(1997) 11 KL CK 0016

In the High Court Of Kerala

Case No : Income-tax Reference No. 129 of 1994

Jose T. Mooken APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Citation : (1999) 235 ITR 205

Hon'ble Judges : P.A. Mohammed, J;P. Shanmugam, J

Bench : Division Bench

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

Judgement

P.A. Mohammed, J.—This Income Tax reference case is coming before us in view of the direction issued by this court in O. P. No. 11652 of 1991, dated August 10, 1994. The applicant before us is the accountable person of the estate of the late M. O. Thomakutty, Mooken House, Mission Quarters, Trichur. On his death, the appellant filed a return disclosing the property passed on the death of the deceased. While determining the quantum of goodwill, the Assistant Controller of Estate Duty rejected the claim for reduction in respect of the gratuity liability. In appeal, the Appellate Controller of Estate Duty, Madras, held that the provision for gratuity is a statutory liability and therefore, it is an allowable deduction while computing the goodwill. But in appeal the Income Tax Appellate Tribunal held that the provision for gratuity being a contingent liability cannot be deducted while computing the value of the goodwill. The Tribunal disallowed the prayer for reference and the reference case is before us as a result of the compelling reference.

2. The questions referred to us for decision are as follows :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that gratuity liability is a contingent liability ? and

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the provision for gratuity being a contingent liability cannot be deducted while computing the value of goodwill ?"

3. The Assistant Controller of Estate Duty in annexure-A found that the liability has not become crystallized and ascertainable or ascertained as on the date of death. Therefore, the authority expressed that it is not in a position to allow the liability claim. However, 2/5ths share of gratuity reserve is therefore added back (2/5ths of Rs. 1,21,392 = Rs. 48,556). The accountable person filed an appeal before the Appellate Controller of Estate Duty, Madras. In annexure-B, the Appellate Controller observed as below :

"The gratuity liability is a statutory liability which has to be determined and allowed as deduction as unlike W. T. in the case of estate duty, the estates are valued assuming succession of business. The Madras High Court in Commissioner of Wealth-tax and Others Vs. S. Ram and Others, has held that gratuity is an allowable deduction in computing the goodwill in the case of estate duty. The A.C.E.D. is directed to allow the gratuity in computing the share of the appellant in the business."

4. However, in the appeal filed by the Assistant Controller of Estate Duty, the Income Tax Appellate Tribunal following the decision of the Cochin Bench of the Tribunal in E. D. A. No. 15 (Coch.) of 1985, dated August 29, 1989, held that the gratuity liability being a contingent liability cannot be deducted. Therefore, the Tribunal found that the Appellate Controller was not justified in directing the Assistant Controller of Estate Duty to allow the provision for gratuity while computing the value of goodwill. The accountable person is really aggrieved by the finding of the Tribunal as aforesaid.

5. Counsel for the applicant brings to our notice the decision of the Madras High Court in Commissioner of Wealth-tax and Others Vs. S. Ram and Others, . The above decision was relied upon by the Appellate Controller. What is laid down in the aforesaid decision is this (headnote) :

"Payment of gratuity, from the point of view of the liability to a workman may be a contingent liability but when on a scientific and actuarial basis, an employer makes a provision for gratuity, such a provision must be regarded as a present, direct and minimum liability of the company for the reason that it represents the present discounted value of the employer''s commitment as a whole to pay the workmen gratuity as and when it becomes liable."

6. This decision pre-supposes a scientific and actuarial valuation for the purpose of determining the liability. If there is a provision for payment of liability made on the basis of actuarial valuation, it is not a contingent liability but an existing liability though the payment of the said amount is at a future date. The senior standing counsel for the Department in this context pointed out that the liability in this case is the liability de future and not in praesenti and therefore, the provision for payment of gratuity without an actuarial valuation cannot be

allowed. This question came up before the Division Bench of this court in John J. Chackola Vs. Controller of Estate Duty, , while deciding a case arising under the Wealth-tax Act, 1957. The Division Bench of this court observed (page 41, 42) :

"If the said provision is towards a known and existing liability, though it is payable at a future date, it can never be characterised as a contingent liability. It is only a liability, which has already accrued for the year in question.... if the provision for gratuity liability is made on the basis of actuarial valuation, it is taken out of the purview of contingent liability and will be placed in the category of known and existing liability. . . provision for payment of gratuity made on the basis of actuarial valuation is an existing liability and that it is a liability in praesenti, though the payment of the said amount is at a future date."

7. Therefore, one of the requirements for applying this dictum is whether there was a provision for payment of gratuity made on the basis of actuarial valuation. As far as the present case is concerned, the Appellate Controller has applied the dictum laid down by the Madras High Court in Commissioner of Wealth-tax and Others Vs. S. Ram and Others, . The above decision was applied only on the assumption that there was an actuarial valuation in this case. Counsel on both sides submits that there was no payment of gratuity on the basis of actuarial valuation in this case. If that be the position, the questions referred to us for decision do not arise for consideration. In view of this situation, we decline to answer the questions referred to us. However we direct the Assessing Officer to determine the payment of gratuity on the basis of actuarial valuation and then decide the existing liability. If the provision for payment of gratuity had been made on the basis of actuarial valuation, the benefit accruing thereon shall be, afforded to the accountable person. The case is remanded to the Assistant Controller of Estate Duty, Trichur, in view of the direction given above.

8. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench.