(1990) 08 KL CK 0018

In the High Court Of Kerala

Case No : Income-tax Reference No. 162 of 1987

Commissioner of Income Tax APPELLANT

Vs

Eastern Clay Works Limited RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Income Tax Act, 1961 — Section 36(1)

Citation : (1991) 63 FLR 37 : (1991) 188 ITR 274

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P. Balachandran, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessee is entitled to claim deduction of the bonus paid in excess of the minimum and in holding that the customary bonus paid will not attract the provisions of Section 36(1)(ii) of the Income Tax Act, 1961 ?"

2. The respondent is a public limited company. We are concerned with the assessment year 1980-81. The assessee is carrying on business in manufacture and sale of roofing tiles and bricks as lessee of Feroke Tile Works. The assessee paid 16% of the salary as bonus and 10% as production incentive. Admittedly, payment of bonus exceeded 20% which is the maximum payable under the Payment of Bonus Act. The excess of 6% was disallowed by the assessing authority. In appeal, the Commissioner of Income Tax (Appeals) deleted the disallowance made by the assessing authority. In further appeal, the Appellate Tribunal held that since the bonus was paid by the assessee as a customary bonus, it is entitled to the deduction of the full amount paid. It is thereafter at the instance of the Revenue that the question of law formulated hereinabove has been referred for the decision of this court.

3. We heard counsel. The Appellate Tribunal itself has stated that an amount of Rs. 54,197 being the excess of the bonus paid over 20% of the salary is a permissible deduction, since it was paid on the occasion of "Vishu", and so it is a customary bonus. In the matter of payment of bonus, to what extent the bonus paid to the employees is a permissible deduction has been laid down in several decisions of this court ; the earliest one is the decision reported in Commissioner of Income Tax Vs. P. Alikunju, M.A. Nazir, Cashew Industries, . There are subsequent decisions on the subject. They are : Commissioner of Income Tax Vs. Kumar Industries, , Commissioner of Income Tax Vs. Kerala Agro Industries Corporation, , and an un-reported Bench decision of this Bench rendered in Income Tax Reference No. 13 of 1987 dated June 6, 1990--since reported in Commissioner of Income Tax Vs. Travancore Titanium Products Ltd., . The above decisions hold the view that, ordinarily, a payment envisaged by the Payment of Bonus Act is a permissible deduction. If the amount paid by way of bonus exceeds the maximum permissible under the Payment of Bonus Act, the excess so paid has to be scrutinised u/s 36(1)(ii) of the Act. These aspects were not borne in mind by the Appellate Tribunal when it held that the amount paid in excess of the maximum of 20% payable under the Payment of Bonus Act is a permissible deduction, since what was paid was a customary bonus. We are afraid that the Appellate Tribunal has totally ignored the mandate of the statute contained in Section 36(1)(ii) as explained in the above Bench decisions. Therefore, we hold that the Appellate Tribunal was in error in surmising that the assessee is entitled to the entire amount paid by way of bonus in excess of 20% which is the maximum amount payable under the Payment of Bonus Act. We are of the view that the matter requires a fresh appraisal by the Appellate Tribunal. Therefore, we decline to answer the question referred to this court, but, at the same time, we direct the Income Tax Appellate Tribunal to restore the appeal to file on this aspect and decide the matter afresh in the light of the Bench decisions adverted to hereinabove.

4. We should also point out that the question framed reads "the bonus paid in excess of the minimum" which should only be a clerical mistake for "the bonus paid in excess of the maximum". In answering the question referred to this court, we reframe the question thus :

''Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessee is entitled to claim deduction of the bonus paid in excess of the maximum and in holding that the customary bonus paid will not attract the provisions of Section 36(1)(ii) of the Income Tax Act, 1961 ?"

5. The reference is disposed of as above.

6. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.