. The claim of the assessee-company is, therefore, rejected."

3. The assessee preferred an appeal before the CIT(A) who deleted the disallowance on the ground that similar disallowances had been deleted in earlier years. The matter was thereafter taken by the Revenue before the Tribunal. The appeal was dismissed with the following observations :

"The arguments have been heard and considered and record carefully perused. The learned ITO made the addition on the understanding that conditions u/s 40A(7) of the Act, were not satisfied. The said provision requires that the gratuity fund should have been approved or the payment had been actually made. In the case before us, it is seen that the payment of the gratuity fund was made by the assessee during the relevant accounting period. This factual position appears to be clear beyond doubt from the balance sheet of the company and the receipts in the gratuity fund. It was, therefore, not a mere provision as was understood by the learned ITO. In the present case, the payment had been made to the fund. The assessee appears to have applied for the approval of the gratuity fund some time during 1975 and such approval was ultimately accorded on 23rd Sept., 1980 w.e.f. 18th Aug., 1980. In view of the fact that the payment had actually been made, the absence of approval is not materially relevant. It is also seen that during other years in the similar circumstances, the disallowance was either not made by the learned ITO nor such disallowance was deleted by the first appellate authority and such actions are said to have been accepted by the Revenue. In the given circumstances, we are of the opinion that the learned ITO was not justified to disallow the assessee's claim and the learned CIT(A) rightly vacated a wrong finding. For such a conclusion, we find support from the Tribunal's order supra. The impugned order, in our view, warrants no interference and is, therefore, confirmed.

4. Before advertng to the question, we may first notice the provision of Sub-section (7) of Section 40A of the IT Act (for short the "Act"), which reads as under :

"(7)(a) Subject to the provisions of cl. (b), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

(b) Nothing in cl. (a) shall apply in relation to 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.

Explanation : For the removal of doubts, it is hereby declared that where any provision made by the assessee for the payment of gratuity to his employees on their retirement or termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution

towards an approved gratuity fund or by way of gratuity to any employee, shall not be allowed as a deduction in computing, the income of the assessee of the previous year in which the sum so paid."

5. A bare perusal of the above provision shows that as per cl. (a), no deduction in respect of any provision for payment of gratuity is admissible. Clause (b), however, provides for two exceptions to the general rule contained in cl. (a). As per cl. (b), the provision for gratuity can be allowed : (i) if it had been made for payment by way of contribution towards an approved gratuity fund; or (ii) if the provision is for the purpose of payment of any gratuity that has become payable during the previous year. The Tribunal, in this case, has found that the deduction has not been claimed on the basis of any provision made in the books of account of the assessee. The deduction had been claimed on account of the gratuity actually deposited in the fund. Thus, the deduction was not claimed in respect of a provision. Such a claim could only have been disallowed if it had been proved that the gratuity, in respect of which the said payment had been made, had not become payable during the previous year relevant to asst. yr. 1979-80. No such case has been made out by the Revenue. Thus, in our view, the Tribunal was right in holding that the grant of approval to the gratuity fund was not relevant for the purposes of this case as the deduction was not being claimed on account of any provision. The deduction was in respect of the amount actually deposited in the fund which had become payable during the previous year relevant to asst. yr. 1979-80. This factual position has not been disputed nor has the counsel for the Revenue controverted the factual findings that in the earlier years, similar claims of the assessee had been allowed by the AO or by the CIT(A) and the orders stand accepted by the Revenue.

In view of the above, the question is answered in the affirmative i.e., in favour of the assessee and against the Revenue. No costs.