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(1990) 10 KL CK 0008

In the High Court Of Kerala

Case No : IT Reference No. 214 of 1987 & Income-tax Reference No. 214 of 1987

Commissioner of Income Tax — APPELLANT

Vs

Thomas Stephen and Co. Ltd. — RESPONDENT

Date of Decision : 05-10-1990

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

Citation : (1992) 63 TAXMAN 34

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P. Balachandran, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the revenue, the Tribunal has referred the following question of law for the decision of this Court:

Whether, on the facts and in the circumstances of the case, section 36(1)(ii) is inapplicable to the case?

The respondent is a company. It is an assessee to income tax. We are concerned with the assessment year 1978-79, for which the previous year ended on 31-12-1977. A sum of Rs. 2,90,180 was paid by way of bonus to the workers during the previous year relevant to this assessment year. According to the ITO, the said amount related to the prior years 1976-77 and 1977-78 and so was not allowable as a deduction. In appeal, the Commissioner (Appeals) held that the liability to pay bonus for the earlier years 1975 and 1976 arose only as a result of the agreement dated 23-8-1977 and the amount had been correctly debited to the accounts of this year. He deleted the disallowance. In further appeal filed by the revenue, the Tribunal found that the liability to pay bonus arose only on 23-8-1977, as a result of the settlement by the respondent/assessee with its employees. The bonus paid was contractual and so it was not hit by the first proviso to section 36(1)(ii) of the income tax Act, 1961 ("the Act"). The appeal

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filed by the revenue was dismissed. It is thereafter at the instance of the revenue that the question of law formulated hereinabove has been referred for the decision of this Court.

2. We heard the counsel for the revenue, Mr. P.K.R. Menon, as also the counsel for the respondent/assessee. To what extent the bonus paid to the employees is deductible as revenue expenditure has been the subject-matter of more than one Bench decision of this Court. This Court had occasion to consider the impact of section 36(1)(ii) of the Act in the said decisions. The decisions are Commissioner of Income Tax Vs. P. Alikunju, M.A. Nazir, Cashew Industries, ; Commissioner of Income Tax Vs. Kumar Industries, ; Commissioner of Income Tax Vs. Kerala Agro Industries Corporation, and Commissioner of Income Tax Vs. Travancore Titanium Products Ltd., . Ordinarily, a payment envisaged by the Payment of Bonus Act can be claimed as a deduction. Amounts paid over and above the amount payable under the Act can be claimed as deduction u/s 36(1)(ii) provided the following conditions are fulfilled. The amount should be 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. The Tribunal has failed to evaluate the question that arose before it in the light of the principles laid down by the Bench decisions of this Court. The Tribunal was not justified in law in holding that the entire amount paid by the assessee was a permissible deduction without specifically finding that the provisions of section 36(1)(ii), as laid down by the decisions of this Court, had been satisfied in the instant case. Even if the bonus paid was a contractual one, it should stand the scrutiny of section 36(1)(ii). This aspect was not borne in mind by the Tribunal. The decision of the Tribunal is not satisfactory.

3. Therefore, in the light of the earlier Bench decisions of this Court, we decline to answer the question referred to this Court by the income tax Tribunal, but, at the same time, we direct the Tribunal to restore the appeal to file and re-evaluate the entire matter in the light of the Bench decisions referred to hereinabove. It is for the Tribunal to consider the matter in the light of the above Bench decisions and if it considers that it will be just and proper in the circumstances of the case that the matter is re-evaluated by the assessing authority, the Tribunal will be free to make a remit of the matter to the assessing authority for that purpose. The reference is disposed of as above.

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