
(1989) 12 KL CK 0034

In the High Court Of Kerala

Case No : Income-tax Reference No. 48 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Travancore Cements Ltd.

RESPONDENT

Date of Decision : 07-12-1989

Acts Referred:

Income Tax Act, 1961 — Section 36(1), 40A(7)

Citation : (1990) 184 ITR 319 : (1991) 1 LLJ 255 : (1990) 53 TAXMAN 244

Hon'ble Judges : Varghese Kalliat, J; K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P.G.K. Wariyar and K.B. Menon, for the Respondent

Judgement

K.S. Paripoornan, J.—The question that arises for consideration in this case is the deduction the assessee is entitled to in respect of the provision made by it for payment of gratuity to its employees payable during the previous year. We are concerned in this case with the assessment year 1976-77. The previous year ended on December 31, 1975. At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following two questions of law for decision of this court:

"(1) Whether, on the facts and in the circumstances of the case, and without entering a finding as to the fulfilment of all the three conditions laid down by the statute, the Tribunal was right in holding, that the assessee would be entitled in principle, to the deduction of the provision if that provision related to the year of liability ?

(2) Whether, on the facts and in the circumstances of the case and considering the quantum of the claim of the assessee before the Officer, should not the Tribunal have limited the claim (assuming the claim is permissible) to only rupees three lakhs ?"

2. The question that arises for consideration is simple and lies in a narrow

compass. All along the line, the statutory authorities as also the parties seem to have misunderstood the entire position and there has been no real adjudication of the only question that arose for consideration. After a good deal of arguments on both sides, we are glad to find that there is an agreement between the parties as to what is the real controversy that calls for consideration in this case. We, therefore, proceed now to decide the scope of the controversy and give our decision thereon by agreement of parties.

3. We heard counsel for the Revenue, Mr. P.K.R. Menon, and counsel for the respondent, the assessee, Mr. K.B. Menon. For the assessment year 1976-77, the assessee claimed a deduction from his business income, stating that he has made a provision of Rs. 3 lakhs for payment to the gratuity fund. The assessee put forward the plea that the gratuity liability as per the actuarial valuation comes to Rs. 1,76,204. It actually turned out that the assessee paid to the approved gratuity fund a sum of Rs. 1,52,164. The Income Tax Officer held that the provision of Rs. 3 lakhs was made on actuarial valuation. He disallowed it. He held that the assessee has paid only a sum of Rs. 1,52,164. He allowed the said amount by way of deduction from the business income under, Section 36(1)(v) of the Income Tax Act. The gratuity liability claimed as per the actuarial valuation, of a sum of Rs. 1,76,204, in excess of the said provision, was disallowed. An appeal filed by the assessee before the Commissioner of Income Tax (Appeals) was dismissed by order dated July 22, 1981. The assessee came in second appeal before the Income Tax Appellate Tribunal, Cochin Bench. After referring to the rival contentions of the parties, the Appellate Tribunal held that the assessee would be entitled to the deduction relating to gratuity in terms of Section 40A(7)(b)(i) of the Income Tax Act. Proceeding further, the Appellate Tribunal held that the Income Tax Officer should verify two points : (1) whether the actuarial liability of Rs. 1,76,204 is the liability of the previous year as contemplated by Section 40A(7)(b)(i) of the Act, and (2) whether the actual payment of Rs. 1,52,164 is or is not part of this actuarial liability of Rs. 1,76,204. After stating the above, the Income Tax Appellate Tribunal held that if, on such verification, the Officer finds that the sum of Rs. 1,76,204 is the liability pertaining to the assessee's previous year, that is, the liability of the assessee for payment of gratuity to the employees for the services rendered by them in the previous year, for this assessment year, and the actual payment of Rs. 1,52,164 is not part of the sum of Rs. 1,76,204, then the deduction will be allowed, in the sum of Rs. 1,76,204, u/s 40A(7)(b)(i) of the Act. The Appellate Tribunal concluded that it will be so done in addition to the sum of Rs. 1,52,164 which has already been allowed by the Income Tax Officer. It is thereafter and at the instance of the Revenue, that the two questions of law formulated here have been referred to this court for decision.

4. We are afraid that the real question that arose for consideration was neither posed nor adjudicated by the Appellate Tribunal. What is more, there is some confusion regarding the exact provision of law that is applicable regarding the deduction permissible for gratuity payment. It is now agreed that the assessee is

entitled to the deduction for payment of gratuity to its employees that has become due in the previous year in terms of Section 40A(7)(b)(i) of the Income Tax Act. We record the said submission. If Section 40A(7)(b)(i) of the Act applies, we see no reason why there should be any actuarial valuation regarding the liability. That is postulated only in cases coming u/s 40A(7)(b)(ii) of the Act, which deals with three prior years, the three prior years previous to that relevant year. All that the assessee is entitled to is the provision made by it for the payment of the sum by way of contribution to the gratuity fund or for the purpose of payment of gratuity due that has become payable during the previous year. We are unable to understand as to why any actuarial valuation is necessary in that matter. Be that as it may, it cannot be that the assessee is entitled to any deduction in addition to the entitlement available to him u/s 40A(7)(b)(i) of the Act. This position is clear. We state that whatever deduction the assessee is entitled to u/s 40A(7)(b)(i) of the Act alone is permissible and the deduction of Rs. 1,52,164 u/s 36(1)(v) was not called for. This position is also made clear.

5. Even according to the assessee's own showing, it made a provision of Rs. 3 lakhs and the deduction which the assessee is entitled to u/s 40A(7)(b)(i) can in no case exceed that amount. The actual entitlement will be worked out by reference to the terms of Section 40A(7)(b)(i) of the Act, which, of course, will entail deletion of the deduction allowed u/s 36(1)(v) of the Act, in a sum of Rs. 1,52,164.

6. Unfortunately, all along the line, the authorities as well as the parties proceeded on different lines, without pointedly adverting to the relevant statutory provision that is applicable in the instant case. Now that the proposition is made clear, we reframe the question by agreement of parties in the following manner :

"What is the quantum of amount the assessee is entitled to by way of deduction, in the provision made by him, for the purpose of contribution of payment of gratuity to its employees that has become payable during the previous year ?"

7. Our answer to the said question is that the assessee is entitled to the deduction of that amount for which provision is made or payment is made in terms of Section 40A(7)(b)(i) of the Act and nothing more. The reference is answered as above.

8. The Registrar shall send a copy of this judgment to the Income Tax Appellate Tribunal, Cochin Bench, under the seal of this court and the signature of the Registrar.