
(1997) 09 MAD CK 0168

In the Madras High Court

Case No : Tax Cases No"s. 709 and 710 of 1982 (References No"s. 447 and 448 of 1982)

Kunal Engineering Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 10, 147, 28, 40, 9

Citation : (2000) 241 ITR 340

Hon'ble Judges : Kanakaraj, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : Deokinandan and C.V. Rajan, for the Appellant; K.M.L. Majele and R. Janakiraman, for the Respondent

Judgement

Kanakaraj, J.—These two tax cases arise out of two references made by the Tribunal for the assessment years 1974-75 and 1975-76, respectively, u/s 256(1) of the Income Tax Act, 1961. Out of the three questions of law referred to us for the assessment year 1974-75, the second question of law has already been answered by the apex court against the assessee in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . Therefore, the second question of law raised in T.C. No. 709 of 1982 is answered in the affirmative. We will discuss the other two questions of law a little later.

2. So far as the assessment year 1975-76 is concerned both the questions of law referred to us have been answered against the assessee, one by the judgment in CIT v. Elgi Rubber Products Ltd. [1996] 219 ITR 109 and the second by the judgment in Smith Kline and French (India) Ltd. and Others Vs. Commissioner of Income Tax, . Therefore, in Tax Case No. 710 of 1982 relating to the assessment year 1975-76 we answer both the questions of law raised before us in the affirmative following the said judgments of the Supreme Court of India.

3. We are now left with the two questions of law to be answered for the assessment year 1974-75. They are as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment was validly reopened u/s 147(b) of the Income Tax Act, 1961 ?

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section 40(c) of the Income Tax Act have to be applied to the managing director's remuneration inclusive of the bonus payments though such payments related to the assessment years 1972-73 and 1973-74 ? (additional question dated February 16, 1981)."

4. To answer the first question of law, we have to find out whether the reopening of the assessment u/s 147(b) of the Act was justified or not. For this assessment year 1974-75, the original assessment was made on November 30, 1976. It was reopened because in the course of audit by the Department, it was pointed out that the salary payment to the managing director was not limited as provided for u/s 40(c) of the Act and depreciation had been allowed in excess on some of the assets. The question is whether such information given by the audit report could give rise to a cause of action to the Income Tax Officer to reopen the assessment. The first question of law that is argued before us is that if the audit party gives information by way of interpreting certain legal provisions, that may not amount to information simpliciter for the purpose of section 147(b) of the Act. Without wasting much time on this issue, we would straightaway refer to the judgment of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, . That was almost an identical case where the assessment was reopened on the basis of the report of the audit party. The question is answered by the apex court in the following words (page 1003) :

"But although an audit party does not possess the power to so pronounce on the law, it nevertheless may draw the attention of the Income Tax Officer to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communicator of the law is carefully maintained, the confusion which often results in applying section 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose."

5. In the case before the apex court, the internal audit party had expressed the view that the receipts from the occupation of a conference hall and rooms did not attract section 10 of the Act and that the assessment should have been made u/s 9 of the Act. Referring to the above factual position, the apex court observed (page 1004) :

"That part alone of the note of an audit party which mentions the law which escaped the notice of the Income Tax Officer constitutes "information" within the meaning of section 147(b); the part which embodied the opinion of the audit party in regard to the application or interpretation of the law cannot be taken

into account by the Income Tax Officer."

6. All that we have to do is to apply the above ratio of the judgment of the Supreme Court to the facts of the present case. The Tribunal in its order dated August 30, 1980, points out that the Income Tax Officer in his original assessment order dated November 30, 1976, did not mention anything about the managing director's remuneration and there was no indication that the Income Tax Officer had considered the application of section 40(c) of the Act. If this is the factual position, the mere information of the audit party that the Income Tax Officer had omitted to consider the application of section 40(c) of the Act would certainly constitute information enabling him to reopen assessment u/s 147(b) of the Act.

7. In this view of the matter, we hold against the assessee in respect of the first question and answer the same in the affirmative.

8. The second question of law, that is posed for consideration is whether the Tribunal was right in holding that section 40(c) of the Act has to be applied to the managing director's remuneration, inclusive of the bonus payments though such payments related to the assessment years 1972-73 and 1973-74. On this issue all the officers below including the Tribunal came to the conclusion that the managing director of the company, Sri Deepak Banker, was paid a total salary of Rs. 83,239 including the bonus contribution to the provident fund. In the reassessment, the Income Tax Officer rejected the assessee's plea that bonus of Rs. 9,600 and Rs. 5,100 pertaining to the financial years 1972-73 and 1971-72 should be excluded and if so excluded, the salary will be less than the limit of Rs. 72,000 prescribed u/s 40(c) of the Act. The reason for rejecting the assessee's argument is that the bonus accrued during the relevant accounting year ending with March 31, 1974. Therefore, in the reassessment order, the Income Tax Officer applied the limit u/s 40(c) of the Act and disallowed the excess of Rs. 11,239. The Tribunal has in addition to the above reasoning of the Income Tax Officer pointed out that the bonus payments in question were approved by the Central Government only in November, 1973, and the payments were sanctioned by the board of directors only on February 28, 1974, i.e., for the year ended March 31, 1974. What is more, the managing director's remuneration including the said bonus payment had been debited to the assessee's accounts and claimed as an expenditure for the year ended March 31, 1974.

9. In addition to the above reasoning of the Tribunal, Mr. C. V. Rajan, learned counsel for the Revenue, points out that u/s 310 of the Companies Act, any such addition to the managing director's emoluments shall be given effect to only after the approval by the Central Government. There is also the decision of the Supreme Court in Nonsuch Estate Ltd. Vs. The Commissioner of Income Tax, Madras, . The apex court held that the liability to pay the managing director in such circumstances arises only when the Government conveyed its approval and not prior to that. Therefore, the accounting of the bonus payments for the year ended March 31, 1974, was rightly taken note of by the Income Tax Officer for

holding that the assessee had exceeded the limit prescribed u/s 40(c) of the Act. In this view of the matter, the third question of law raised in Tax Case No. 709 of 1982 is also answered in the affirmative and against the assessee.

10. In fine, all the questions of law raised in Tax Case No. 709 of 1982 are answered against the assessee and in the affirmative. No costs.