
(1997) 12 MAD CK 0185
In the Madras High Court
Case No : Tax Case No. 1418 of 1990

New Ambadi Estates Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Citation : (2002) 256 ITR 778

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : R. Gangadharan, for the Appellant; T. Mathi, for the Respondent

Judgement

N.V. Balasubramanian, J.—This Tax Case Revision is filed against the order of the Commr. of Agrl. IT dt. 12th January, 1990 passed in SRMP No. 4 of 1988. The assessment year involved is 1984-85. The Commr. of Agrl. IT disallowed the commission paid to the managing director of the company and other directors on the ground that the directors including the managing director were the shareholders and they are entitled to share equally the profit and loss. In this view of the matter, the CIT held that the commission paid to the directors cannot be allowed as a deduction in the computation of agricultural income of the assessee. It is against this order of the Commr. of Agrl. IT, the present revision petition has been filed.

2. It is stated by the learned counsel for the assessee that the commission paid to the managing director and other directors for the asst. yrs. 1980-81 and 1981-82 were disallowed and for the earlier asst. yr. 1983-84 also, this Court in Tax Case (R) No. 938 of 1987 by judgment dt. 28th August, 1997 held that the assessee is entitled to deduction of the commission paid to the managing director as well as to the other directors.

3. Learned Government advocate on the other hand submitted that the commission paid to the managing director and other directors are not allowable in the computation of agricultural income of the assessee as the commission paid

to them would really partake the character of the non-agricultural expenses.

4. We have carefully considered the submissions of the learned counsel for the assessee and learned Government advocate. It is not disputed that the commissions paid to the managing directors and other directors for the asst. yrs. 1980-81 and 1981-82 were disallowed in the assessment proceedings and for the asst. yr. 1983-84, this Court has taken the view that the expenses incurred by way of payment of commission to the directors is within the limit prescribed by the Company Law and is permissible. Further, there can be payment by a company to the directors or the managing director for the services rendered by them to the company for the business of the company and hence, if they render personal services to the company for the promotion of the business of the company, it is open to the company to pay salary to the directors or the managing director. The payment of salary can be measured either on time basis, i.e., weekly, monthly or quarterly and it can also be paid on the basis of the work done by the director. Whatever may be the measure, for the payment of money to the director for the work done, the commission paid to the director by the company would really partake the character of the salary though it is styled as a commission. Viewed in that light, the commission paid to the managing director as well as the directors can be regarded as salary paid to the directors or the managing director, and since the money was paid for rendering services to the company, it can be regarded as the expenditure incurred for the purpose of the company. The mere fact that in the earlier years it is treated as a non-agricultural expenditure, could not prevent the company from claiming the expenditure paid as a legitimate deduction in the computation of agricultural income of the assessee. We are of the view that the Commr. of Agrl. IT has proceeded on a wrong basis that the directors are partners in the company and they are entitled to share the profits and loss of the company equally. He overlooked the fact that the company is a distinct and separate jurisdic entity and the directors are not entitled to share the profit and they will be entitled to receive dividends on the declaration of the dividends in a general body meeting of the company. It is not disputed that the directors did not render any service at all to the company, and therefore, it cannot be held that the payments were made on certain extra commercial consideration or the payments made were not commensurate with the services rendered by the directors to the company. The only ground on which the Commissioner disallowed the payment of commission was that the company is not entitled to pay commission as the directors are entitled to share the profits or loss of the company. In our view, such a view is plainly erroneous as there can be an independent, separate and valid contract between the company and the directors for services to be rendered by the directors to the company stipulating the payment of salary or commission as well. Since the Commr. of Agrl. IT has proceeded on an erroneous basis and disallowed the commission paid to the directors as well as the managing director, we are of the view that the order of the Commr. of Agrl. IT suffers from infirmity. We also find support from the earlier order of this Court that the expenses

incurred by way of commission to the managing director and other directors is deductible in the computation of agricultural income of the assessee as it is within the limit prescribed by the law and it is a permissible deduction.

5. Accordingly, we set aside the order of the Commr. of Agri. IT in SMRP No. 4 of 1988, dt. 12th January, 1990 and allow the Tax Case Revision. No costs.