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(1974) 09 AHC CK 0012

In the Allahabad High Court

Jayna Time Industries (Pvt.) Ltd. — APPELLANT

Vs

Industrial Tribunal (III) and Others — RESPONDENT

Date of Decision : 23-09-1974

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 16, 32
Payment of Bonus Act, 1965 — Section 16, 6

Citation : (1975) 2 LLJ 436

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution on behalf of a private limited company called Jayna Time Industries with its registered office at Daryaganj, Delhi, and having a factory at Ghaziabad. The dispute arose between the petitioner-company and its employees with regard to the payment of bonus for the year 1964. This dispute was eventually referred by the State of Uttar Pradesh for adjudication to the Industrial Tribunal III, Allahabad. The following question was referred to the Tribunal:

Should the employers be required to pay bonus to their workmen for the year 1964? If so, at what rate and with what other details.

After the parties had exchanged pleadings, a sum of Rs. 41,680 was worked out as available surplus in the following manner:

Profit for the year 1964- 65 (year ending 31-12- 1964) as per Profit and Loss Account. Rs. 68,233,00 Add back as per Schedule II of the Bonus Act. Depreciation Rs. 91,228.00 Development Rebate, Rs. 41,800.00 _____ Rs. 2,01,261.00

Deduct:

Depreciation u/s 6(a) of Bonus Act. Rs. 91,228.00 Development Rebate under Section 6(b) of Bonus Act. Rs. 41,800.00 8.5% equity capital as per Schedule

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III of the Bonus Act Rs. 19,125,00 6% of the reserve, i.e., Development Rebate Rs. 7,428.00 _____ Rs. 1,59,581.00 _____ Available surplus Rs. 41,680.00

2. Against this available surplus, the petitioner claimed to set off an aggregate sum of Rs. 1,36,263.00 on account of losses brought forward from earlier years. In this way a net loss of Rupees 94,583.00 was worked out, The figure of loss of Rs. 1,36,263.00 claimed as a brought forward loss is made up of the following items:

1. Arrears of Development Rebate Rs. 79,278.00 2. Arrears of business loss Rs. 56,985.00

3. According to the petitioner, the available surplus for the year 1964 was wiped out completely by the brought forward business loss and development rebate and as such it was not liable for the payment of any bonus. The presiding officer has not accepted this position as in his view a sum of Rs. 1,65,600 which is the total amount of development rebate/reserve brought forward from the earlier years was not a loss which could be deducted in arriving at the available surplus.

4. The answer to the question involved in this case depends upon the interpretation of Sections 6 and 16 of the Act. Section 6 enumerates the deductions to be made from gross profit to arrive at the net profit to determine the available surplus for distribution as bonus. Clause (a) of Section 6 provides for the deduction of depreciation admissible in accordance with the provisions of Sub-section (1) of Section 32 of the Income Tax Act and Clause (b) provides for the deduction of development rebate or development allowance which is an allowable deduction under the Income Tax Act. Section 16 then provides that where an establishment is newly set up, the employees thereof shall be entitled to bonus only from the accounting year in which the employer derives profit from such establishment, Explanation II then provides that an employer shall not be deemed to have derived profit in any year unless:

(a) he has made provision for that year''s depreciation to which he is entitled under the Income Tax Act or, as the case may be under the agricultural Income Tax law, and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

It is thus clear that in order to arrive at the net available surplus allowable for distribution as bonus, the net profit has first to be computed in accordance with Section 6 which permits the deduction of current depreciation and development rebate. Thereafter the loss of earlier years and arrears of development rebate have to be set off against the net profit so worked out. Clause (b) of Explanation II of Section 16 only permits the arrears of depreciation and losses to be brought forward and set out against the net profit. It does not speak of arrears of

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development rebate. Thus the net position appears to be that while computing the surplus of a particular year an employer is entitled to deduct depreciation as also development rebate of that year and deduct further the arrears of depreciation and business losses of earlier years. But the development rebate of earlier years is not admissible.

5. However, it is not necessary to pronounce any final judgment on the question as to whether the development rebate of earlier years can also be set off, since in the instant case the business loss of the earlier years is large enough to wipe out the available surplus of the year 1964 which is the year in question. The business loss sought to be carried forward is Rupees 56,986,00 (vide Annexure "J" whereas available surplus is Rs. 41,680 which is less than the brought forward loss. As such the surplus of Rs. 41,680 is completely wiped out. The net result is a loss. The petitioner is, therefore, not liable to make any payment on account of bonus for the year 1964.

6. In the result the petition succeeds and is allowed. The order of the first respondent. Industrial Tribunal III. Allahabad, dated 27th June, 1970 (Annexure "H") is quashed and it is declared that the petitioner is not liable to pay any bonus to its employees for the year 1964.

7. Having regard to the circumstances of the case. I make no order as to costs.

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