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(1989) 07 KL CK 0045

In the High Court Of Kerala

Case No : Income-tax Reference No. 399 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Kumar Industries — RESPONDENT

Date of Decision : 28-07-1989

Acts Referred:
Income Tax Act, 1961 — Section 36(1)

Citation : (1990) 183 ITR 156

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant;

Judgement

K.A. Nayar, J.—At the instance of the Commissioner of Income Tax, Cochin, and as directed by this court, the Income Tax Appellate Tribunal, Cochin Bench, referred the following questions of law arising out of the order of the Tribunal dated June 18, 1982, in I. T. A. No. 48(Coch) of 1981 for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim deduction for ''goodwill bonus'' under the Income Tax Act ?

(2) (a) Whether, on the facts and in the circumstances of the case, the Tribunal is right and had materials in considering/treating the so-called ''goodwill bonus'' as to ''made up the customary bonus'' in the nature of the customary bonus ?

(b) Whether, on the facts and in the circumstances of the case, did the assessee prove and the Tribunal consider ''customs'' in the so-called customary nature of the bonus and is not the order vitiated for not proving/ considering ''customs'' ?"

2. The matter arises out of the Income Tax assessment for the assessment year 1977-78 for which the previous year ended on December 31, 1976. During the previous year, the assessee paid an amount of Rs. 97,664.87 as "goodwill bonus". This was over and above the regular and incentive bonus paid by the assessee to its employees for which allowable deduction was given by the

Income Tax Officer. The Income Tax Officer held that the bonus of Rs. 97,664.87 being in excess of the 20% limit imposed under the Bonus Act was not admissible u/s 36(1)(ii) of the Income Tax Act. On appeal by the assessee, the Commissioner of Income Tax (Appeals) held that the prohibition contained in the proviso to Section 36(1)(ii) of the Act had no relevance and the claim was admissible under the main clause itself. The appeal by the Revenue before the Appellate Tribunal was not successful. The Tribunal held that the payment has to be considered as in the nature of customary bonus granted by the assessee to conform to the standards of the previous years. It also considered the payment u/s 36(1)(ii) and held that the payment was bona fide made and the quantum was reasonable.

3. Thereafter, the Revenue filed a petition before the Tribunal for getting the questions of law aforementioned to be referred which was dismissed. After the dismissal of the petition, for compelling reference, the Revenue filed original petition before this court and the court directed the questions to be referred to the High Court.

4. We heard counsel.

5. The guidelines to be adopted while considering the payment of bonus in excess of 20% limit u/s 36(1)(ii) of the Act have been laid down in a Bench decision of this court in Commissioner of Income Tax Vs. P. Alikunju, M.A. Nazir, Cashew Industries, . This court held that all the three conditions postulated by Clauses (a) to (c) of the second proviso must be satisfied, if the payment made in excess of that stipulated by the Payment of Bonus Act is to be regarded as reasonable within the meaning of Section 36(1)(ii) of the Act. The pay of the employee and the conditions of his service, the profits of the business or profession for the previous year in question and the general practice in similar business or profession, all will have to be examined. The said decision has been followed by this court in Income Tax Reference No. 185 of 1985 (Commissioner of Income Tax Vs. P. Balakrishna Pillai, International Cashew Traders,) and ITR No. 198 of 1985.

6. On a perusal of the order of the Appellate Tribunal, it is seen that the Tribunal has not considered these aspects at ali. Therefore, there had been no adjudication of the case as required by law. We also held therein that any bonus paid beyond the limit mentioned in the Bonus Act should stand the test specified in Section 36(1)(ii) of the Act.

7. In the light of the above, we decline to answer the questions referred to us, but at the same time direct the Appellate Tribunal to consider the matter afresh in the light of the decision reported in Commissioner of Income Tax Vs. P. Alikunju, M.A. Nazir, Cashew Industries, and ITR No. 185 of 1985 Commissioner of Income Tax Vs. P. Balakrishna Pillai, International Cashew Traders,) and 198 of 1985.

8. A copy of this judgment under the seal of the High Court and the signature of

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the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, forthwith.

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