

(1991) 03 KAR CK 0057

In the Karnataka High Court

Case No : Income-tax Referred Case No. 158 of 1986

Commissioner of Income Tax

APPELLANT

Vs

International Instruments Ltd.

RESPONDENT

Date of Decision : 25-03-1991

Acts Referred:

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

Citation : (1993) 109 CTR 87 : (1992) 196 ITR 792

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chanderkumar, for the Appellant; G. Sarangan, for the Respondent

Judgement

K. Shivashankar Bhat, J.—Under the provisions of the Income Tax Act, 1961 ("the Act for short), the following question has been referred for out consideration :

"Whether, on the facts and in the circumstance of the case, the Appellate Tribunal was right in holding that the assessee is entitled to the deduction of Rs. 64,071 being bonus paid in excess of 20 per cent. When section 36(1)(ii) of the Income Tax Act, 1961, restricts such allowance to the amount payable under the Payment of Bonus Act, 1965 ?"

2. The relevant assessment year is 1977-78. The previous year ending is on December 31, 1976. In May, 1977, at a meeting of the directors of the assessee company it was resolved to make certain payments to be workmen by way of bonus. This was found to be in excess of the amount payable u/s 31A of the Payment of Bonus Act, 1965, and therefore, this excess amount was disallowed when it was claimed as a deduction by the assessee.

3. The Appellate Tribunal found that there was there was continuous dialogue between the management and the labour union which resulted in a resolution for

the payment of additional bonus. Therefore, it was held that the liability to pay the additional bonus accrued in the year 1976 and that the payment was also made during the same year. The resolution of the board only ratified the payment made already. According to the Tribunal, the payment was by virtue of an agreement (though not in writing) between the management and the labour. Section 31A of the Payment of Bonus Act, 1965, was referred to and quoted by the Appellate Tribunal, and reads thus :

"31A. Notwithstanding anything contained in this Act, -

(i) whether an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976), or

(ii) Where the employees enter into any agreement or settlement with their employer after such commencement,

for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be :

Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus u/s 10 shall be null and void in so far as it purports to deprive them of such right :

Provided further that such employees shall not be entitled to be paid such bonus in excess of twenty per cent. of the salary or wage earned by them during the relevant accounting year."

4. The Appellate Tribunal states that the second proviso quoted above came into effect only from September 3, 1977, and, therefore, the bar stated in the said proviso was not applicable. Learned counsel for the Revenue pointed out that this is an error committed by the Appellate Tribunal which has affected the conclusion of the Tribunal. It is true that section 31A was amended and certain changes were effected by the insertion of a proviso. However, the present second proviso was already there in the original section as the sole proviso. The alteration that was done by the amendment to the second proviso was by introducing a new proviso as the first proviso as it now stands and the original proviso was transferred as the present second proviso. Therefore, the Appellate Tribunal should have considered the applicability of the said proviso to the claim of the assessee.

5. Learned counsel for the assessee, however, contended that the provisions of section 36(1)(ii) of the Income Tax Act, 1961, and its second proviso are not exhaustive and an assessee can claim deduction u/s 37 of the said Act also. It was also contended that, under the second proviso to section 36(1)(ii) of the Income Tax Act, 1961, the Revenue can examine the reasonableness of the bonus paid whenever the said bonus is now covered by the first proviso to

the said section. Various decision were cited in support of the proposition that the bar imposed by the first proviso to section 36(1)(ii) governs the contractual payments specifically referred to u/s 31A of the Payment of Bonus Act, 1965. But there are various kinds of bonus which are not covered by the said proviso such as incentive bonus, attendance bonus, festival bonus, etc. The only bonus covered by section 31A of the Payment of Bonus Act, 1965, is the bonus which is linked with production as is clear from the very section and the preamble to the said Act. Even otherwise, it was contended that the second proviso to section 36(1)(ii) of the Income Tax Act, 1961, preserved the rights of the assessee to have a reasonable bonus deducted.

6. We do not express our views at this stage on the proceedings in view of the patent error committed by the Appellate Tribunal while referring to the provisions of section 31A of the Payment of Bonus Act, 1965. Further, it is necessary to mention the two decisions of the Kerala High Court which support the contentions advanced by Sri Sarangan in support of the claim made by the assessee; they are reported in Commissioner of Income Tax Vs. P. Alikunju, M.A. Nazir, Cashew Industries, and Commissioner of Income Tax Vs. P. Balakrishna Pillai, International Cashew Traders, . A few more decisions were cited which it is not necessary for us to refer to at present.

7. Since the Appellate Tribunal has not examined the appeal before it by referring to the appropriate provision of law, we direct the Appellate Tribunal to rehear the appeal by permitting the assessee and the Revenue to raise all contentions. The matter is remitted to the Appellate Tribunal as was done by the Kerala High Court in the case reported in Commissioner of Income Tax Vs. P. Balakrishna Pillai, International Cashew Traders, . Reference is disposed of accordingly.