(2005) 03 AHC CK 0015

In the Allahabad High Court

Case No : IT Ref. No. 236 of 1992

Commissioner of Income Tax — APPELLANT

Vs

Raza Textiles — RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 28, 36(1), 37(1)

Citation : (2006) 204 CTR 418 : (2008) 296 ITR 688 : (2006) 154 TAXMAN 277

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

R.K. Agrawal, J.—The Tribunal has referred the following question of law u/s 256(2) of the IT Act, 1961 (hereinafter referred to as "the Act"), for opinion to this Court:

Whether the Tribunal is correct in law in restricting the field of enquiries to be made by the AO with regard to the payment of bonus from the point of view of genuineness of payment alone?

2. The reference relates to the asst. yr. 1974-75.

Briefly stated, the facts giving rise to the present reference are as follows:

The respondent-assessee is a public limited company running the textile mills. In the course of assessment for the asst. yr. 1974-75, an addition of Rs. 446929 was made by the AO on account of payment of incentive bonus. Feeling aggrieved, the respondent preferred an appeal before the CIT (A) who has restored the matter back to the assessing authority with the direction that the ITO should examine the case again with regard to allowability of the claim after giving opportunity to the assessee and keeping in view the direction given by him in the asst. yr. 1980-81 on the same issue. After examining the fact as directed by the CIT(A), the AO completed the assessment afresh on 21st March, 1989 by making an addition of Rs. 4,46,929 again on account of incentive bonus. In the asst. yr. 1981-82, the Tribunal had observed that responsibility of payment of the incentive bonus has to be judged not on any subjective standard by the assessing authority but on the point of view of commercial expediency. It was claimed before the Tribunal that the assessee was claiming payment of incentive bonus as additional payment to the regular workers for additional work done by them. The Tribunal had modified the order of the CIT (A) setting aside the order of the AO and directed the ITO to re-examine the question from the point of view of the genuineness of the payment of incentive bonus alone. According to the Tribunal, if the genuineness of the payment is proved, the claim of the assessee should be allowed. The contention of the Revenue was that in view of the specific limitation provided u/s 36(1)(ii) of the Act, the payment of the incentive bonus in excess of the limits provided u/s 64 of the Payment of Bonus Act, 1965, was not allowable. The Department''s contention was that resort cannot be had to the provisions of Section 37(1) of the Act to claim deduction in respect of larger amount paid by way of bonus either in cash or in species. The Tribunal restricted the powers of the AO to make enquiry regarding the genuineness of the payment of incentive bonus.

3. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee.

4. Section 36(1)(ii) of the Act, as it stood during the relevant period, reads as follows:

36. Other deductions-(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in s. 28 --

(ii) 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 deduction in respect of bonus paid to an employee employed in a factory or other establishment to which the provisions of the Payment of Bonus Act, 1965 (21 of 1965), apply shall not exceed the amount of bonus payable under that Act:

Provided further that the amount of the bonus (not being bonus referred to in the first proviso) or commission is reasonable with reference to-

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

(b) the profits of the business or profession for the previous year in question; and

(c) the general practice in similar business or profession.

From a reading of the second proviso to Section 36(1)(ii) of the Act, before any bonus which is not referred to in the first proviso which relates to the Payment of Bonus Act, 1965 (is allowed) the conditions mentioned in Clauses (a)(b) and (c) are to be seen and fulfilled. Thus, the question of genuineness of the payment alone is not the only criteria for allowing the incentive bonus. The conditions mentioned in sub-cls. (a)(b) and (c) are to be fulfilled. Thus, the Tribunal was not justified in limiting the discretion of the ITO for verifying the genuineness of payment alone.

5. We accordingly answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee. There shall be no order as to costs.

