
(1978) 01 CAL CK 0013

In the Calcutta High Court

Case No : Income-tax Reference No. 70 of 1971

Commissioner of Income Tax

APPELLANT

Vs

Longview Tea Co. Ltd.

RESPONDENT

Date of Decision : 05-01-1978

Acts Referred:

Income Tax Act, 1922 — Section 66(1)

Citation : (1978) 113 ITR 515

Hon'ble Judges : Dipak Kumar Sen, J;C.K. Banerji, J

Bench : Division Bench

Advocate : Bagchi and B.K. Naha, for the Appellant;P.K. Pal and R.N. Dutt, for the Respondent

Judgement

Sen, J.—This reference u/s 66(1) of the Indian Income Tax Act, 1922, is at the instance of the Commissioner of Income Tax, West Bengal-II, and arises out of the assessment of Longview Tea Company Ltd., the assessee, for the assessment year 1961-62, the relevant accounting period being the calendar year ending on the 31st December, 1960.

2. The facts found and/or admitted in the proceedings below are as follows : In the assessment year in question the assessee claimed a deduction in respect of a sum of Rs. 37,835 on account of staff and labour bonus. The Income Tax Officer disallowed the claim on the ground that this provision had not been made pursuant to any agreement entered into or any award passed during the year. On appeal, the Appellate Assistant Commissioner by following the judgment of the Supreme Court in Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., upheld the decision of the Income Tax Officer.

3. There was a further appeal by the assessee to the Income Tax Appellate Tribunal. The Tribunal did not agree with the view taken by the Appellate Assistant Commissioner and disposed of the matter with the following observation :

" In our opinion, the Appellate Assistant Commissioner was not correct. The matter relates to the bonus for the current year. The same is an existing liability and has to be allowed as such. The facts of the instant case are distinguishable from the facts of the case before the Supreme Court relied upon by the Appellate Assistant Commissioner. The claim of the assessee would thus be allowed in this regard. The disallowance of Rs. 37,835 will be deleted."

4. From this order of the Tribunal the following question has been referred :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 37,835 included as provision in the accounts for 31st October, 1960, as bonus to its staff and labour for the year 1960 was deductible in computing its profits for the assessment year 1961-62 as a liability?"

5. Mr. Bagchi, learned advocate appearing for the revenue, has submitted that the matter is concluded by the decision of the Supreme Court in the case of Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., .

6. It will be convenient to consider at this stage the said decision of the Supreme Court. The facts before the Supreme court were, inter alia, that the assessee had paid to its employees a sum of Rs. 1,08,325-9-3 for the calendar year 1947 as bonus in terms of an award under the Industrial Disputes Act made on the 13th January, 1949. The payment was in fact made in the calendar year 1949, the relevant assessment year being 1950-51. But this amount was debited in the profit and loss account of the assessee for the year 1948, corresponding credit being made to the bonus payable account. The books of 1948 had not been closed till the date of the order of the Industrial Tribunal, i.e., the 13th January, 1949. On these facts the question which was before the Supreme Court was :

" Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim a deduction of bonus of Rs. 1,08,325 relating to the calendar year 1947 in the assessment year 1950-51 ? "

7. The Supreme Court noted the relevant parts of Section 10 of the Indian Income Tax Act, 1922, as follows :

Section 10(2)(x) :

" Any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to-

(a) the pay of the employee and the conditions of his service ;

(b) the profits of the business, profession or vocation for the year in question ;

and

(c) the general practice in similar businesses, professions or vocations."

Section 10(5):

" In Sub-section (2) " paid " means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section....."

8. The Supreme Court reviewed the law as to bonus and noted its judgment in the case of Keshav Mills Ltd. Vs. Commissioner of Income Tax, Bombay, and laid down the following principle :

(a) The workmen are entitled to make a claim to profit bonus if certain conditions are satisfied ;

(b) the workmen have to make such claim from year to year ;

(c) the claim has either to be settled amicably or by industrial adjudication ; and

(d) if there is a loss or if no claim is made, no bonus would be permissible.

9. On the basis of the above, the Supreme Court held on the facts that it was only in 1949 that the claim to profit bonus was settled by an award of the Tribunal and that would be the only year in which the liability could properly be attributed to.

10. Mr. Bagchi also cited other decisions which are chronologically as follows :

(a) NEW VICTORIA MILLS CO. LTD Vs. COMMISSIONER OF Income Tax, U. P., . In this case, the Allahabad High Court followed Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., , and added that, in the mercantile system of accounting, for making a credit or debit entry, it had to be shown that a certain enforceable liability has accrued or arisen. Such liability must be one that has been ascertained and capable of being enforced by the person in whose favour the debit has been raised.

(b) Commissioner of Income Tax Vs. Somasundaram Mills (P.) Ltd., Hence, the assessee who followed the mercantile system of accounting claimed a deduction of a sum of Rs. 1,98,993 in the assessment year 1957-58, the relevant previous year being the calendar year 1950. The assessee had made a provision for Rs. 1,50,000 in its accounts for payment of bonus but the said sum of Rs. 1,98,993 was actually paid towards bonus after the close of the accounting year 1956. The actual payment was Rs. 1,98,993 which was more than what was provided for.

On these facts the Madras High Court, following the case of Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., held that, as the provision of Rs. 1,50,000 was not made in respect of bonus following an award or a settlement by agreement the

amount, was not deductible.

(c) *Luxmi Devi Sugar Mills Vs. Commissioner of Income Tax*, . The facts in this case were that in the assessment year 1961-62, the previous year ending on the 19th September, 1960, the assessee had made a provision for payment of bonus and claimed a deduction thereon. The liability for bonus was in fact determined under the order of the Government dated the 29th December, 1960. On these facts the Allahabad High Court, following *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd.*, , held that as the bonus was admittedly paid after the close of the previous year and the liability for payment had also arisen after the close of the previous year by the Government order, the amount provided for payment of bonus in the assessment year in question was not an allowable deduction.

11. Mr. Pranab Pal, learned counsel for the assessee, contended before us that the decision of the Supreme Court in the case of *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd.*, had to be read in the context of its special facts and in the light of the subsequent decision of the Supreme Court in the case of *Metal Box Company of India Ltd. Vs. Their Workmen*, .

12. In this case, the Supreme Court explained the scope of the concept of "reserve" and also that of the concept of "provision". The Supreme Court held that an estimated liability under the schemes for payment of gratuity or bonus, even if amounting to a contingent liability and not a debt under the Wealth-tax Act, if properly ascertainable and if its present value was discounted, would be deductible from the gross receipts while preparing the profit and loss account. If an estimated liability was ascertainable with fair accuracy under the methods of accountancy and following actuarial principles, there was no reason why it should not be taken into account in arriving at true profits and gains under the Income Tax Act.

13. Mr. Pal next cited a decision of this court in the case of *TEXTILE MACHINERY CORPORATION LTD. Vs. COMMISSIONER OF WEALTH-TAX, CALCUTTA.*, . In this case, a question similar to that in the present reference, arose in a wealth-tax proceeding. In the assessment years in question the assessee had made provision for payment of bonus and further made advances to the workmen on the basis thereof against anticipated demand. The question arose whether, on these facts, in determining the net value of the assets of the assessee's business, provision made for bonus should be deducted.

14. The decision of the Supreme Court in the case of *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd.*, was cited and this court distinguished the decision of the Supreme Court with the following observations *TEXTILE MACHINERY CORPORATION LTD. Vs. COMMISSIONER OF WEALTH-TAX, CALCUTTA.*, :

" We live in a welfare State where we have certain responsibilities. One such

responsibility is that employers should not only pay wages and allowances to workmen, but must share with them a portion of their profit. This is not a moral responsibility. It may have started that way but in course of time this moral responsibility has ripened into a legal liability and has recently been converted into a statutory obligation. If that is so, this liability is at par with any other liability, may be contractual liability as in *Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal*, or statutory obligation as in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, . We agree that the argument of Mr. Sen that the context in which the Supreme Court observed that the liability to pay bonus did not become a liability until it was amicably settled or covered by an award of the industrial tribunal was made in a different context and their Lordships had not to consider the case in the context that we are now doing. In our opinion, the liability to pay a bonus is a debt and not a contingent liability and, therefore, is liable to be taken into consideration in the computation of the net wealth u/s 2(m) of the Wealth-tax Act.

There is another aspect of the matter. Here, it does not appear that there was any dispute between the assessee and the workmen over the payment of bonus up to the extent provided for by the assessee. The workmen were possibly asking for more and that is why industrial adjudication was going on. But up to a total sum of Rs. 16,93,000 spread over the years of assessment, the assessee admitted liability and was making payment of considerable sums towards bonus. This is an indication that up to that amount the payment of bonus was not disputed. If that was so, and we have every reason to think that it was so, then this is an additional reason why the liability should be treated as debt owed by the assessee to the workmen."

15. The assessee was held to be entitled to deduct the amount of the provision.

16. Decisions of other High Courts, namely, *Sassoon J. David and Company Pvt. Ltd. Vs. Commissioner of Income Tax*, and *Symonds Distributors (P.) Ltd. and Wheelers Distributors (P.) Ltd. Vs. Commissioner of Income Tax*, were also cited by Mr. Pal.

17. In the last mentioned decision, the facts before the Allahabad High Court were that the accounting year of a company came to a close on the 31st December, 1961. On the 4th December, 1961, a resolution for payment of bonus was passed and appropriate entries were made in the accounts kept under the mercantile system. The High Court held that, as the assessee was maintaining its accounts under the mercantile system, it incurred liability when it passed its resolution for payment of bonus and was entitled to the deduction of the same, *Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd.*, was distinguished on facts that there the claim had been made by employees, which was disputed and the matter was pending adjudication and that there was no such dispute in the case before the High Court. The payment was voluntary and the High Court assumed

that the employees must have made a claim, which the management must have accepted or, alternatively, there was a subsisting understanding as to the payment of bonus. On these grounds the claim for deduction was upheld.

18. In reply, Mr. Bagchi cited the case of Commissioner of Wealth Tax, Gujarat-II Vs. Sayaji Mills Ltd., . In this case, the identical question as in the case of TEXTILE MACHINERY CORPORATION LTD. Vs. COMMISSIONER OF WEALTH-TAX, CALCUTTA., arose before the Gujarat High Court. The Gujarat High Court dissented from the Calcutta High Court and held that the liability to pay bonus was not a liability for any liquidated amount until the amount of bonus would be settled by mutual agreement or industrial adjudication. It is only then that it becomes a " debt " owed by the employer. The High Court observed as follows (page 64) :

" Every liability to pay does not necessarily constitute a debt. We have to examine the nature of the liability in order to see whether it is for a liquidated amount or for an unliquidated amount. If it is the former, it is a debt but not so, if it is the latter. "

19. Mr. Bagchi also drew our attention to the decision in the case of Commissioner of Income Tax Vs. Somasundaram Mills (P.) Ltd., , where the Madras High Court distinguished TEXTILE MACHINERY CORPORATION LTD. Vs. COMMISSIONER OF WEALTH-TAX, CALCUTTA., on facts. The Madras High Court noted that in the case of Textile Machinery Corporation, there was no dispute between the assessee and the workmen for payment of bonus up to the extent provided for by the assessee. But the workmen were asking for more and the dispute related to the excess which was being claimed by the workmen for which adjudication was going on. The assessee admitted the liability and was making payment of considerable sums towards the bonus without admitting the workmen's claim for the excess. Because it was an agreed and admitted liability, therefore, it became an accrued liability and consequently a " debt " within the meaning of the Wealth-tax Act.

20. After a careful consideration of the facts of this case and of the decisions cited at bar, we are of the opinion that it is not possible to answer the question on the facts before us. The Tribunal has gone only on the basis that there was a provision for bonus in the accounts of the assessee. There is no finding that in the particular year there had been any payment of bonus though bonus had been paid in other years. There is no indication as to the basis on which the bonus which has been provided for in the accounts was arrived at, viz., whether it was on the basis of mere claims made by the employees or whether it was on the basis of the accepted and past practice of the company or whether such provision has been made pursuant to any understanding or arrangement between the assessee and its workmen. It is not even found whether this provision for bonus had been made pursuant to any resolution of the directors or the shareholders of the assessee.

21. In our view it is necessary to ascertain on enquiry on the point indicated and determine on what basis the bonus is being provided for before the question can be answered.

22. If it is found on enquiry that the bonus in question has been provided for pursuant to any regular practice of the assessee to pay a percentage of its profits as bonus every year and/or pursuant to a lawful resolution of the assessee after a claim has been made by the workmen, it may be held to be an admitted liability amicably settled and, therefore, deductible. We remand the matter back to the Tribunal for this enquiry. -The Tribunal will be at liberty to take fresh evidence, hear the parties and decide the matter in accordance with law, as indicated above.

23. There will be no order as to costs.

Banerji, J.

24. I agree.