
(1968) 08 MAD CK 0048

In the Madras High Court

Case No : Tax Case No. 18 of 1965 (Reference No. 8 of 1965)

Nonsuch Tea Estates Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-08-1968

Acts Referred:

Companies Act, 1956 — Section 326

Citation : (1969) 39 CompCas 283 : (1969) 72 ITR 274

Hon'ble Judges : Veeraswami, J; Alagiriswami, J

Bench : Division Bench

Advocate : P.C. Kurian and T.N.C. Rangarajan, for King and Patridge, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Veeraswami, J.—This reference relates to the assessment year 1959-60, and raises the following question :

" Whether, on the facts and in the circumstances of the case, the sum of Rs. 97,188 representing the managing agency remuneration for the period April 1, 1956, to June 30, 1956, and July 1, 1956, to June 30, 1957, was deductible in the computation of the income of the previous year ending on 30th June, 1958, relevant for the assessment year, 1959-60 ? "

2. On that point, the revenue as well as the Tribunal have held against the assessee. The assessee is a public limited company incorporated in 1924. Messrs. Harrisons and Crossfield Ltd. were its managing agents from the commencement, but there was no written agreement as to the terms of the managing agency. Prior to April 1, 1956, the remuneration to the managing agents was fixed at certain rates. For the period April 1, 1956, to June 30, 1956, the assessee credited a sum of Rs. 9,320 to the managing agents with the recital " by remuneration in accordance with the terms of the proposed new agreement payable for the period April 1, 1956, to June 30, 1956 ". The debit was in the " managing agency remuneration account ". This was disclosed also in the return for the relevant year. But it appears, in computing the actual income chargeable

to tax, the assessee added back the sum of Rs. 9,320. This process was also followed in the next year in which the assessee debited to the managing agency remuneration account a sum of Rs. 86,678, but in the computation of the income, added that sum as if it was liable to be included in the chargeable income. On August 3, 1957, the assessee applied to the Government of India u/s 326 of the Companies Act for approval of the re-appointment of Harrisons and Cross-field Ltd., as the managing agents and also the revised terms of remuneration payable to them. Eventually, on September 2, 1957, the Government of India gave approval for appointment of Harrisons and Crossfield Ltd., as managing agents of the assessee for a period of ten years, but with effect from April 1, 1956, and on a remuneration of 5% commission on the net profits, subject to a minimum of Rs. 12,000. In the assessment year in question, basing itself on the approval of September 2, 1957, the assessee for the first time claimed a deduction of a total of Rs. 97,188 for both the periods. We may mention that the assessee maintains accounts on the mercantile basis. The assessee contended that, notwithstanding the debits towards remuneration of the managing agency in its accounts, the liability to pay remuneration had not actually been incurred until the Government of India gave its approval on September 2, 1957, and that being the case, in the year in which the approval was given the liability having arisen to pay the remuneration according to the new terms, it was entitled to deduction of the total sum of Rs. 97,188.

3. The Tribunal, which agreed with the revenue at different stages, held that the liability to pay the sum of Rs. 97,188 was an ascertained liability when the debits in the remuneration account of the managing agency were made. If the assessee failed to claim deduction for the appropriate period, the responsibility was entirely its own and it could not properly be allowed to claim deduction of the same in the assessment year in question.

4. It has been strenuously argued for the assessee that until the approval of the Government of India came for the appointment of the managing agency and the revised terms of the agreement in relation to it, no liability to pay remuneration and expenses accrued, and it follows, therefore, that the assessee could not have claimed deduction of the same earlier than the assessment year. We are unable to accept this contention, which overlooks the fact that in this case there was no question of appointing a new managing agent as the old managing agent even under the provisions of the Companies Act continued to function, and the approval of the Government of India, when it was given in September, 1957, had retrospective effect from April 1, 1956. That means, the continuance or re-appointment, whatever the case was, of the managing agency beyond April 1, 1956, and payments to the managing agency on the revised terms were legally made even from April 1, 1956. That is the effect of the approval of the Government of India with retrospective effect. But it is said that factually, before the approval, the assessee could not visualise what its liability would be towards the remuneration to the managing agency, and that, in this sense, it was justified in not claiming the deduction at the earlier period. But the point is that the same

managing agency continued to function, and there was undoubtedly an understanding between the: managing agency and the assessee as to the new terms of remuneration which actually were given effect to by making debit entries in the remuneration account then and there. It is true that at the time the debit entries were made the approval of the Central Government had not come. But when it came actually later, it gave legal effect to the debit entries not from the date of the approval, but from, as we said, April 1, 1956. That being the case, the refusal of the deduction, in our opinion, was right.

5. Our attention has been invited to certain provisions of the Companies Act, and it is argued that if the payment of remuneration had been made prior to the date of approval in September, 1957, that would have been illegal. We have carefully considered the provisions of the Companies Act, in particular, Sections 326, 328 and 330, as also Section 2(25) and Section 331, but we find little support derived from those Sections for the contention for the assessee. None of those provisions, as we understand them, would have the effect of rendering the payment, if made prior to the approval, as illegal, whatever might be the other effects of the assessee contravening the provisions of Section 326.

6. Our attention has been invited by the assessee to Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., and to Associated Printers (Madras) Private Ltd. Vs. Commissioner of Income Tax, Madras, Both of them related to bonus awarded by the Tribunal. In the first of these cases the Supreme Court held that it was only when profit bonus was settled by an award of the industrial tribunal that any liability to pay bonus arose for the first time, and it followed that bonus so paid could be deducted in the year of account in which the award was made. The same principle was laid down in the second case as well.

7. We fail to see how these cases are of assistance to the assessee. Considerations applicable to settlement of bonus by an award are quite different from those which apply to remuneration settled by terms of an agreement entered into between the parties to which legal approval has been given with retrospective effect. In the latter case the liability becomes an ascertained liability in terms of the agreement which have been approved later, but with effect from the date of the agreement.

8. We, therefore, answer the question against the assessee with costs. Counsel's fee Rs. 250.