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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-23-1987

Reported in : (1987)21ITD228(Delhi)

Judge : S Chander, S Mehra

Appellant : inspecting Assistant

Respondent : Teletube Electronics (P.) Ltd.

Judgement :

1. These cross-appeals by the revenue and the assessee are directed against the order of the Commissioner (Appeals)-XI, New Delhi dated 15-11-1985 relating to the assessment year 1981-82.

2. We have heard the parties and we proceed to determine the grounds taken up in appeal by the respective parties as under. The solitary ground in the appeal of the revenue relates to the deletion of the addition of Rs. 20,771 made under the first proviso to Section 36(1)(ii) of the Income-tax Act, 1961 ('the Act') on account of production incentive paid to employees. On 17-7-1978, the assessee formulated, what has been christened as 'Production Incentive Scheme'.

The assessee's previous year is the financial year and the books of account are maintained on mercantile system of accounting. The assessee-company under this scheme paid Rs. 20,771 to the factory workers on the basis of the production targets achieved by them. During the assessment proceedings, the IAC

(Assessment) took it to be production incentive bonus and finding that it was in excess of the limit of 20 per cent which according to him was the ceiling laid down in the first proviso to Section 36(1)(ii) disallowed the same. When the matter came up in appeal before the learned Commissioner (Appeals), he gave a finding on fact that production incentives were not in the nature of bonus payable under the provisions of the Payment of Bonus Act, 1965. He held it to be an allowable item and following the judgment of the Tribunal in the case of Kelvinator of India Ltd. [IT Appeal No. 3988 of 1981, dated 30-12-1982], held that the amount was deductible while computing the total income of the assessee. The learned Commissioner (Appeals) reiterated that production incentive is not bonus under the Payment of Bonus Act, and that it satisfies the conditions of the second proviso to Section 36(1)(w). This is objected to by the revenue.

3. The revenue relied upon the judgment of the Tribunal, Calcutta Bench 'D' relating to the assessment year 1979-80 in the case of Orient Movietone Corpn. Ltd. [IT Appeal No. 976 (Cal.) of 1983, dated 16-7-1984] to contend that the order of the Commissioner (Appeals) was erroneous and it may be reversed. On the other hand, the learned counsel for the assessee submitted that the amount in dispute was production incentive and not bonus. It could, therefore, be considered more as a part of additional wages than bonus as it was paid under the Production Incentive Scheme appearing at pages 4 to 5 of the paper book laying down the conditions linking the payment to production of the items which are manufactured by the assessee. The assessee-company is manufacturer of picture tubes. It was contended that the factum of payment is not in dispute, the purpose of payment for the business is not doubted and the disallowance is merely because it has been alleged that production incentive is bonus, which is incorrect. Therefore, there is no case for an interference in the order of the learned Commissioner (Appeals). He relied upon the judgment of the Supreme Court in the case of Titaghur Paper Mills Co. Ltd. v. Their Workmen [1959] Suppl. 2 SCR 1012 particularly p. 1019.

4. The revenue had contended that if the payment is hit by the first proviso to Section 36(1)(ii) as held by the IAC (Assessment) then the payment cannot be considered under Section 37 of the Act. Rebutting this argument, the learned counsel for the assessee contended that the Hon'ble Delhi High Court in CIT v.

Rama Krishna Steel Rolling Mills [1974] 95 ITR 97 while considering the question of admissibility of a claim under Section 10(2)(u) of the Indian Income-tax Act, 1922 held that if the claim was not admissible under that clause the amount could be considered for deduction under Section 10(2)(OT). Arguing on this analogy, he submitted that if in the alternative, the contention of the revenue is to be considered, then the claim of the assessee can be considered under Section 37 as well.

5. We have given careful consideration to the rival submissions. The Hon'ble Supreme Court in the case of Titaghur Paper Mills Co. Ltd. (supra) has held that the payment of production bonus depends upon production and is in addition to wages. The Court has further clarified that in effect, it is an incentive to higher production and is in the nature of an incentive wage. So, whatever may be the nature of the plan of payment in effect it is an extra emolument for extra effort put in by the workmen over the standard that may be fixed. The extra payment depends not on extra profits but on extra production.

6. On perusal of the scheme for payment of production incentives, we find that it is related to production targets and not to profits.

Therefore, the premise on which the IAC (Assessment) proceeded was erroneous because the payment was not in any manner bonus as ordinarily understood in the ordinary sense but is covered by the provisions of the first proviso to Section 36(1)(ii). The learned Commissioner (Appeals) gave a correct finding that such production incentive payments were not in the nature of bonus payable under the provisions of the Payment of Bonus Act. If that is clear then the issue becomes very simple. The assessee has actually paid the production incentives on actual extra production by the workmen and in view of the Hon'ble Supreme Court judgment referred to supra, it has to be considered as additional wages for additional production. The amount is, therefore, clearly admissible.

7. The argument of the revenue that if the provisions of Section 36(1) are attracted then Section 37 cannot be invoked is, therefore, not relevant in the context of the issue before us. The amount is admissible as additional wages. Since, the learned Commissioner has allowed the amount as a deduction, his order requires no

interference at our hands. The appeal of the revenue is, therefore, dismissed. While arriving at the above decision, we have considered the judgments of the Tribunal cited from both the sides. Whereas, the judgment of Delhi Bench 'D' is directly on the point in issue before us, the judgment of the Calcutta Bench was on different facts.

8 to 10. [These paras are not reproduced here as they involved minor issues.]

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