

Cit Vs. Maheshwari Builders

Cit Vs. Maheshwari Builders

SooperKanoon Citation : sooperkanoon.com/770727

Court : Rajasthan

Decided On : Apr-12-2006

Reported in : [2007]292ITR468(Raj)

Judge : Rajesh Balia and; R.P. Vyas, JJ.

Appellant : Cit

Respondent : Maheshwari Builders

Judgement :

1. The aforesaid two cases have been referred to this court by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. Submitting a statement of case in each case, the following substantial question of law has been referred to this court for its opinion:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that bonus was a part of the normal business expenditure was covered by the net profit rate applied to the instant case

2. Both the cases are in respect of the same assessee for successive assessment years 1985-86 and 1986-87.

3. The respondent-assessee is MES contractor. For each year, finding the books of account to be defective, the assessing officer invoked the proviso to Section 145(1) for resorting to best judgment assessment. While resorting to best

judgment assessment, the assessing officer had applied a net profit rate of 10 per cent, subject to depreciation and interest to third party and any other expenditure of such nature. On appeal, the net profit rate was reduced from 10 per cent, to 9.5 per cent. While applying the net profit rate by the assessing officer, the claim of the assessee for deduction of Rs. 1,29,330 as expenditure of such nature by way of payment of bonus to its workers under an agreement with the labourers entered on February 20, 1984, was rejected, inter alia, on the ground that it cannot be termed as special nature, but ordinary incident of business. However, the Commissioner (Appeals), while adjusting the net profit rate did not agree with the aforesaid finding of the assessing officer for disallowing the claim of deduction for payment made to the labourers for bonus for the assessment years in question.

4. We may notice here that for the assessment year 1986-87, Rs. 1,60,000 were paid by way of bonus.

5. It is neither the case of the revenue nor of the assessee that it was under the statutory obligation to pay bonus under the Bonus Act. On the contrary, it was found by the Commissioner (Appeals) that the appellant-firm had not paid the bonus to the workers in the earlier years. However, there being shortage of local labourers and the anxiety to complete the contract work within time, the firm had to agree to make payment of bonus to the workers during the year under consideration. However, there is nothing on record to doubt the necessity or actual payment of bonus to the workers. With this background, the learned Commissioner (Appeals) concluded that the payment of bonus is, therefore, a relevant factor which deserves due consideration as claimed by the appellant.

6. On further appeal, the Tribunal upheld the claim of the assessee that payment of bonus during the relevant assessment year in question was of special nature for those assessment years and consequently that amount is to be reduced from the profit by applying the net profit rate.

7. In the aforesaid circumstances, we are of the opinion that the finding reached by the Tribunal about the special nature of expenditure incurred on payment of bonus during the relevant assessment year in question is a finding of fact and does not give rise to question of law. There is no finding that the liability of bonus was a

continuous liability arising under the statutory provisions of the Payment of Bonus Act or under any statute. The fact that the liability during the relevant assessment year had arisen only as a result of agreement having been arrived at between the labour union and the assessee during the previous year relevant to the assessment year 1985-86 and the expenditure incurred for the first time during these assessment years, the finding could reasonably be reached that the expenses regarding payment of bonus during the assessment years in question were of special nature.

8. Looking to the assessee's case, while applying the net profit rate, we are, therefore, of the opinion that the Tribunal was justified in allowing the deduction of amount of payment made to the workers as bonus during the relevant assessment year as a result of agreement arrived at between the labour union and the assessee for the first time.

9. In these circumstances, the question referred in each case is answered in the affirmative, i.e., in favour of the assessee and against the revenue.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com