

(2001) 08 CAL CK 0029
In the Calcutta High Court
Case No : Income Tax R. No. 20 of 1992

Commissioner of Income Tax

APPELLANT

Vs

Ganges Rope Co. Ltd.

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 263, 36(1)
Payment of Bonus Act, 1965 — Section 31A

Citation : (2001) 252 ITR 524 : (2002) 125 TAXMAN 155

Hon'ble Judges : Y.R. Meena, J;Arun Kumar Mitra, J

Bench : Division Bench

Advocate : S.K. Mukherjee, for the Appellant;None, for the Respondent

Judgement

1. On an application u/s 256(2) of the Income Tax Act, 1961, this court has directed the Tribunal to refer the following question set out at page 2 of the paper book for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961, is legal and valid and whether the Tribunal is justified in holding that the additional sum of Rs. 1,45,595 was not in the nature of bonus and in setting aside the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961 ?"

2. In compliance with our direction, the aforesaid question has been referred for our opinion.

3. The assessee is a limited company. The relevant assessment year is 1981-82. The total income assessed in this year is Rs. 9,24,771.

4. On a scrutiny of the assessment records, the Commissioner of Income Tax noticed that the Assessing Officer has allowed the claim of the assessee regarding the deduction of Rs. 1,45,595. In this regard, the provision of Section 36(1)(ii) of the Act, the amount relates to the customary bonus and he set aside

the assessment order of the Assessing Officer with the direction to disallow the amount of Rs. 1,45,595 which has been paid as bonus to the assessee's employees/workers.

5. In appeal before the Tribunal, the Tribunal has followed the decision of this court in the case of General Beopar Co. (Pvt.) Ltd. Vs. Commissioner of Income Tax, , and held that the Commissioner of Income Tax has no jurisdiction to exercise his revisionary power u/s 263 of the Act.

6. None appeared for the assessee. Heard learned counsel for the Revenue. Learned counsel for the Revenue fairly admits that the controversy is whether the ex gratia payment of bonus is a bonus u/s 34 read with Section 31A of the Payment of Bonus Act, 1965. Their Lordships held that the statutory bonus and customary bonus operate in two fields and do not clash with each other.

7. Learned counsel for the Revenue further brought to our notice the decision of this court in Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd., , wherein this court has taken the view that ex gratia payment of bonus in terms of the agreement is wholly and exclusively for the purpose of business and deductible. The facts are not in dispute that the assessee had paid ex gratia payment of bonus of Rs. 1,45,595 in addition to the bonus payable under the Payment of Bonus Act. Their Lordships in *Hukumchand Jute Mills Ltd. v. Second Industrial Tribunal* [1979] 54 FJR 391 observed as under (page 395):

"We may straightaway dispose of the argument based on Section 31A. That relates to bonus linked with production or productivity in lieu of bonus based on profits. We are not concerned with such a situation and we agree that in regard to productivity bonus, Section 31A shall have operation but it speaks nothing about the other kinds of bonus and cannot, therefore, be said to have the spin-off benefits claimed by the appellant. Similarly, the submission that all agreements inconsistent with the Bonus Act shall become inoperative also has no substance vis-a-vis customary bonus. The fallacy is simple. Once we agree-and this is incontestable now -that the Bonus Act (1965) does not deal with customary bonus and is confined to profit-based or productivity-based bonus, the provisions of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other.

We have reached the end of the journey because the focal point of the debate is as to whether customary bonus, as claimed in this case, is impaired or eliminated by the 1976 amendment Act. Moreover, both parties have agreed that throughout they have been dealing with customary bonus only and whenever there has been a settlement or agreement it has been not the source of the right but the quantification thereof. The claim was rooted in custom but quantified by contract. It did not originate in any agreement, but was organised by it. We are, therefore, satisfied that the appeal must fail."

8. The ex gratia payment does not form the part of bonus as contemplated u/s

36(1)(ii) of the Act and therefore, both operate in two different fields.

9. In Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd., , this court has an occasion to consider whether the ex gratia payment of bonus is deductible, if this is for the purpose of business. Learned counsel for the Revenue has not disputed the fact that the payment was for the purpose of business. The payment satisfied the conditions laid down in the second proviso to Section 36(1)(ii) of the Act of 1961. The payment is deductible in spite of the fact that the payment in excess of the limit prescribed u/s 36(1)(ii) of the Act. Therefore, when learned counsel has not disputed the fact that the payment has satisfied the three conditions laid down in the second proviso to Section 36(1)(ii) of the Act of 1961, as referred to at page 461 in the case of Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd., , the claim of the assessee has rightly been allowed.

10. In view of these admitted facts, we find no infirmity in the order of the Tribunal.

11. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.

12. All parties are to act on a xeroxed signed copy of this dictated order on the usual undertaking.