

Smt. Devayaniamma Vs. Commissioner of Income-tax, KeralaA.

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Court : Kerala

Decided On : Jun-17-1968

Reported in : [1969]71ITR140(Ker)

Appeal No. : Income-tax Referred Cases No. 44 of 1967

Appellant : Smt. Devayaniamma

Respondent : Commissioner of Income-tax, KeralaA.

Judgement :

In compliance with the directions of this court in O.P. No. 878 of 1966 the following question have been referred to this court for our decision by the Income-tax Appellate Tribunal, Madras Bench :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the disallowance of salary of Rs. 6,000 and bonus of Rs. 2,500 was justified ?

(2) Whether, r on the facts and in the circumstances of the case, the Tribunal was right in holding that the addition of Rs. 18,685 on the ground of purchase inflation was sustainable ?'

The year of assessment with which we are concerned is 1962-63, the corresponding accounting period having ended on the 30th of September, 1961. During that year of account one Sri P. Gopinathan Nair who is the husband of the

assessee, was paid sum of Rs. 1,250 per mensem as salary. The salary fixed by the assessee for Sri P. Gopinathan Nair for the period before October 1, 1960, was Rs. 1,000 per month. That the business of the assessee is being managed by the said Gopinathan Nair is not disputed. The business consists of dealing in cashewnuts, processing of the nuts for sale either by way of export or for internal consumption. the assessee owns 8 cashewnut factories. The turnover for type year in question was 61 lakhs of rupees.

On the above facts and circumstances, the Tribunal found that the salary was in excess of what should reasonably be paid to a manager managing such business. To use their own words we would extract paragraphs 8, 9 and 10 of the order passed in appeal by the Tribunal :

'The assessee's representative supplied us some trading data in respect of a few other assessee's. We put it to him whether any of these assessee's paid their general managers of this nature. He was not able to furnish the necessary information. According to the information of the department, the maximum salary paid to a manager by one assessee was Rs. 1,548 per annum and in another case when the assessee had employed her husband as general manager the maximum salary was Rs. 9,000. In the assessee's case the disparity in the salary paid by the assessee to her longstanding staff and the salary paid to her husband who joined her only three years back suggests that it was not business consideration that was at the back of the fixation of the salary. The maximum salary that the assessee paid her manager was Rs. 150 p.m. The assessee's learned representative would have it that these persons were mere supervisors.

Salary nearly ten times this cannot be said to have been made out of purely business consideration. The assessee returned an income of Rs. 28,125; as against this the claim of salary and bonus to the general manager, Gopinathan Nair, amounted to Rs. 20,500.

In the preceding year, i.e., 1961-62, the department allowed Rs. 6,000 and the assessee accepted this. In the year 1960-61, as against a claim of Rs. 11,484, the department allowed only Rs. 3,242 and this was also accepted.'

The question arising in such cases for determination has now been well settled and it is hardly necessary to refer to any case other than the recent pronouncement of the Supreme Court in Commissioner of Income-tax v. Walchand and Co. Private Ltd. We shall extract a few passages from this judgment :

'It is open to the Tribunal to come to a conclusion either that the alleged payment is not real or that it is not incurred by the assessee in the character of a trader or that it is not laid out wholly and exclusively for the purpose of the business of the assessee and to disallow it.'

It has not been suggested that the payments claimed have not in reality been made or that it has not been incurred by the assessee in her character as a trader. what is suggested is that it has not been wholly and exclusively laid out for the purpose of the business. Regarding this the Supreme Court has said in the decision referred to :

'But it is not the function of the Tribunal to determine the remuneration which in their view should be paid to an employee of the assessee.'

As we understand the order of the Tribunal what has been done is to substitute the judgment of the assessing authorities for that of the businessman. This we do not think is warranted at all. what they should find out is specific material on the basis of which it is possible for a reasonable person to come to a conclusion that the payment has been made for extraneous considerations such as relationship of the employee to the proprietor or some such thing. Unless it is possible to spell out on some specific material that he received payment for such reasons it is not permissible for the Income-tax Officer to substitute his own ideas of what a person should be paid and what would be a proper payment for a particular person.

Two factors have been relied on by the Tribunal. One of these is that in the two previous years the income-tax authorities decided to slash what has been paid to the said Gopinathan Nair by the assessee and that these decisions were not challenged. This, we do not think, has any relevancy in deciding the question as to what can be reasonably claimed as an expenditure coming under section 10(2)(xv)

of the Indian Income-tax Act, 1922, for the particular year in question. the other circumstance relied on by the Tribunal is a comparison of the salaries paid by others engaged in similar business to their so-called managers. comparisons in such circumstances are always dangerous and not at all clinching. what a particular employee should be paid will naturally depend upon what responsibility he has been asked to shoulder and what qualifications and experience the person who has been employed possessed at the time he was engaged. These are essentially matters for the businessman to decide and what the assessee considers a reasonable payment for the services of a particular individual must be a permissible item of expenditure unless on material it can be established that the payment was for reasons other than business considerations. the following passage from the judgment of the Supreme Court referred to is useful :

'An employer in fixing the remuneration of his employees is entitled to consider the extent of his business, the nature of the duties to be performed, and the special aptitude of the employee, future prospects of extension of the business and a host of other related circumstances.'

The said Gopinathan Nair, though the husband of the assessee, was employed by Volkart Brothers, a well-known firm and was drawing a remuneration equivalent to what has now been permitted by the Income-tax Appellate Tribunal to be drawn by him at the time he left the services of Volkart Brothers and took employment under his wife and started managing the business of the assessee which, as indicated, was of considerable extent. The responsibility of managing this is exclusively on the said Gopinathan Nair that cashew business in the State is a risky one is well known. Policy decisions will have to be taken regarding purchases, in circumstances, where there is bound to be a clamour for raw materials, due to its scarcity. On such decisions will depend the question whether profit will be made or not. There are eight factories and these have to be managed. It was suggested that the so-called managers in each of the factories drawing a salary of Rs. 150 per month would discharge the managerial functions in these factories. The suggestion seems to be ridiculous. It is difficult to get even a clerk for Rs. 150 in this State and it is impossible to imagine that a person capable of discharging managerial functions can be obtained for Rs. 150 per month. Even if they are

called managers, they cannot be understood as managers.

We are not satisfied that there was material before the Tribunal which would justify a reasonable conclusion that extraneous considerations weighed with the assessee in fixing up the salary of the said Gopinathan Nair at Rs. 1,250 per month. The entire claim towards salary should have been allowed. We, therefore, answer the first question, in so far as it relates to the sum of Rs. 6,000 mentioned therein, in the negative, that is, in favour of the assessee and against the revenue.

The question involves a further sum of Rs. 2,500. This is part of a sum of Rs. 5,500 paid by the assessee to the said Gopinathan Nair as bonus for the year in question. Regarding this amount (Rs. 2,500), the Tribunal has stated in its order that 'no reference was made in regard to the portion of the claim of the bonus disallowed by the department'.

In view of the above, we do not consider that any question of law arises in regard to this particular disallowance. Regarding this amount, the question has to be answered against the assessee and in favour of the department. We do so.

On a consideration of the point involved in question No. 2, after hearing the parties in full, we are satisfied that what has been decided by the Tribunal is essentially a question of fact. The decision of the Tribunal cannot be said to be vitiated on any grounds which would justify a different conclusion being reached by this court. This question will have to be answered against the assessee and in favour of the department. We answer it accordingly.

This reference is answered as above. We direct the parties to bear their respective costs.