(1991) 07 MAD CK 0003

In the Madras High Court

Case No : Tax Case No''s. 1001 to 1003 of 1980

Commissioner of Income Tax APPELLANT

Vs

George Oaks Ltd. RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1992) 61 TAXMAN 225

Hon'ble Judges : Thanikkachalam, J;Ratnam, J

Bench : Division Bench

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

Judgement

Ratnam, J.—In these tax case references u/s 256(1) of the income tax Act, 1961 (''the Act'') at the instance of the revenue, the following

questions of law have been referred to this Court, for its opinion:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the provision for monetary value of

unavailed leave salary of the employees should be allowed as a deduction?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 12,171 being the

arrears of urban land tax is an admissible expenditure for the assessment year 1973-74 even though the tax related to the earlier years?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 2,481 being the notice

pay to workers voluntarily retired should be allowed as a deduction in the assessment year 1973-74? (Only in T.C. No. 1003 of 1980).

Insofar as the first question is concerned, the learned counsel for the revenue now represents that he has been instructed not to press for an answer

on this question and we, therefore, refrain from answering the common question.

2. Insofar as the second question is concerned, in view of the decisions in Commissioner of Income Tax Vs. M. Ct. Muthiah, CIT v. Woodlands

Hotel [1983] ITR 603 (Mad.) and Commissioner of Income Tax Vs. East India Industries (M) Pvt. Ltd., the question is answered in the

affirmative and against the revenue.

3. The third question arises this way. The assessee is a limited company and during the accounting year relevant to the assessment year 1973-74, it

paid to nine workers, consequent on their voluntary retirement, a sum of Rs. 2,481 representing notice pay. The ITO treated this payment as a

voluntary payment and, therefore, inadmissible, as expenditure wholly and exclusively incurred for purposes of business. The AAC, however, took

the view that though the payment of Rs. 2,481 was in the nature of a voluntary payment, it was made to maintain good relationship with the

employees and upheld the claim of the assessee that the expenditure was an allowable item laid out wholly and exclusively for purposes of

business. The Tribunal, in the course of its order, found that the assessee was finding it difficult to function owing to the sustaining of the losses and

with a view to reorganise the branch by reducing the staff, nine workers, who had offered to voluntarily retire, were paid notice pay as per the

standing orders and that the expenditure incurred by the assessee was incurred as part of the business expediency and hence allowable as claimed

by the assessee. That is how the third question referred to above has come up before us. There is no dispute that during the accounting period

relevant for the assessment year 1973-74, the assessee had sustained losses and had wanted, by reducing the staff, to bring a reorganisation of the

branch, saving on the wage bill as well. Under the standing orders, provision is made for the voluntary retirement scheme and it is stated that in all

such cases of voluntary retirement, the quantum of benefits will be, as if retrenched as per the Industrial Disputes Act, 1947. Though voluntary

retirement, under the provisions of Industrial Disputes Act cannot be regarded as retrenchment, yet, under the standing orders, which is binding on

the assessee as well as the workers, a scheme has been evolved for voluntary retirement on benefits being made available to the retiring workmen, as if they had been retrenched under the provisions of the Industrial Disputes Act. It is not disputed that if the assessee had resorted to the

procedure outlined in the Industrial Disputes Act for retrenching the nine workmen, then, the assessee would have been liable to pay such benefits

as would be available to the retrenched workmen as per the Industrial Disputes Act. However, the assessee resorted to the voluntary retirement

scheme, in and by which, though the retirement of the workmen may be voluntary, yet, the benefits are available on a par with that under the

Industrial Disputes Act. In other words, though under the provisions of the Industrial Disputes Act, as such, no liability was cast on the assessee for

making available the benefits of retrenchment to nine retrenched workmen, yet, under the standing orders, it became necessary for the assessee to

meet that obligation. The purpose of retrenching the nine workmen as found by the Tribunal was only to contain the loss, reorganise the branch by

reducing the staff and to bring about a reduction in the wage bill as well. These are matters of management pertaining to business considerations

and expediency and the expenditure incurred by the assessee in this regard was for purposes of business and also with a view to maintain good

relationship with the labour and that expenditure has to be considered as having been laid out wholly and exclusively for business purposes of the

assessee. A reference in this connection may be made to Sassoon J. David and Co. Pvt. Ltd., Bombay Vs. Commissioner of Income Tax ,

Bombay, where the Supreme Court stated that it is too late in the day now to treat the expenditure incurred by a management in paying reasonable

sums by way of compensation for termination of service as not business expenditure. It is also significant that it is not the stand of the revenue that

the sum of Rs. 2,481 representing the payment of notice pay to the nine workmen is not reasonable. Therefore, the third question is answered in

the affirmative and against the revenue. There will be no order as to costs.

