(2006) 10 AHC CK 0047

In the Allahabad High Court

Commissioner of Income Tax	APPELLANT
Vs	
Raza Textiles Ltd.	RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:
Income Tax Act, 1961 — Section 260A, 36(1)(ii)

Citation : (2007) 293 ITR 92

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—Affidavit of service filed today be placed on record.

2. Both the appeals have been filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and pertain to the assessment years 1974-75 and 1977-78, respectively.

3. Sri Shambhoo Chopra, learned standing counsel for the revenue, submitted that in both the appeals common substantial questions of law have been raised and the facts are similar.

4. The assessing authority had disallowed the claim of expenditure in respect of incentive bonus amounting to Rs. 48,929 and Rs. 7,17,830 respectively made by the respondent-assessee. The matter went up to the Tribunal and the Tribunal had directed the assessing authority to make enquiry and examine as to whether the payments were genuine or not and if the payments were found to be genuine and have been actually made by the assessee, then, its claim should be allowed. The operative portion of the order passed by the Tribunal is reproduced below:

We have given our anxious consideration to the rival submissions as also to the material on record. In its order relating to the assessment year 1981-82, the Tribunal has observed that the reasonableness of the payment has to be judged not on any subjective standard of the assessing authority but from the point of view of commercial expediency. It has also been held that such payment was being made by the assessee in the past as well and there was such a practice in the industry as certified by the U. P. Chamber of Commerce. As already stated, the assessee is claiming payment of incentive bonus as additional payment to the regular workers for additional work done by them. In the circumstances, no further enquiry is necessary with regard to the similar practice in the trade on the reasonableness of the payment. However, the Commissioner (Appeals) has doubted the genuineness of the payments. In the circumstances, we feel that he was justified in ordering an enquiry on the point. We, therefore, hold that the assessing officer should hold enquiry about the genuineness of the payment and in case the payments have been actually made by the assessee as claimed by it, then its claim should be allowed. The assessing officer is not required to make enquiry on any other points as suggested by the Commissioner (Appeals).

5. Pursuant to the aforesaid order, the assessing authority, i.e., the Deputy Commissioner of Income Tax, Special Range I, Kanpur, made enquiries and found that the payments were genuine. However, he disallowed the claim u/s 36(1)(ii) of the Act. Feeling aggrieved, the assessee preferred appeal before the Commissioner (Appeals), Kanpur, allowed the appeal and upheld the claim of deduction. The revenue''s appeal before the Tribunal has failed. The Tribunal has held that the assessing authority was not required to make enquiries on any other point except to find out whether the payments have actually been made by the assessee, as claimed by it, and if the payment has been made, its claim should be allowed.

6. We have heard Sri Shamboo Chopra, learned standing counsel for the revenue. Nobody has appeared on behalf of the respondent-assessee.

7. In view of the order of the Tribunal confining the jurisdiction of the assessing authority to enquiry only regarding the genuineness of the payments made by the assessee, it was not open to the assessing authority to embark upon any other enquiry and to reopen the matter which had already been decided in favour of the assessee by the Tribunal. The Tribunal was justified in holding that the assessing authority could not have gone into the question of disallowance of the incentive bonus u/s 36(1)(ii) of the Act.

8. We are of the considered opinion that the order of the Tribunal does not raise any substantial question of law which requires consideration.

9. Both the appeals are accordingly dismissed in limine.

