IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 4TH FEBRUARY 2008 / 15TH MAGHA 1929

ITA.No. 216 of 2001()

ITA.527/COCH/1996 of I.T.A.TRIBUNAL,COCHIN BENCH
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APPELLANT :

THE COMMISSIONER OF INCOME TAX, THRISSUR..

BY ADV. SRI.P.K.R.MENON(SR.),SR.COUNSEL FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENTS:

M/S. KERALA STATE FINANCIAL ENTERPRISES LTD., THRISSUR.

BY ADV. SRI.P.BALACHANDRAN
SMT.PREETHA S.NAIR

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 4/2/2008, THE COURT ON 04/02/2008 DELIVERED THE
FOLLOWING:

C.N. Ramachandran Nair &
T.R. Ramachandran Nair, JJ.

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I.T.A.NO.216 of 2001

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Dated this the 4th day of February, 2008.

JUDGMENT

C.N. Ramachandran Nair, J.

This is an appeal filed by the Revenue under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal allowing deduction of around Rs.1.86 crores towards wage increase payable by the assessee to the employees during the previous year under an agreement signed in the subsequent year. The respondent assessee is a Kerala Government undertaking engaged in kury business and financing. The wage settlement with the employees expired on 31.7.1992, i.e. towards the middle of the previous year relevant for the assessment year 1993-94. Negotiations for settlement were going on in the previous year and the actual agreement approving wage increase with effect from 1.8.1992 was signed on 9.6.1993. This was approved by the Government by order dated 20.10.1993. The assessee claimed increased wages payable to the employees during the previous year as a deduction in the return filed for the assessment year 1993-94. The assessing officer disallowed the claim on the ground that liability arose under the agreement approved by the Government in the succeeding year. On appeal, the Commissioner of Income Tax (Appeals) confirmed the disallowance, against which the assessee filed second appeal to the Tribunal. The Tribunal found that liability, though ascertained and paid through the agreement approved by the Government in the succeeding year, is liability of the previous year and hence allowable. It is against this order of the Tribunal, the Revenue has filed appeal.

2. We have heard learned Standing Counsel appearing for the Revenue and Shri P. Balachandran, learned Senior counsel appearing for the respondent assessee. Learned Standing Counsel referred to the decision of the Calcutta High Court in **Commissioner of Income Tax v. Teesta Valley Co. Ltd.** (187 I.T.R. 657) and the decision of the Bombay High Court in **Tyresoles Goa Pvt. Ltd. v. Commissioner of Income Tax** (193 ITR 649) and contended that the liability in this case is contingent in nature and therefore not an admissible deduction. The assessee on the other hand, relied on the decision of the Supreme Court in **Bharath Earth Movers v. Commissioner of Income Tax** (245 ITR 428), the decision of the Rajasthan High Court in **C.I.T. v. Premier Vegetable Products (** 227 ITR 931) and the decision of the Bombay High Court in **United Motors India Ltd. v. Commissioner of Income Tax** (181 ITR 347) and contended that liability for increased wages, though ascertained and discharged in the subsequent year being liability of the previous year is an allowable deduction. It is the

admitted fact that wage settlement that was prevailing between the management and the employees expired on 31.7.1992, i.e. during the previous year. Therefore, the employees were entitled to wage revision from 1.8.1992 onwards. It is quite normal and particularly in the case of Government companies, wage settlement involves protracted negotiations taking time and even though agreement is entered later, it always takes effect from the date of expiry of the previous settlement. In fact, it is only on this understanding and expectation the employees continue to work without any demand for immediate increase of wages after the expiry of the existing settlement.

3. Even though learned Standing Counsel for the Revenue contended that contractual liability arises only on the date of signing the agreement, we are unable to accept this argument in this case. In the normal course, an agreement called settlement as increase in wages takes effect from the date of expiry of the previous settlement and this case is no exception to it. What is important is not the date of signing the agreement nor the later approval granted by the Government, but the effective date of commencement of the wage revision under the agreement. There is no dispute that the wage increase was granted as a continuous measure from the date of expiry of the previous settlement, i.e. with effect from 1.8.1992. Therefore, the liability for wage increase really accrued for the respondent-assessee with effect from 1.8.1992. The assessee is entitled to claim

deduction of such wage increase attributable upto the end of the previous year, no matter exact amount was ascertained and payment made later. In the decision of the Supreme Court referred to above, it is made very clear that what is to be considered is whether the liability is attributable to the previous year or not and it is immaterial if the actual liability was ascertained and settled only in the next year. Even though the other two decisions cited by the assessee are not directly on the point, the principles laid down therein are applicable to the facts of this case. It is clear from the orders that by the time the accounts were finalised and returns were filed, the assessee had ascertained the actual liability attributable to the previous year and therefore the actual amount payable only was claimed based on mercantile system of accounting followed by the assessee.

We are therefore of the view that the Tribunal was perfectly justified in allowing the claim. The appeal therefore fails and the same is accordingly dismissed.

(C.N. Ramachandran Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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C.N. Ramachandran Nair &
T.R. Ramachandran Nair, JJ.

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I.T.A. No.216 of 2001

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JUDGMENT

4th February, 2008.