

**Cit Vs. Peico Electronics and Electricals Ltd.**

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**Court :** Kolkata

**Decided On :** Mar-14-2002

**Reported in :** (2002)175CTR(Cal)6

**Appeal No. :** IT Ref. No. 105 of 1995 14 March 2002 A.Y. 1981-82

**Appellant :** Cit

**Respondent :** Peico Electronics and Electricals Ltd.

**Advocate for Pet/Ap. :** Pal, *for the Assessee Mullick, for the Revenue*

**Judgement :**

ORDER

By the court

Three questions we have caused to be referred to ourselves under section 256(2).

The questions are as follows :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Commissioner (Appeals) deleting a sum of Rs. 11,08,658 on account of gratuity payable to the employees on transfer to Telecommunication Department of the State Government ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the provision of section 40A(7) of the Income Tax

Act, 1961, could not be invoked to defeat the assessee's claim for Rs. 11,08,656 on account of gratuity payable on transfer to Telecommunication Department of the State Government and that the same was allowable under section 28 or under section 37(1) of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the amount of subsidy of Rs. 1,48,000 is not to be deducted from the costs of generator for the purpose of calculating depreciation ?'

2. In regard to the first two questions the basic facts are that the Telecommunication Department of the assessee was transferred to Webel, a West Bengal Government organisation, as a going concern. The employees also got transferred maintaining continuity of service.

The agreement of transfer is dated in 1978 and the memorandum of understanding involving the workers is dated the 29-2-1980.

As a result of this the assessee had a liability accrued to itself as on 1-3-1980, as to the making over of the amounts of gratuity lying with them in regard to the workers transferred to Webel. Such making over of the gratuity amount was to be made to Webel.

As such, for the previous year, corresponding to the calendar year 1980 relating to the assessment year 1981-82, the assessee admittedly made a provision for the accrued liability of making over the gratuity amounts of the transferred workers to Webel.

3. In regard to the second question, Mr. Mullick argued before us that since the amounts relate to gratuity, the section 40A(7) has to be specifically satisfied before deduction can be claimed.

4. For expounding the scheme of that section he relied on the case of Sri Sajjan Mills Ltd. v. CIT : 1986ECR276(SC) .

No objection based on this section was, however, taken by the department before the Tribunal. The Tribunal dealt with the section nonetheless for what it felt, was

the cause of completeness.

It formed the view that the payment was not being made for the employees of the assessee who had ceased to be such. It, therefore, opined that generally under section 37(1) the provision for the liability was deductible.

5. Mr. Pal gave us the case of W.T. Suren & Co. : [1998]230ITR643(SC) , a Supreme Court decision. There the employees were transferred by the subsidiary company to the holding one and the gratuity amounts of the employees were also paid over. There are clear indications in the judgment at and after page 662 (of 230 ITR) that these payments are in the nature of generally deductible business expenses.

As such, the second question has to be answered in favour of the assessee.

6. The first question is intimately related to the second. We are of the opinion that, if the second question is answered in favour of the assessee, the first question also has to be so answered. We are of the opinion that the provision made by the assessee for satisfying the liability arising out of the above agreements, although relating to payment of gratuity of the workers ultimately, must cause the deletion of the said sum of Rs.11,08,658, and in this regard the Commissioner (Appeals) and the Tribunal were both correct in law.

7. The third question relates to calculation of depreciation. The sum of Rs. 1,48,000 was admittedly received from the State of West Bengal as subsidy. On an examination of facts, however, the Tribunal has come to the conclusion that the said amount was not given by the Government towards the cost of the generator sets (see pp. 88 and 89 of the paper book). Once this finding of fact is accepted, the argument as per the definition of 'actual cost' given in section 43(1) no longer hurts the case of the assessee at all.

8. No question has been raised that the said finding of fact by the Tribunal was perverse and could not be reasonably reached in any event. Thus, the calculation of depreciation, without knocking off the amount of subsidy as made by the assessee, does not suffer from any non-observance of any of the sections of the

Income Tax Act, 1961, specially section 43(1).

We take note that in regard to the subsidy matter, the Tribunal reversed the decision of the Commissioner (Appeals) who had affirmed the order of the Income Tax Officer. However, the Tribunal did not at all go wrong in law anywhere in this regard.

As such all the questions are answered in the affirmative and in favour of assessee.

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