

(1991) 01 CAL CK 0007
In the Calcutta High Court

Case No : Income-tax Reference No. 61 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Moran Tea Co. (I.) Ltd.

RESPONDENT

Date of Decision : 29-01-1991

Acts Referred:

Citation : (1992) 195 ITR 702

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : R.C. Prasad, for the Appellant;Pal and R.N. Dutta, for the Respondent

Judgement

Ajit K. Sengupta, J.—This reference u/s 256(1) of the Income Tax Act, 1961, relates to the assessment year 1979-80.

2. Shortly stated, the facts are that the assessee, a limited company, was following the mercantile system of accounting. Under the terms of a scheme of amalgamation sanctioned by the Calcutta High Court, the Indian undertaking of Moran Tea Co. Ltd., a sterling company, was acquired by the present assessee as a going concern with all its assets and liabilities as at the close of the business on December 31, 1977. The assessee made provision for bonus at Rs. 15,40,720. The provision was made for the assessment year 1978-79. The assessee made payment of bonus of Rs. 18,08,911. The said payment exceeded the provision by Rs. 2,68,191. The excess payment was disallowed by the Income Tax Officer on the ground that it related to the earlier year.

3. The assessee came up in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) was impressed with the arguments of the assessee and, accordingly, deleted the addition.

4. Before the Tribunal, it was contended on behalf of the Revenue that, since the assessee was following the mercantile system of accounting, it ought to have made provision correctly for the liability which had been discharged during the year under reference. If the assessee could not estimate the liability correctly,

the excess payment cannot be allowed. On the other hand, the contention of the assessee was that, by the letter dated December 11, 1980, addressed to the Income Tax Officer, the assessee explained the situation under which a discrepancy arose in the provision for bonus in the earlier year. It was also contended that the bonus has been paid for business considerations and it was rightly allowed by the Commissioner of Income Tax (Appeals). The Tribunal held that the additional expenses which had been claimed by the assessee had rightly been allowed by the Commissioner of Income Tax (Appeals). It was held that it was for the purpose of business. On these facts, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, and in view of the system of accounting regularly employed by the assessee, the Tribunal was justified in holding that the sum of Rs. 2,68,191 is an allowable expenditure in computing the income for the assessment year 1979-80 ?"

5. The facts are not in dispute. The assessee admittedly failed to make suitable provision for liability of bonus. The question is whether, by reason of the omission on the part of the assessee to make a provision for bonus in the accounts for some staff, it would disentitle the assessee from claiming deduction for the liability not provided for but discharged by it. In our view, the answer must be in the negative.

6. In *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, the assessee who was assessed to sales tax initiated proceedings for a reduction or cancellation of the assessment. During the pendency of the Income Tax assessment of the assessee, its liability to sales tax was quantified and a demand for a specific sum was raised. The assessee had not made any provision for the said sales tax demand in its original return but filed a revised return claiming such deduction. It was held by the Supreme Court that the assessee was entitled to do so and that liability for payment of tax arose independent of the assessment thereof and such liability to pay the tax could be claimed by way of deduction though the same could not be enforced till it was quantified by assessment.

7. In this case also, the liability to pay bonus arose out of the Payment of Bonus Act, 1965. The assessee, in its letter dated December 11, 1980, stated the reason why the bonus payable was not correctly estimated. It was, *inter alia*, stated therein as follows :

"As you are aware, in terms of a scheme of amalgamation sanctioned by the Calcutta High Court, the Indian undertaking (which is the only undertaking) of the Moran Tea Co. Ltd. (a sterling company) was acquired by Moran Tea Co. (India) Ltd. as a going concern with all assets and liabilities as at the close of business on December 31, 1977.

The sterling company used to close its accounts on March 31 each year and the last account was for a period of nine months from April, 1977 to December,

1977. The system of accounting followed by the sterling company was that, While the sales up to March 31 used to be accounted for, the garden expenses for the period January to March used to be carried forward to the subsequent year as all garden expenses were basically kept on a seasonal basis and not on the basis of the financial year. As at March 31, 1977, the sterling company in fact carried forward Rs. 57,48,103 which included eligible salary and wages for three months which should have been taken into account for purposes of computing the bonus for the period up to December 1977. Due to some error or oversight, this was not taken into account in computing the provision for bonus for the period up to December 1977. This had been taken into account when bonus in respect of 1977 was actually paid in 1978, by Moran Tea Co. (India) Ltd. This omission in not taking into account the eligible salary for the three months January to March, 1977, has resulted in the bonus paid in 1978 by Moran Tea Co. (India) Ltd., in respect of 1977 being more than the provision made therefore in the accounts up to December 31, 1977, of the sterling company.

The excess amount paid (excess over the provision) was Rs. 2,68,191 as the following will show :

Rs.

"Actual eligible salary/wages 90,44,555

Bonus thereon at 20% 18,08,911

Actual bonus paid in 1978 on account of 1977 18,08,911

Bonus provision made in the accounts up to December 31, 1977, based on eligible salary/wages for the period April 1, 1977, to December 31, 1977 of Rs. 77,03,600--15,49,720

Short provision in 1977 which had to be paid in 1978 by Moran Tea Co. (India) Ltd., in addition to Rs. 15,40,720--2,68,191

In terms of the order of the Calcutta High Court, all assets and liabilities of the Indian undertaking of the sterling company were transferred to and vested in the Indian company. Accordingly, the liability for the bonus of 1977 fell on the Indian company and the shortfall had to be charged in the revenue accounts for 1978 of the Indian company. The charge of such shortfall is strictly in accordance with the terms of amalgamation.

The bonus payment of Rs. 18,08,911 in 1978 on account of 1977 had to be made and we may point out that such adjustments in respect of over-provision or under-provision through an adjustment account in the accounts of tea companies is a common feature. Further, the payment of Rs. 18,08,911 could not be avoided as non-payment of the full amount to which they were entitled would have resulted in unrest and any unpleasantness had to be avoided and, as a matter of commercial expediency, this had to be paid."

8. This statement of the assessee was accepted by the Commissioner of Income

Tax (Appeals) as well as by the Tribunal. It is nobody's case that the liability for the bonus did not fall on the Indian company after all the assets and liabilities of the sterling company were transferred to and vested in the Indian company. The bonus was also paid to the staff taken over by the Indian undertaking of the sterling company. On these facts, in our view, the Tribunal came to a correct conclusion.

9. Mr. R.C. Prasad, the learned advocate for the Revenue, has, however, submitted that the principles laid down in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, would not apply to the facts of this case and there is divergence of opinion on the question of applicability of the principles laid down therein. He has drawn our attention to the decision of this court in the case of *Shalimar Chemical Works Private Ltd. Vs. Commissioner of Income Tax*. There, on the facts of that case, this court held that though the statutory liability was created by the Employees' State Insurance Act, the liability became real and enforceable in the relevant subsequent year though the demand was referable to the earlier years. From a commercial point of view, the assessee was, at that stage, entitled to treat the demand of the Employees' State Insurance authorities as final and enforceable and the liability as having accrued on the said demand at that stage. In our view, this case does not support the contention raised by Mr. Prasad on behalf of the Revenue. The question involved in that case was essentially whether the liability in respect of the earlier years which became enforceable in the year of account could be allowed as a deduction or not. Although the liability might have accrued earlier, the court allowed that liability as a deduction. In our view, therefore, whether the principles laid down in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, or in *Shalimar Chemical Works Private Ltd. Vs. Commissioner of Income Tax*, are applied, the fact remains that the assessee is entitled to the deduction for the bonus which was also statutorily payable by the assessee in respect of the employees taken over from the Indian undertaking of the sterling company. For the foregoing reasons, we answer the question in this reference in the affirmative and in favour of the assessee.

10. There will be no order as to costs.

Shyamal Kumar Sen, J.

11. I agree.