(1993) 07 CAL CK 0030

In the Calcutta High Court

Case No : Income-tax Reference No. 134 of 1991

Commissioner of Income Tax APPELLANT

Vs

National Engineering Industries Ltd. RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:
Income Tax Act, 1961 — Section 37, 40A(5)

Citation : (1994) 208 ITR 1002 : (1994) 73 TAXMAN 581

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

Bench : Division Bench

Advocate : R.N. Bajoria and J.P. Khaitan, for the Respondent

Judgement

Ajit K. Sengupta, J.—Pursuant to the direction of the High Court u/s 256(2) of the Income Tax Act, 1961, the Tribunal has referred the following questions for the assessment year 1980-81 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that technical know-how fees of Rs. 33,33,333 paid to S.R.G. Kugeller Works Schemid Roost, A.G. Switzerland was revenue expenditure ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the ex gratia payment of Rs. 13,99,650 to the workers and employees in excess of the statutory limit of 20 per cent. of salary in terms of the Payment of Bonus Act, 1965, was allowable as deduction ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs. 2,01,000 being contribution made by the assessee to the National Engineering Industries Centre and National Engineering Industries Officers and Executive Welfare Scheme was allowable u/s 37 of the Income Tax Act, 1961 ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was

justified in holding that the medical reimbursement made by the employers was not includible in the calculation of the disallowance u/s 40A(5) of the Income Tax Act, 1961, as perquisite ?"

2. The first question is relating to the admissibility of the technical know-how fees under the collaboration agreement as the revenue expenditure. An identical question has been decided by this court in favour of the assessee in the assessee''s own case in Commissioner of Income Tax Vs. National Engineering Industries Ltd., . Following the said decision, we answer the first question in this reference in the affirmative and in favour of the assessee.

3. The second question relates to the ex gratia payment to the workers and employees in excess of the statutory limit prescribed by the Payment of Bonus Act, 1965. It is not in dispute that this question is concluded by the decision of this court in the case of Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd.,

4. Following the said decision, we answer the second question in the affirmative and in favour of the assessee.

5. The facts relating to question No. 3 are as under :

The Income Tax Officer by following his order for the assessment year 1976-77 disallowed two contributions made by the assessee, i.e., Rs. 1 lakh to NEI Centre and further contribution of Rs. 1,01,000 to NEI Officers and Executives Welfare Scheme aggregating to Rs. 2,01,000. The Commissioner of Income Tax (Appeals) by following his order for the assessment year 1976-77 deleted the addition. On further appeal, the Tribunal maintained the order of the Commissioner of Income Tax (Appeals) by following its order for the assessment year 1976-77 in ITA No. 1030 (Cal) of 1981 and C.O. No. 81 (Cal) of 1981 and ITA No. 623 (Cal) of 1981. It has held that both the contributions made to the NEI Centre which was registered under the West Bengal Societies Registration Act, 1961, for the welfare and benefit of the employees as also the contribution made to NEI Officers and Executive Welfare Scheme were deductible u/s 37 of the Act.

6. This payment is by way of contribution to the welfare schemes of the employees of the assessee. The payment has to be made as the assessee''s conduct of business has a nexus to the object of the employees'' welfare schemes. The expenditure is justified having regard to the business expediency. The refusal to pay such expenditure would have spread disaffection amongst the workers and employees and would have adversely affected the assessee''s business. The expenditure incurred merely for the purpose of keeping the workers happy and maintaining industrial peace and cordial relations with the employees is by now an accepted expenditure of the carrying on of a business. Without such good relations it is not possible to run any business. Therefore, the expenditure is rightly allowable as revenue expenditure. For the reasons aforesaid, we answer the question in the affirmative and in favour of the assessee.

7. The fourth question relates to the cash allowance paid by way of reimbursement of medical expenses incurred by the assessee. Such medical reimbursement does not come within the ambit of the expression "perquisite" as defined in Explanation 2(b) of Section 40A(5). This view has been taken by a number of decisions of this court, e.g., Indian Leaf Tobacco Development Co. Ltd. Vs. Commissioner of Income Tax, . Following the said decision, we answer the fourth question in the affirmative and in favour of the assessee.

8. There will be no order as to costs.

Shyamal Kumar Sen, J.

9. I agree.

