
(1975) 04 AHC CK 0053

In the Allahabad High Court

Case No : Income-tax Reference No. 711 of 1973

Luxmi Devi Sugar Mills

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-04-1975

Acts Referred:

Income Tax Act, 1922 — Section 10(2)

Citation : (1976) 105 ITR 335

Hon'ble Judges : R.L. Gulati, J;M.P. Mehrotra, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bharatji Agarwal, for the Appellant; Deokinandan, for the Respondent

Final Decision : Disposed Of

Judgement

1. u/s 256(2) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has submitted the statement of the case with the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 1,01,539 provided as bonus relating to the profits of the assessment year 1961-62 was an allowable deduction u/s 10(2)(x) of the Indian Income Tax Act, 1922 ?"

2. The assessee is a private limited company and runs a sugar mill at Deoria. The assessment year involved is 1961-62 with the previous year ending on 19th September, 1960. The assessee made a provision of a sum of Rs. 1,01,539 for payment of bonus to its workers in respect of the profits of the relevant previous year and claimed the sum as deduction in the computation of its net profits liable to tax. The Income Tax Officer disallowed the claim of the assessee on the ground that the liability for bonus was determined under the orders of the Government dated 29th December, 1960, and so on 29th September, 1960, when the accounts were closed there was no ascertained liability against the assessee for payment of bonus. He relied upon a decision of the Supreme Court

in the case of Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., Before the Appellate Assistant Commissioner of Income Tax the assessee tried to distinguish the decision of the Supreme Court in the case of Swadeshi Cotton and Flour Mills (P.) Ltd. and argued that, under the Bonus Act, bonus is payable to the workers with reference to the profit earned in a particular season and each year the labour department of the Government sets up a committee for ascertainment of bonus payable to the workmen by each sugar factory in the State. For the ascertainment of bonus payable for the year under consideration a committee was set up on 7th September, 1960, i.e., before the close of the accounting year. The committee submitted its report to the Government and the U.P. Government issued a notification after the close of the accounting year on 23rd December, 1960. It was argued that under similar circumstances a notification was issued by the State Government after the close of the previous year in respect of the assessment year 1959-60 and the assessee-company had made a provision for the payment of bonus at the end of the previous year and the assessee's claim had been allowed. The assessee had followed a similar practice in the assessment year in question and hence it was entitled to deduction. The Appellate Assistant Commissioner of Income Tax accepted the assessee's contention on the view that since the assessee had been following a similar practice in the past the claim of the assessee should be allowed in respect of the assessment year in question also. Against that order the department went up in appeal before the Income Tax Appellate Tribunal. The Tribunal allowed the department's appeal and set aside the order of the Appellate Assistant Commissioner of Income Tax holding that at the end of the previous year there did not exist any legal liability against the assessee for the payment of bonus and the liability arose only on 23rd December, 1960, when the Government issued a notification under the Industrial Disputes Act, saddling the assessee with the liability for the payment of bonus. The assessee is aggrieved and at his instance this reference has been made.

3. The assessee, no doubt, follows the mercantile system of accounting so that every liability incurred by it during the relevant previous year could be claimed as a deduction. But even in a case where mercantile system is followed the liability must be an enforceable liability ascertained or capable of being ascertained. We might make it clear here that the Bonus Act was not in force at the relevant time. The liability of the assessee to pay bonus arose because of the notification issued by the State Government under the Industrial Disputes Act. It appears that the workers of the sugar industry claimed bonus for the season ending on 29th September, 1960, and as the claim was not accepted by the sugar mills including the assessee-company, a tripartite conference was held and a committee was formed to go into the question. This committee was no doubt formed on 7th September, 1960, before the assessee closed its accounts but the notification was issued by the State Government after the accounts had been closed. The liability of the assessee to pay bonus, therefore, arose when the

State Government issued the notification. Before that date there was no liability upon the assessee to make payment of bonus. u/s 10(2)(x) of the Indian Income Tax Act, 1922, any sum paid to an employee as bonus or commission for services rendered is to be allowed as a deduction. Now, the word "paid" in this clause means actually paid or incurred according to the method of accounting upon the basis of which the profits and gains are computed under this section. This has been provided in Section 10(5) of the Act. In the instant case the bonus was admittedly paid after the close of the previous year but the liability for payment had also arisen after the close of the previous year when the Government issued the notification in December, 1960. A similar question arose before the Supreme Court in Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., There the assessee-mill made a provision for payment of bonus relating to the profits of the year 1947. The provision was made in the year 1948 but the award under the Industrial Disputes Act was given in 1949. The Supreme Court held that the liability of the company to pay bonus to its workers arose in the year 1949 when the award was made by the Industrial Tribunal. It was not allowable in the year 1947 merely because the bonus related to the profits of that year. In that case also the Bonus Act was not applicable and the workmen had to make a claim for bonus every year and the company became liable for payment of bonus only if the claim was settled amicably or by adjudication. The facts of this case are on all fours with the facts of the instant case. Here also the bonus was not payable under the bonus Act but became payable as a result of the notification issued by the Government under the Industrial Disputes Act. The notification was issued on 23rd December, 1960, long after the previous year relevant to the assessment year 1961-62 had expired. The claim was, therefore, not admissible in the assessment proceedings for the assessment year 1961-62. The claim will be admissible in the succeeding assessment year.

4. Following the decision of the Supreme Court in the case of Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., this court has taken a similar view in NEW VICTORIA MILLS CO. LTD Vs. COMMISSIONER OF Income Tax, U. P., . In a recent case, Nonsuch Estate Ltd. Vs. The Commissioner of Income Tax, Madras, the Supreme Court has held that where the remuneration paid to the managing agent became payable only after the approval of the Government, u/s 326 of the Companies Act, 1956, the claim to deduct the commission is admissible only in the previous year in which the approval is granted by the Government and not earlier.

5. In TEXTILE MACHINERY CORPORATION LTD. Vs. COMMISSIONER OF WEALTH-TAX, CALCUTTA., the Calcutta High Court held that the liability to pay bonus is a debt and not a contingent liability within the meaning of Section 2(m) of the Wealth-tax Act, 1957. We have no quarrel with that proposition. We respectfully do not agree with the view that a provision for bonus can become a debt even prior to the date when the payment of bonus is amicably settled or adjudicated upon under the Industrial Disputes Act. Such a view is contrary to the view of the

Supreme Court in the case of Swadeshi Cotton & Flour Mills (P.) Ltd. It is true that bonus is no longer a matter of concession but workers can claim it as a matter of right but before the coming into force of the Bonus Act, 1965, the liability for the payment of bonus always arose when the claim was amicably settled or adjudicated upon by the industrial court. No employer could make a provision for the payment of bonus earlier than that date and claim it as a debt in the computation of his net wealth under the Wealth-tax Act.

6. We, accordingly, answer the question in the negative, in favour of the department and against the assessee. The Commissioner of Income Tax is entitled to costs which we assess at Rs. 200.