

(1997) 01 MAD CK 0130

In the Madras High Court

Case No : Tax Case No's. 875 to 877 of 1982 13th January, 1997

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

L.M. VAN MOPPE DIAMOND TOOLS INDIA LTD.

RESPONDENT

Date of Decision : 13-01-1997

Acts Referred:

Citation : (1999) 151 CTR 435

Hon'ble Judges : Thanachalam, J;Thamekka Chalam, J;S.M. Sidickk, J

Bench : Full Bench

Judgement

THAN9MA CHALAM, J.

At the instance of the Department, the Tribunal has referred the following three questions for the opinion of this Court under s. 256(1) of the IT Act, 1961.

" 1. Whether, on the facts and in the circumstances of the case, the expenses incurred in the shifting of the assessee's factory from Madras to Coonoor was an allowable deduction?

2. Whether, on the facts and in the circumstances of the case, the sum claimed as provision for monetary value of the unavailed leave of the employee should be allowed as deduction in computing the total income of the assessee ?

3. Whether, on the facts and in the circumstances of the case, the assessee was entitled to the deduction of Rs. 2,355 being the recoverable bonus written off in the assessment for the asst. yr. 1973-74 ?

2. In so far as question No. 2 is concerned, that is not pressed. Hence, that question is returned unanswered.

3. In so far as question No. 1 is concerned, the point for consideration is, whether the expenses incurred in the shifting of assessee's factory from Madras to Coonoor, was allowable deduction. For the asst. yrs. 1973-74 to 1975-76, the

assessee deducted expenditure incurred in shifting its factory from Sembiam at

Madras to Coonoor. The assessee contended that the premises at Madras was still kept in readiness for the company's officers and the shifting of factory alone to Coonoor, did not give rise to any enduring benefit. The ITO was of the view that since the entire manufacturing unit had been shifted, the retention of the premises at Madras, did not indicate any intention to continue the manufacturing process there. He held that the expenditure incurred for the shifting of the factory was capital expenditure and could not be allowed to be deducted, in view of the decision of the Supreme Court in *Sithalpur Sugar*

Sitalpur Sugar Works Ltd. Vs. Commissioner of Income Tax, Bihar and Orissa, On appeal, the AAC following the decision of the Tribunal for the earlier asst. yrs. 1970-71 to 1972-73 held that it is an admissible deduction. On further appeal by the Revenue, the order of the AAC was confirmed following its own decision dt. 4th March, 1977 in ITA Nos. 70 to 72/MDS/76-77.

4. A similar question also came up for consideration before this Court in *CIT vs. Birnetal Bearings Ltd.* (1995) 124 CTR (Mad) 189: (1994) 210 IM 945, wherein this Court held that the Tribunal was justified in treating the expenditure relating to the shifting of the machinery as capital expenditure and the expenditure relating to the shifting of the employees as revenue expenditure. Similar view was also taken in *Commissioner of Income Tax Vs. Bimetal Bearings Ltd.*, In as much as the order passed by the Tribunal is in accordance with the above said decisions of this Court, we answer question No. 1 in the affirmative and against the Department.

5. In so far as question No. 3 is concerned, a sum of Rs. 2,355 representing recoverable bonus, which has been paid in 1971 and by a deed of settlement dt. 31st Jan., 1972, it was decided to treat it as an expenditure of the company and debits were made during the year ending 31st Dec., 1973 by corresponding credits to the recoverable bonus account. The ITO was of the view that either the amounts advanced in prior years had been waived, in which case, it was not an admissible deduction in the year in question or it was equivalent to a bed debt, which again was not referable to this accounting year or even if it is treated as a bonus pertaining to this year, the aggregate exceeded 8-1/3 per cent and it had to be disallowed. On appeal, the AAC, following the order of the Tribunal in the case of *Higgingothems Ltd.* in ITA No. 828/77-78 held that it was paid out of business expenditure and was an admissible deduction. On further appeal by the Revenue, the Tribunal followed its own decision in ITA No. 828/Mad/77 dt. 28th Sept., 1978 confirmed the order of the AAC. A similar question came up for consideration in T.C. No. 360 of 1982 wherein by judgment dt. 7th Oct., 1996, this Court held that when the expenditure incurred as bonus in settlement of a dispute between employer and employees, it would amount to expenditure incurred for the purposes of business. Therefore, it is an allowable deduction. In view of the aforesaid decision of this Court, there is no infirmity in the order of the Tribunal in allowing the amount paid by way of bonus. Accordingly, we answer question No. 3 in the affirmative and against the Department. No costs.