Garware Synthetics (P.) Ltd. Vs. Income-tax Officer

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SooperKanoon Citation : sooperkanoon.com/59150

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Apr-30-1982

Reported in : (1982)2ITD176(Mum.)

Judge : M Sikka, B Venkataramaiah

Appellant : Garware Synthetics (P.) Ltd.

Respondent : income-tax Officer

Judgement :

1. In this appeal, the assessee objects to the confirmation by the Commissioner (Appeals) of a disallowance of Rs. 20,287 out of the general charges, restriction of relief under Section 35B of the Income-tax Act, 1961 ('the Act') to only 50 per cent of the salary of the staff engaged in the export business and confirmation of a disallowance of Rs. 1,89,540, paid as bonus, made by the ITO.2. We first deal with the ground relating to the rejection of the assessee's claim under bonus. The assessee entered into an agreement with its workmen on 29-4-1974. According to this agreement, the assessee was to pay bonus, up to 20 per cent of the wages, for the financial years 1972-73 to 1975-76. According to the assessee, 20 per cent of the wages paid to the permanent, daily-rated and monthly-rated workmen came to Rs. 1,89,540, in respect of the financial year 1975-76, relevant to the assessment year 1976-77. When it filed a return on 8-10-1976, it did not claim this amount as a liability. However, a revised return on 24-1-1977 was filed, wherein the aforesaid deduction from the profits was claimed. The claim was negatived by the ITO. In fact, there is no discussion in the order of the ITO, on this point. In appeal, the Commissioner (Appeals) noticed that the assessee had not made any provision, in the books of account, for payment of bonus amounting to Rs. 1,89,540. He also stated in his order, that the 'extra amount', stated to have been claimed, was higher bonus, on the basis of an agreement which was arrived at subsequently and the liability did not exist during the relevant accounting year. The Commissioner (Appeals), however, held that by virtue of the amendment of Section 36(1)(a) of the Act, with effect from 1-4-1976, the assessee was not entitled to claim any deduction of bonus higher than the minimum payable under the Payment of Bonus Act, 1965 ('the Bonus Act'). He, accordingly, held that the assessee was not entitled to any deduction under bonus.

3. In appeal before us, Shri S.E. Dastur, the learned counsel for the assessee, submitted that the agreement entered into on 29-4-1974, covered the payment of bonus for the subsequent years also. The claim of the assessee was confined, only, to the bonus relating to the relevant previous year. It was an accrued liability and although no provision for payment of the same was made in the accounts, the liability was deductible under the mercantile system of accounting-Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC).

The learned counsel further submitted that the restrictions placed by Section 36(1)(a) would apply only to profit-based or productivity bonus and mother types of bonus-like customary, and festival contractual bonus-it would not apply. He relied upon the Supreme Court decision in the case of Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai AIR 1976 SC 1455. He then referred to the Supreme Court judgment in the case of Hukumchand Jute Mills Ltd. v. Second Industrial Tribunal [1980] 3 Taxman 43, wherein the Supreme Court held that customary bonus was not impaired or eliminated by the amendment to the Bonus Act, with effect

from 1-4-1976. He then referred to another order of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi, dated 30-3-1977 in the case of S. Sundaram v. American Express International Banking Corporation. [No. 33(2)/9/76 of 1976]. In this case, the bonus payable, in accordance with the agreement entered into between the employees and the management, was held to be not affected by the amendment to the Bonus Act. The Supreme Court also rejected the special leave petition filed by the management. According to Shri Dastur, the last case, which had become final, squarely covered the assessee's case. The agreement imposed a contractual obligation and, thus, the liability on the assessee, the deduction of which was not affected by Section 36(1)(ii). The assessee had, in fact, put up a notice on 11-10-1976 informing the workers that, 4 per cent of the wages would be paid on 15-10-1976 in accordance with the conditions stipulated in the Bonus Act. On 11-7-1977, the balance was agreed to be paid. Shri.

Dastur stressed that the notice dated 11-10-1976 did not extinguish the assessee's liability, which had already accrued, and the payment was also made subsequently. He further relied upon certain decisions of the Tribunal, wherein it had been held that customary bonus was not covered under Section 36(1)(ii). For these reasons, he urged that the claim of the assessee to deduct Rs. 1,89,540, from its profits, should be allowed.

4. The learned departmental representative, on the other hand, submitted that the assessee never made the claim in the fashion in which it was urged before the Tribunal. It was a new case which was sought to be made out by the assessee and, hence, not admissible according to the Supreme Court decision in the case of Addl. CIT v.Gurjargravures (P.) Ltd. [1978] 111 ITR 1. He further argued that the claim was not there in the original return and the assessee had never argued before the Commissioner (Appeals) that the bonus payable by it was not production-based or productivity bonus. The claim of the assessee, now made before the Tribunal would require investigation into fresh facts and was, thus, not admissible. On merits, he argued that, firstly, the liability arose under the contract in 1974 itself and, thus, if at all, it should have been claimed in the assessment year 1975-76. Secondly, the claim was also being made in the assessment year 1978-79. Thirdly, the bonus payable to the employees was covered by Section 36(1)(a), as was clear from Clause 14 of the agreement. This clause made it clear that the employees were to get the benefits either under the settlement or under the legislation introduced either by the State Government or by the Government of India, but not under both. He submitted that this clause made it clear that the bonus given by the assessee, to its employees, was of the same type as the bonus conferred under the legislative Acts and, thus, Section 36(1)(ii) applied to the assessee. Alternatively, it was contended that, if it was not covered by the first proviso under Section 36(1)(iv) and covered by the second proviso, then the reasonableness of the bonus was a matter which should be gone into. On the above grounds, the learned departmental representative submitted that the order of the Commissioner (Appeals) in this behalf should be upheld.5. We have given careful consideration to the submissions made by both sides. At the outset, we have to say that we are unable to accept the arguments advanced on behalf of the revenue that the assessee is setting up a new case before the Tribunal. The ground regarding deduction of the bonus was there before the ITO and the Commissioner (Appeals). What the assessee has urged is another aspect of the same claim. It is now well settled, by the decision of the Supreme Court in the case of CIT v. Mahalakshmi Textile Mills Ltd. [1967] 66 ITR 710 that if relief is admissible under some ground, other than what was urged in Appeal, the Tribunal is bound to give the relief, under such other grounds. Here the agreement, entered into between the employer and the employees, was already there before the authorities below. What is required is an interpretation of that agreement in the light of the Payment of Bonus Act, 1965, and Section 36(1)(ii). We, therefore, admit for consideration the arguments advanced by the assessee in its favour.

6. The Industrial Disputes Act, 1947 defines 'settlement' under Section 2(p) of the Act as follows : settlement means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

Obviously, the settlement of 29-4-1974 is a settlement under the Industrial Disputes Act, 1947. Sections 18 and 19 of that Act also prescribe that the settlements are binding on the parties and shall come into operation on such date as is agreed upon, by the parties to the dispute and, also, will be in force for such period as is agreed upon. The question now is whether the payment, under settlements, is hit by the restrictive provisions of Section 10 of the Bonus Act and Section 36(1)(ii). The preamble to the Bonus Act clearly mentions that it relates to bonus, to persons employed in certain establishments, on the basis of profits or on the basis of production or productivity and for matters connected therewith. Thus, any settlement which has no relation to profits, production or productivity, is taken out of the purview of the Bonus Act. In the assessee's case, the settlement provides that it has to pay its workmen bonus, at the rate of 20 per cent of their earnings, irrespective of the profits earned by the assessee. We have, therefore, no hesitation in holding that the bonus payable according to the settlement of 29-4-1974 does not come under the purview of the Bonus Act. We are also not impressed by the arguments of the learned departmental representative that Clause 14 of the agreement brings the bonus under the Bonus Act. Clause 14 reads as under : Labour Legislation : If, due to Labour Legislation or otherwise, identical or similar benefits as accruing to the workmen under this settlement are introduced by the Maharashtra State Government or Government of India the workmen shall be entitled to get either the benefits given under the legislation or under this settlement, but not both.

It is clear from the above clause that the management merely attempts to safeguard its position if similar benefits are conferred by the legislation in future. Hence, we cannot say that the bonus under consideration is under the Payment of Bonus Act.

7. The decisions of the Supreme Court, relied upon by the learned counsel for the assessee, clearly place bonus-profit or productivity bonus -on a footing different from other types of bonus. In Mumbai Kamgar Sabha's case (supra), the Supreme Court has clearly held that the Payment of Bonus Act does not govern customary, traditional or contractual bonus. As stated earlier, the same decision was given after an amendment to the Bonus Act with effect from 1-4-1976. It is also not possible to hold that the contractual bonus refers only to the bonus payable in terms of the contract of service. Any settlement, arrived at between the employees and fc the employer, for payment of bonus, is a contract and is enforceable. That such a payment does not come under the purview of the Payment of Bonus Act, is again made clear in the Award of the Industrial Tribunal, in the case of American Express International Banking Corporation (supra), wherein the Special Leave Petition of the management against the judgment of the Tribunal was rejected by the Supreme Court. For the above reasons, we hold that the claim of the assessee to deduct Rs. 1,89,540 for payment of bonus is not hit by Section 36(1)(;7).

8. We also do not see any force in the revenue's arguments that the liability arose in 1974 itself. If an agreement, covering payment relating to future years, is entered into on a particular date, certainly, the liability of future years, also, does not arise on the date of the agreement. If the arguments of the revenue in this behalf were to be accepted, it would appear that the entire salary payable to an employee from the date of his appointment to the date of his retirement would be debitable, in the profits and loss account, on the day of the contract itself. (63 ITR 134 (sic) does not apply to the facts of this case.) We, therefore, hold that the liability to pay bonus arose during the relevant previous year and is deductible from the profits of the assessee. We wish to make it clear that since the deduction is allowed for the assessment year 1976-77, it cannot again be claimed, on the basis of actual payment in a future year. The assessee's ground in this behalf succeeds.

9. Regarding the disallowance under the genera! charges, we find that out of Rs. 14,686, there are a few items which could be treated as 'entertainment' or which are not for the purposes of business. We, accordingly, hold that the disallowance be limited to 25 per cent of Rs. 14,686.

10. The gifts consisting of mangoes were made to the customers in the ordinary course of business. The claim of the asseseee, in this behalf, is accordingly, allowed.

11A. The relief given under Section 35B is in conformity with the Tribunal's order for the earlier year. No change is necessary.