

(1998) 04 MAD CK 0095

In the Madras High Court

Case No : Tax Case No. 824 of 1987 (Reference No. 527 of 1987)

Commissioner of Income Tax

APPELLANT

Vs

Diesel Engineer

RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Citation : (2000) 244 ITR 488

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Income Tax Appellate Tribunal has stated the case and referred the following three questions of law on the basis of the directions of this court, for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the amount payable to the workmen, under an award of the Labour Officer u/s 12(3) of the Industrial Disputes Act, 1947, dated September 26, 1977, is allowable as a deduction in computing the income of the assessee-firm for the accounting year November 3, 1975, relevant for the assessment year 1976-77 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had valid materials to hold and was justified in holding that there was only a reorganisation of the business in the process of transferring the manufacturing business hitherto carried on by the assessee ?

(3) Whether, the Appellate Tribunal had valid material to conclude that the reorganisation of the business was made in the interest of the business for earning better profits from the continuing business, if the answer to the second question is in the affirmative ?"

2. The assessee is a registered firm. It was carrying on certain manufacturing activities in addition to certain trading activities as part of its business. The assessee discontinued its manufacturing business on September 15, 1975, and sold all the machinery to a company by name, Krislar Diesel Engines Private Limited, which was incorporated on August 31, 1975, and which started manufacturing diesel engines. The assessee-firm retrenched 20 workers in the manufacturing unit of the assessee of whom 17 had found employment with Krislar Diesel Engines Private Limited. The said private limited company is also a company formed by the partners of the assessee firm. Some labour dispute arose between the workers of the newly formed company and the management and ultimately a settlement was arrived at under the provisions of the Industrial Disputes Act before the Labour Officer, who issued orders in the month of September, 1977. Under the agreement, the assessee was required to pay a certain sum of money on or before October 15, 1977, and the workers should be deemed to have been retrenched from service of the assessee with effect from September 14, 1975. The assessee paid a sum of Rs. 25,752 representing retrenchment compensation of Rs. 14,452 and gratuity of Rs. 11,300.

3. The assessee claimed that the sum of Rs. 25,752 paid should be allowed as a business expenditure in the computation of business income for the assessment year 1976-77. The Income Tax Officer disallowed the claim on the ground that the agreement referred to by the assessee was between the union of the workers and the newly formed company and the assessee firm, was not a party to the agreement and the liability to pay retrenchment compensation as well as the gratuity arose on account of the change of ownership or transfer of the business and it cannot be said to be revenue in nature. The above view of the Income Tax Officer was confirmed by the Commissioner of Income Tax (Appeals), Madras, on the appeal preferred by the assessee. The assessee carried the matter in appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal recorded a clear finding that the manufacturing activity as well as the trading activity of the assessee formed the total business of the assessee, as there was unity of control and unity of management. The Tribunal held that when the manufacturing wing was transferred to a newly set up company, it was only made for reorganisation of the business in the interest of the business for earning better profits from the continuing business. The Tribunal, therefore, held that the assessee was entitled to deduction of the sum of Rs. 25,752.

4. On an application preferred by the Revenue to refer the questions of law, the Tribunal rejected the application, but, on a direction by this court, the Tribunal has stated the case and referred the three questions of law set out earlier.

5. Learned counsel for the Revenue submitted that the Tribunal was not correct in holding that there was admission by the Revenue that both the businesses, viz., manufacturing business as well as the trading activity carried on by the assessee constituted a single business, and there was also no admission by the Revenue that there was a reorganisation of the business, and the payments were

made for the purpose of carrying on the business. Learned counsel for the Revenue further submitted that the finding of the Income Tax Officer as also by the Commissioner of Income Tax (Appeals) was that the liability to pay retrenchment compensation arose due to the closure of the business and, therefore, the assessee was not entitled to deduction of the same. Learned counsel for the Revenue brought to our attention the decisions of the Supreme Court in the case of Commissioner of Income Tax, Kerala Vs. Gemini Cashew Sales Corporation, Quilon, and M/S. W.T. Suren and Co. Ltd. Vs. The Commissioner of Income Tax, Bombay, . In the later decision the Supreme Court held that in so far as the gratuity liability is concerned, the obligation was a present liability and even though there was a transfer or closure of the business, the assessee would be entitled to deduction of the same. Learned counsel for the Revenue submitted that on the basis of the decision of the Supreme Court in the case of Commissioner of Income Tax, Kerala Vs. Gemini Cashew Sales Corporation, Quilon, , the decision of this court in India Manufacturers (Madras) P. Ltd. Vs. Commissioner of Income Tax, and the decision of the Calcutta High Court in the case of Binani Printers (P.) Ltd. Vs. Commissioner of Income Tax, , the assessee is not entitled to the deduction of the retrenchment compensation. Learned counsel for the assessee submitted that the finding of the Appellate Tribunal is clear that both the business are one and the same, and there was unity of control and unity of management and in view of the finding of the Appellate Tribunal, the assessee is entitled to claim the deduction of both the retrenchment compensation and the gratuity liability.

6. We have carefully considered the submissions of learned counsel. In so far as the gratuity payment is concerned, the decision of the Supreme Court in the case of M/S. W.T. Suren and Co. Ltd. Vs. The Commissioner of Income Tax, Bombay, would squarely govern the facts of the case wherein the Supreme Court held that retrenchment compensation is not the same thing" as gratuity and gratuity is payable on the termination of the employment of the employee and in any account, the gratuity liability should be regarded as a present liability. Applying" the principles of law laid down by the apex court, we are of the opinion that the Tribunal was correct in holding that in so far as the gratuity liability is concerned, the assessee was entitled to deduction of the same, as it cannot be said that the liability arose only on the closure of the business and the assessee was entitled to deduction of the same.

7. In so far as retrenchment compensation is concerned, we have set out the facts earlier and it is clear that there was transfer of the assets of the manufacturing unit in favour of another company and there were certain surplus employees in the assessee-firm who have to be retrenched. Though the assessee was not a party to the settlement arrived at before the Labour Officer, the order of the Labour Officer clearly shows that the assessee was required to pay retrenchment compensation to the employees and their services were also terminated. The assessee in compliance with the orders of the Labour Officer had paid the same. The question that arises is whether such a payment can be

regarded as business expenditure. The finding of the Appellate Tribunal is that there was a unity of control and unity of management of both the units of the business, viz., the manufacturing activity as well as the trading activity and both the units constituted a single business. The Revenue has not specifically challenged that finding though the question has been raised by the Revenue regarding the reorganisation of the business. In view of the finding of the Appellate Tribunal that both the businesses constituted a single business, the payment by the assessee to some of its employees as retrenchment compensation should be regarded as a business expenditure. It is too late in the day to say that payment of retrenchment compensation by the employer to the employee cannot be regarded as a business expenditure. In fairness to learned counsel for the Revenue, he submitted that if we uphold the finding of the Appellate Tribunal that both the units constituted a single business, the payment of retrenchment compensation would be allowable as a business expenditure. Though the Tribunal has not discussed in detail or indicated in its order the evidence on which it came to the conclusion that both the businesses constituted a single business, we are of the view that the Tribunal would have perused the orders of the Income Tax Officer and the Commissioner of Income Tax (Appeals) and materials on record and after satisfying itself that both the businesses constituted a single business, it recorded such a finding. Though there is no elaborate discussion by the Tribunal, the normal presumption one can draw is that the Tribunal has recorded its finding on the basis of materials, unless it is established that there are no materials for such a conclusion. It is not possible for the court, sitting in reference jurisdiction to go into the question of evidence on which it recorded a finding. Further, when the Tribunal rendered a finding that it was not disputed by the Revenue before it that two units constituted a single business the statement as to what happened before the Tribunal has to be given due effect and cannot be lightly brushed aside. In view of the finding of the Appellate Tribunal that both the businesses constituted a single business, the assessee would be entitled to the deduction of retrenchment compensation as well. The decision relied upon by learned counsel for the Revenue related to cases of two different businesses and on the closure of one business, the Supreme Court as well as the other High Courts have taken the view that the liability arose on the closure and the discharge of the liability by payment of retrenchment compensation was not for the purpose of carrying on the business. But here, the factual position is different as it has been found that both the units of the business are single and indivisible and once the finding of the Appellate Tribunal is not challenged, the payment of retrenchment compensation by the assessee should be regarded as a business expenditure and it cannot be regarded as a contingent liability which fell on the assessee on the closure of its business. The assessee continued its business in the remaining business of trading activity and, therefore, the liability has fallen on the assessee, during the course of carrying on the business and during the course of the reorganisation of the business.

8. We are of the opinion that the Tribunal was correct in holding that the retrenchment compensation paid is an allowable expenditure. In the view we have taken that both the businesses constituted a single business, it is not necessary to discuss in detail the various case law relied upon by learned counsel for the Revenue. We find that there is no infirmity in the order of the Appellate Tribunal in holding that the assessee is entitled to deduction of the entire sum consisting of both retrenchment compensation and the gratuity liability in computing the business income of the assessee for the assessment year in question.

9. Accordingly, we answer all the three questions of law referred to us in the affirmative, against the Revenue and in favour of the assessee. However, in the circumstances, there will be no order as to costs.