(1978) 11 AHC CK 0053

In the Allahabad High Court

Case No : Income-tax Reference No. 296 of 1976

Jaina Talkies APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 03-11-1978

Acts Referred:

Citation : (1980) 122 ITR 970

Hon'ble Judges : Satish Chandra, C.J;M.B. Farooqi, J

Bench : Division Bench

Advocate : K.B. Bhatnagar, for the Appellant; A. Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, C.J.—The assessee is a registered firm. It had to pay a sum of Rs. 16,486 as employees'' contribution under the Employees'' Provident Funds Act, 1952, for the period 1962 to December, 1970. It claimed this amount as an allowable expense in the assessment year 1972-73 for which the financial year 1971-72 was the accounting period.

2. It appears that on 17th August, 1965, the Regional Provident Fund Commissioner passed an order requiring the assessee to pay the provident fund contribution of its employees for the period from February, 1962, to February, 1964. The assessee did not accept this liability. It filed a civil suit and subsequently a writ petition in this court. The suit was dismissed on the finding that the assessee was employing more than 20 persons in its firm and was hence liable to pay the employees'' contribution. The first appeal filed by the assessee was dismissed. The assessee then filed a second appeal in this court, which was also dismissed on October 26, 1970. Then the assessee filed a writ petition in this court which was dismissed on 4th February, 1971. Then the assessee made the payment during the financial year 1971-72.

3. It is not disputed that the assessee maintained its accounts on the mercantile system. Under it, the liability becomes an expense the moment it accrues. The

liability to pay contribution under the Employees'' Provident Funds Act accrued from year to year during the period 1962 to 1972, which could have been claimed as an allowable deduction in each of these years.

4. For the assessee, it was contended that since the liability was hotly disputed, the assessee was entitled to claim the deduction in the year in which it actually made the payment as a result of final adjudication of the dispute. In the present case, the final adjudication took place on 26th October, 1970, when the suit was ultimately dismissed by the High Court and on 4th February, 1971, when the writ petition was disposed of by this court. On these dates, the final adjudication and consequently the quantification of the liability took place. But both these dates are outside the accounting period relevant for the assessment year 1972-73. The assessee was following the financial year as the accounting period. The case would become arguable if the quantification had, in fact, taken place after 1st April, 1971. But that is not so. So the question whether the final date of quantification of the liability is relevant or material does not, as a matter of fact, arise. The Tribunal, in our opinion, was justified in negativing the claim of the assessee.

5. At the instance of the assessee, the Tribunal has referred the following question of law for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the contribution of Rs. 16,486 relating to the period from February, 1962, to December, 1970, was not allowable as a deduction in the assessment year 1972-73 ?"

6. In view of what we have said above, the question referred to us is answered in the affirmative, in favour of the department and against the assessee. The Commissioner will be entitled to his costs, which are assessed at Rs. 200.

