
(1989) 05 CAL CK 0027

In the Calcutta High Court

Case No : Income-tax Reference No. 324 of 1980

Express Cables Private Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-05-1989

Acts Referred:

Payment of Bonus Act, 1965 — Section 10, 11, 15, 15(2)

Citation : (1991) 187 ITR 607

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : A.K. Roy Chowdhury, for the Appellant;B.K. Bagchi and A.N. Bhattacharyya, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(2) of the Income Tax Act, 1961, made at the instance of the assessee for the assessment years 1968-69 and 1969-70, the following questions, of law have been referred to this court:

"1. Whether, on the facts and in the circumstances of the case, the liability of the assessee-company under the Payment of Bonus Act, 1965, should be determined at Rs. 67,678 as claimed by it and is deductible in determining its total income under the Income Tax Act, 1961, for the assessment year 1968-69 ?

2. Whether, on the facts and in the circumstances of the case, the deduction of Rs. 37,840 being the amount of "set on" under the Payment of Bonus Act, 1965, as claimed by the assessee-company was a lawful one for the purpose of accurate reflection of the true costs of earning its year's receipts under the Income Tax Act, 1961, for the assessment year 1968-69 ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sum of Rs. 37,840 being the amount of "set on" under the Payment of Bonus Act, 1965, was a non-deductible provision only for the purpose of determining the total income of the assessee-company under the Income Tax Act, 1961, for the assessment year 1968-69 ?."

Assessment year 1969-70 :

"1. Whether, on the facts and in the circumstances of the case, the liability of the assessee-company under the Payment of Bonus Act, 1965, should be determined at Rs. 85,638 as claimed by it and is deductible in determining its total income under the Income Tax Act, 1961, for the assessment year 1969-70 ?

2, Whether, on the facts and in the circumstances of the case, the deduction of Rs. 42,000 being the amount of "set on" under the Payment of Bonus Act, 1965, as claimed by the assessee-company was a lawful one for the purpose of accurate reflection of the time costs of earning its year's receipts under the Income Tax Act, 1961, for the assessment year 1969-70.

3. Whether,, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sum of Rs. 42,000 being the amount of "set on" under the Payment of Bonus Act, 1965, was a non-deductible provision only for the purpose of determining the total income of the assessee-company under the Income Tax Act, 1961, for the assessment year 1969-70 ?"

2. The assessee in its books for the first year made a provision of Rs. 33,840 for a future contingency for the payment of bonus under the Payment of Bonus Act, 1965. The claim of the assessee for the deduction of the said amount was negated by the Income Tax Officer.

3. Aggrieved thereby, the assessee brought the matter by way of appeal before the Appellate Assistant Commissioner. It was contended before him by the assessee that the said amount of Rs. 33,840 being the bonus payable to the employees of the assessee as determined u/s 15(1) of the Payment of Bonus Act, 1965, should have been allowed as a deduction for the computation of the total taxable income of the assessee. This argument of the assessee was rejected by the Appellate Assistant Commissioner.

4. Aggrieved by the said order of the Appellate Assistant Commissioner, the assessee brought the matter by way of appeal before the Tribunal. It was contended on behalf of the assessee that the authorities below had not appreciated the scheme of the Payment of Bonus Act, according to Which the assessee had to set apart not only the maximum bonus of 20% for this assessment year but also another sum to the extent of 20% for the next assessment year which the assessee considered as a liability of this year. It was argued that the assessee was entitled to take into account the amount required to be set on for the next year as a liability of this year. On the other hand, it was contended on behalf of the Revenue that the liability to pay bonus in this assessment year was limited to the maximum of 20% by the statute and any amount required to be carried over was payable only on certain contingencies and should not be taken as a liability of this assessment year. It was thus submitted that the order of the Appellate Assistant Commissioner on this point for this assessment year should be confirmed.

5. The Tribunal gave consideration to the above arguments and held that there was no merit in the appeal of the assessee. The Tribunal held that the provision u/s 15 is not a liability of the accounting year. The assessee is entitled to deduct only the bonus required to be paid in the accounting year.

6. Coming to the accounting period relevant to the assessment year 1969-70, the Tribunal found that in the assessment order for this year, there is no discussion by the Income Tax Officer for not allowing the claim of the assessee in respect of the bonus payable as per the Payment of Bonus Act, 1965. Aggrieved by the said disallowance, the assessee brought the matter by way of appeal before the Appellate Assistant Commissioner of Income Tax who has directed the Income Tax Officer to allow the claim for bonus as computed for the Payment of Bonus Act, 1965, according to the claim of the assessee by observing that the provision of bonus computed as per the Payment of Bonus Act, 1965, was not a contingent liability but was an ascertained liability. Aggrieved by the said order of the Appellate Assistant Commissioner, the Revenue brought the matter by way of appeal before the Tribunal and it, after hearing both sides, directed the Income Tax Officer to take into account only the actual liability of the assessee as explained in the immediately preceding year in computing the total income of the assessee.

7. Before us, counsel for the parties reiterated the same contentions as raised before the Tribunal. The contention of the assessee has to be viewed in the context of the scheme of the Payment of Bonus Act, 1965. The said Act applies to all factories and it provides by Section 10 that every employer shall be bound to pay to every employee in an accounting year a minimum bonus at 4% of the salary or wages or Rs. 40, whichever is higher. Section 11 provides that where the allocable surplus computed in the manner given in that Act exceeds the minimum bonus, the employer shall be bound to pay bonus which is proportionate to the salary earned by the employees subject to the maximum of 20%. If the allocable surplus exceeds even the amount of maximum bonus payable to the employees, such excess shall be carried forward and set on in the succeeding accounting year u/s 15 of the Act Sub-section (2) of this section provides that if, in the subsequent accounting year, there is no available surplus or the allocable surplus falls short of the minimum bonus payable to the employees, then the amount carried forward and set on shall be utilised for the purpose of distributing the minimum bonus in that accounting year. The first question that falls to be determined is the extent of the liability of the assessee under the Payment of Bonus Act. This liability has to be determined only with reference to Sections 10 and 11 of the Act. It is obvious that the Act requires the employer to pay only the minimum bonus of 4% of wages or Rs. 40 and a maximum bonus of 20% in the accounting year. Section 15 does not require the payment of any bonus in this or even in any subsequent assessment year until and unless there is a shortfall. Therefore, the liability determined by the Act is only to the extent of 20% in one accounting year. The provision requiring the assessee to carry forward the excess to the extent of another 20% of the

allocable surplus is only in the nature of a guarantee for the payment of minimum bonus in the subsequent accounting years in case there is any shortfall.

8. Section 15 merely provides for a provision to meet a further liability which may arise on a certain contingency of there being inadequate allocable surplus in the subsequent accounting year. Such a provision, in our opinion, cannot be regarded as a liability of the accounting year in which the provision is required to be made.

9. The second question that arises is whether the assessee was entitled to claim that even a provision made for meeting a further liability should be treated as a current liability for the purpose of computing the total income. A contingent liability discounted and valued can be taken into account as a trading expense if it is capable of valuation and if profits cannot be properly estimated without taking them into account. The assessee has to satisfy that the amount required to be set on by the statute was a contingent liability and that the profits of the accounting year cannot be properly estimated without taking it into account. The provision required to be made by the assessee by the Payment of Bonus Act for meeting the liability to pay bonus in the subsequent accounting years in the case of any shortfall is not a contingent liability of this accounting year. It is in fact the amount set apart to meet a contingent liability of subsequent accounting years. Therefore, it cannot be said that the profits of this accounting year cannot be properly estimated without taking that amount into account. The assessee is, therefore, entitled to deduct only the bonus required to be paid in the accounting year which is to the extent of a maximum of 20% of the allocable surplus in computing the total income of the accounting year. Any provision made to meet the liability of the assessee in the subsequent accounting years cannot be considered to be an expenditure laid out for, the purpose of business in computing the profits of this accounting year and cannot, therefore, be allowed to be deducted.

10. Our attention has been drawn to the decision of the Madhya Pradesh High Court in *Malwa Vanaspati and Chemical Co. Ltd. Vs. Commissioner of Income Tax*, . There, the court held that "set on" bonus u/s 15(1) of the Payment of Bonus Act is not a subsisting liability as such for the accounting year but it is a contingent liability. It is merely a reserve fund which the assessee has to create by reason of the provisions of Section 15(1) of the Payment of Bonus Act. The court held that u/s 37(1), a connection has to be established between the expenditure incurred and the business activity undertaken by the assessee with such object which is wanting in the present case.

11. Our attention has been drawn to the decision of the Andhra Pradesh High Court which in *Rayalaseema Mills Limited Vs. Commissioner of Income Tax, Andhra Pradesh-I*, , considered a similar question. There the contention raised was that although the deduction does not fall u/s 37, not being an expenditure laid out or expended by the assessee, it was nevertheless allowable u/s 28 on the reasoning that the amount is diverted under an overriding legal obligation.

Repelling that contention, the court proceeded to hold (headnote) :

"Inasmuch as the amount is required to be set apart with the assessee himself for a limited period to meet its bonus obligation in the succeeding accounting years, if necessary, and also because, after the expiry of the prescribed period, the said, amount or the balance, if any, becomes a part and parcel of the general revenues of the assessee, it cannot be said that the money is diverted from the assessee under an overriding legal obligation. The money is not paid to a third party, nor is it paid into a fund from which it never comes back to the assessee ; nor is the money meant exclusively for payment to the employees. It cannot also be said that this amount, so set apart, constitutes a "loss", "expenditure" or a "trading liability" within the meaning of Section 41(1). If so, the said amount, as and when it comes back to the revenues of the assessee, cannot also be treated as its income under Sub-section (1) of Section 41, which circumstance also show that this amount cannot be allowed as a deduction."

12. It was, therefore, held that the amount set on in pursuance of Section 15 of the Payment of Bonus Act is not deductible for Income Tax purposes.

13. In our view, having regard to the relevant provisions of the Payment of Bonus Act, we are of the view that the amount of "set on" under the Payment of Bonus Act is a provision for contingent liability not deductible in determining the total income of the assessee under the Income Tax Act for the assessment year under consideration.

14. In the result, the questions raised in this reference are answered as follows :

For the assessment year 1968-69, the first and second questions are answered in the negative and the third question is answered in the affirmative and all in favour of the Revenue.

15. For the assessment year 1969-70, the first and second questions are answered in the negative and the third question is answered in the affirmative and all in favour of the Revenue.

16. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

17. I agree.