

(1962) 06 GAU CK 0011

In the Gauhati High Court

Case No : Income-tax Reference No. 6 of 1961

Satyanarayan Tea Co. (P.) Ltd.

APPELLANT

Vs

Commissioner of Income Tax, Assam

RESPONDENT

Date of Decision : 18-06-1962

Acts Referred:

Income Tax Act, 1961 — Section 10, 66

Citation : AIR 1967 Guw 95 : (1963) 47 ITR 932

Hon'ble Judges : Mehrotra, C.J

Bench : Single Bench

Judgement

Mehrotra, C.J.—The following question of law has been referred to us by the Income Tax Appellate Tribunal, "B" Bench, Calcutta, u/s 66(1) of the Indian Income Tax Act, Hereinafter called the Act, for our opinion :

Whether, on the facts and in the circumstances of the case, deduction of Rs. 23,770 and Rs. 28,927 on account of bonus payable for the year 1955 and 1956, but actually paid after the end of the accounting year 1956, were admissible deduction from the business income of the company u/s 10 for the assessment year 1957-58 ?

2. The assessee, Messrs. Satyanarayan Tea Co. (P.) Ltd., Dibrugarh, is a private limited company doing tea business and the assessments year in question is 1957-58, the accounting year being the year ending on the 31st December, 1956. The account were kept according to the calendar year. From the year 1953, the company had been agitating for bonus to be payable in its account of bonus from the year 1954 onwards In the account for the year 1954. It the company had provided for a sum of Rs. 35,246 as the amount of bonus payable to its workers and, for the year 1955, it had provided for a sum of Rs. 23,770. The Income Tax authorities however, did not allow any deduction in respect of the aforesaid amount in the relevant accounting years. Sometime in January, 1956, there was an agreement between the planters, workers and the Government and the actual liability of the company was determined for the year

1954, 1955 and 1956. On that basis, the company made a provision of Rs. 64,173 for bonus payable in respect of the accounting year 1956, the assessments year being 1957-58. During the accounting year 1956, a sum of Rs. 35,246 was actually paid towards the bonus of the year 1954 and for years 1955 and 1956, the bonus was actually paid after the and fit the accounting year 1956. On this basis, before the Income Tax Offices, the company claimed a deduction of the sum of Rs. 64,173, the amount for the which they had made provision for the payment of boons in the accounting year 1956. The Income Tax Officer disallowed the amount on the ground that no particulars were furnished to prove the actual quantum of bonus due and payable by the assessee. The Appellate Assistant Commissioner, however upheld the finding of the Income Tax Officer that no particulars were furnished by the assesses which would go the show the actual amount of bonus due from the company to the workers, but as the books of accounts showed an actual payment of Rs. 35,246 towards the bonus of the year 1954, he allowed a education of the said amount out of the claim of Rs. 64,173. Before the Income Tax Appellate Tribunal, the assessee claimed that it was entitled to have education of the balance of Rs. 28,927, as the liability in respect of the bonus for the year 1956 arose and was ascertained and quantified as a result of the tripartite agreement in January, 1956. It was further claimed that, in respect of the 1955 bonus amounting to Rs. 23,770 the petitioner was entitled to claim deduction although the liability arose in the accounting year after the tripartite agreement. The Tribunal however, relied upon certain circulars dated the 24th July, 1956, and 3rd December 1956, issued by the Central Board of Revenue and held that an exception had been made in the case of section 23A-companies in the following terms :

A company which wants to take advantage of this concession will have to exercise the option before it actually submits its return for the assessments year 1956-57.

3. In the present case, the tribunal was of opinion that there was nothing to show that this opinion was exercised by the petitioner company, but following the broad principle of assessments as laid down in the Income Tax Act, Tribunal felt that the allowance of more that on year claimed in the assessments if a particular year would not be on conformity with the accepted principle of assessments and would the revenue adversely. On that ground the Tribunal distinguished the case of commissioner of Income Tax v. Nagri Mills Co. Ltd. and upheld the decision of the Appellate Assistant Commissioner. On an application being made to the Tribunal, the case has been stated and the question of law mentioned above has been referred to us for opinion.

4. So far as the amount of Rs. 28,927 being the bonus for the accounting year 1956, we are of opinion that the question should be answered in the affirmative. It is not dispute that the account of the company were kept on a mercantile basis. Section 10 of the Act provides :

(1) The tax shall be payable by an assessee under the head "profits and gains of

business profession or vocation in respect of the profit and gain of any business profession or vocation carried on by him.

5. Sub-section (2) of section 10 provides that such profits or gains shall be computed after making the following allowances, namely :

..... (x) any sum paid to an employee as business or commission for as profit or dividends if it had not been paid as bounds or commission.

6. This sub-section clearly means that in three the accounting period in determining the profits and gains from the business any amounting paid as bounds during that year will be deducted. If this sub-section has stood alone, it may have been argued that the amount, which is actually paid as bounds during three accounting year could alone be deducted.

7. Sub-section (5) of section 10, however, provides :

In the sub-section (2), paid means actually paid or incurred according to the method of accounting upon the base of which the profit or gains are computes under this section;....

8. The system of accounting adopted by the assessee is the mercantile system and, in such a case as the liability to pay the bounds will be deemed to have been paid under sub-section (2) of section 10 and the assessee was entitled to claim deduction of that amount.

9. The cases of commissioner of Income Tax v. Nagri Mills Co. Ltd. to our mind, applies to the present case and the ground on which it is sought to be distinguished by the Tribunal does not arise. In that case the assessment was for the year 1952-53 and the accounting year was 1951. The bonus which accrued for the year 1951 was allowed as a permissible deduction, though the actual payments was made later. It was held that where a company which maintained its accounts on the mercantile basis, did not make any entry towards bonus for the calendar year 1951, but on a dispute regarding bonus payable to the Bored by its award in June, 1952, directed the company to pay bonus out of the profit for that year 1951 the bonus which it distributed in December, 1952, against the last item of part IV of the Income Tax return as u/s 10(5) of the Income Tax Act, actual payments was not necessary for the purpose of education and it was sufficient if the liability to bonus was incurred according to the method of accounting upon the basis of which the profit or gains were computed, the company was entitled to the deduction u/s 10(2)(x) of the bonus paid from the profit for the that year 1951, even though the amount had not been entered in its accounts for that year. The liability on the basis of the method of accounting adopted by the assessee accrued in the year 1956 for the bonus of that year and the payment in a later year will not affect the right of the assessee to claim education in respect of the aforesaid amount.

10. Mr. Choudhury, who appears for the department, has not contested the proposition of law, but his contention is that, in the present case, when before

the Income Tax officer the assessee claimed education of Rs. 64,173 on the basis that it had made provision for that amount toward the payment of bonus, the amount of bonus had not been ascertained. There was no material placed before the Income Tax authorities to show that the sum of Rs. 64,173 was the actual amount of bonus payable to the workers during the year 1956 and the actual amount which was paid toward bonus of the year 1954 was the only amount of bonus proved by the assessee and thus the amount of bonus for the year 1956 was not quantified. The Tribunal proceeded on the assumption that the sum of Rs. 28,927 represented the amount of bonus payable by the assessee to its workers for that 1956. In fact, the question referred to us makes it abundantly the amounts of the bonus payable to the workers of that company for the year 1956. In fact, in the subsequent year the actual payments of Rs. 28,927 was made That finding of fact will have to be accepted by this court. The Income Tax authorities proceed on the assumption that the sum of Rs. 64,173 kept apart for payment of bonus included the sum of Rs. 35,246 paid for the bonus for the year 1954 and the balance of Rs. 28,927 was the bonus payable for the year 1956. The amount of bonus thus payable had been ascertained and if the amount of bonus payable for the year 1956 was ascertained to be Rs. 28,927, the assessee was entitled to claim deduction of that amount on the ground that the accounting kept by the assessee. The deduction of Rs. 35,246 was allowed in the basis that the amount had already been paid during the accounting year towards the bonus of the year 1954 and as such it was an expense which would be taken into consideration in finding out the actual amount of profit.

11. As regards the sum of Rs. 23,770 this amount was not payable as bonus due to the workers of the companies for the accounting year 1955 and thus sub-section (5) was not attracted in this case. The only question is whether the liability accrued in the accounting year 1956 for this amount. It is contended by the counsel for the assessee that the liability to pay this amount accrued in January, 1956 after the tripartite agreements and thus, even though the actual payment might have been made later on having regard to the method of accounting adopted by the assessee, he could claim a deduction of the sum of Rs. 23,770. This amount, was never claimed before the Income Tax Officer. In the return, it was never shown that the profit had been ascertained after deducting the sum of Rs. 23,770. It was never alleged that the sum of Rs. 64,173 comprised the sum of Rs. 23,770 which the assessee was liable to pay to its workers as bonus for the year 1955. On the finding of the Tribunal the assessee set party sum of Rs. 64,173 for payment of bonus comprising the sum the Rs. 35,246 being the actual sum paid as bonus to the worker for the year 1954 and the sum of Rs. 28,927 which the company was liable to pay as bonus for the year 1956. But the sum of Rs. 23,770, which the company alleged it was liable to pay as bonus to the workers for the year 1955, was never mentioned in the Income Tax return. In the subsequent year, when the amount was actually paid, the assessee has been allowed education of that amount. It was only in the course of the assessment proceedings that an attempt was made to point out

that a sum of Rs. 23,770 was payable to its workers as bonus for the year 1955. But there was no material to show that the liability for this amount accrued in the year 1956, nor to show that the amount of bonus due for the year 1955 was ascertained to be the sum of Rs. 23,770 nor the Income Tax return showed that the income had been arrived at by the assessee after deducting the sum of Rs. 23,770 from the gross income as the amount payable to its workers as bonus for the year 1955.

12. Reliance was placed in the case of Calcutta Co Ltd. v. Commissioner of Income Tax. In that case, the appellant bought lands and sold them in plots fit for building purpose undertaking to develop them by laying out roads, providing a drainage system and installing lights, etc. When the plots were sold, the purchaser paid only a portion of the purchase price and undertook to pay the balance in installments. In the relevant accounting year, the appellant actually received in cash only a part of the sale price, but in accordance with the mercantile system of accounts adopted by it, credited in its accounts the amount representing the full sale price of lands. At the same time, it also debited an estimated sum as expenditure for the development it had undertaken to carry out, even though no part of that amount was actually spent. It was held that the undertaking imported a liability of the appellant, which occurred on the dates of the days of sale, though that liability was to be discharged at a further date. It was held that liability was entitled to claim deduction for the entire expenses. That case to my mind is distinguishable. It does support the contention of the assessee in so far as the sum of Rs. 28,927 is concerned. But as to the sum of Rs. 23,770 this has no application. In that case, the amount of expense was an ascertained amount, the entire sale price was credited, although only a part of it had been received, and obviously the entire expense which the company had to incur for the development of the land was an expense towards the business and, on the method of accounting adopted by the assessee, they were entitled to claim deduction of the entire expenditure. In the present case, as we have already pointed out, the deduction of Rs. 23,770 was claimed. The amount kept apart for payment of bonus did not include this sum and, in calculating income, the assessee had never taken into consideration the accrued liability, if at all, of the sum of Rs. 23,770. Under these circumstances, the question in so far as it relates to the sum of Rs. 23,770 must be answered in the negative.

13. In the circumstances of the case, the deduction of the sum of Rs. 28,927 on account of bonus payable for the year 1956 was an admissible deduction from the business income of the company; but the deduction of the sum of Rs. 23,770 paid on account of bonus for the year 1955, in the subsequent year, was not an admissible deduction. The parties will bear their own costs of this reference.

S.K. Dutta, J.

I agree.

15. Order accordingly.