

In the High Court of Judicature at Madras

Dated: 19.07.2012

Coram

The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN
and
The Honourable Mr.JUSTICE K.RAVICHANDRA BAABU

Tax Case (Appeal) No.635 of 2006

M/s.Thanjavur Textiles Ltd.
Rajapalayam Mills Premises,
P.A.C.Ramsamy Raja Salai,
Rajapalayam 626 117.

.... Appellant

Vs.

The Joint Commissioner of Income Tax
Special Range I,
121, Mahatma Gandhi Road,
Chennai 34.

.... Respondent

APPEAL under Section 260 A of the Income Tax Act against the order dated 26.8.2005 made in I.T.A.No.1905 of 2000 on the file of the Income Tax Appellate Tribunal 'C' Bench for the assessment year 1997-98.

For Appellant : Mr.P.J.Rishikesh
For Respondent: Mr.T.Ravikumar

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This Tax Case (Appeal), filed at the instance of the assessee as against the order of the Income Tax Appellate Tribunal relating to the assessment year 1997-98, was admitted by this Court on the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal ought to have considered the fact that the act of depositing the bonus amounts payable to the workers into a separate bank account is to be construed as actual payment made in the present accounting year?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that bonus paid based on settlement reached after the accounting year is allowable in present assessment year?"

2. It is seen from the facts narrated herein that in respect of the accounting year relevant to the assessment year 1997-98, there was a dispute between the management and employees as regards the percentage of bonus payable by the assessee. While the assessee declared 15% bonus, the employees insisted bonus at 20% as in the earlier year. On the refusal of the same by the management, the workers went on strike since 20th October, 1996. It is seen from the documents placed before this Court that consequent on the conciliation talk, there was a settlement, whereby the management agreed to pay 19% bonus and the strike was withdrawn from 16th November 1996. According to the assessee in respect of the admitted percentage of bonus payable, the assessee deposited the said amount in a separate bank account called Thanjavur Textiles Employees' Bonus Account. The amount was deposited on 26.11.1997 and the amount was paid on 15.12.1997 to the workers based on the agreement entered into on 13.12.1997. The Assessing Authority viewed that as per the provisions of Section 43B of the Income Tax Act, payment of bonus would be an admissible deduction if and only the amount was actually paid before the due date for filing the return. Since the amount was paid long after the due date for filing the return, mere depositing it in a bank account would not entitle the assessee for deduction. Accordingly, the claim was rejected.

3. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who agreed with the assessee following the earlier order passed in the assessee's own case for the year 1994-95. Accepting the case of the assessee that the reasons for belated payment was on account of the workers going on strike and not accepting the payment of bonus, which compelled the assessee to deposit the said amount in a separate account maintained by the assessee, the Commissioner of Income Tax (Appeals) allowed the appeal filed by the assessee.

4. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal pointed out that the assessee had not produced any evidence that it had created irrevocable trust called Workers Bonus Payment Trust. The Tribunal, keeping in mind the object of Section 43 B of the Income Tax Act that the claim for deduction is allowable on actual payment, set aside the order of the Commissioner of Income Tax (Appeals) and restored the order of the Assessing Authority holding that setting apart particular amount towards bonus would not tantamount to actual payment. Aggrieved by this, the assessee is before this Court.

5. Learned counsel appearing for the assessee placed reliance on the decisions reported in (2010) 326 ITR 308 (Commissioner of Income Tax V. Sri Venkatesa Mills Ltd.); (2004) 266 ITR 623 (Commissioner of Income Tax V. Chackolas Spinning and Weaving Mills Ltd.) and (2009) 319 ITR 306 (Commissioner of Income Tax Kolkata III V. Alom Extrusions Limited) only to contend that when the assessee had in fact set apart the amount payable by it to the workers, deposited it in a separate bank account, on account of refusal of the workers to receive, such remitting of the amount in a deposit should be treated as an actual payment.

Referring to the withdrawal therein immediately after the settlement reached, learned counsel submitted that a perusal of the pass book would show that the assessee had not dealt with the money for any of its business purpose; thus the conduct of the assessee would prove that the amount had in fact been set apart and the same should be treated as a deemed payment for the purpose of granting deduction. Referring to the decision of the Supreme Court reported in (2009) 319 ITR 306 (Commissioner of Income Tax Kolkata III V. Alom Extrusions Limited), wherein the Supreme Court had considered the effect of the omission of the second proviso to Section 43 B of the Income Tax Act under Finance Act, 2003, as having retrospective effect from 1.4.1988, he submitted that going by the deposit made in the separate account, which cannot be in any manner used by the assessee, the deduction has to be granted.

6. In the decision reported in (2009) 319 ITR 306 (Commissioner of Income Tax Kolkata III V. Alom Extrusions Limited) the Apex Court pointed out that the object of Section 43 B, inserted under the Finance Act 1983, with effect from 1.4.1983, was to disallow deduction claimed merely by making a book entry based on mercantile system of accounting. Referring to the deletion of the second proviso, the Apex Court pointed out to the amendment to the first proviso brought about uniformity by equating tax, duty, cess and fee with contribution to welfare funds and with the uniformity brought about in the first proviso, the Finance Act 2003 is curative in nature and hence would apply from 1.4.1988.

7. A reading of the amendment thus made under Finance Act, 2003 to the first proviso and on the deletion of the second proviso would show that the position that the deduction is available only on the sum actually paid by the assessee on or before the due date for furnishing the return of income under Section 139(1) of the Income Tax Act remained as it was.

8. In the decision reported in (2009) 314 ITR 167 (Commissioner of Income-Tax V. McDowell and Co. Ltd.), the Apex Court considered the question as to whether furnishing of bank guarantee would entitle the assessee to claim deduction under Section 43 B of the Income Tax Act. On the bank guarantee furnished by the assessee in respect of excise duty payable on wastage of liquor in transit, the Apex Court pointed out that the deduction claimed by the assessee was to be tested on the touchstone of Section 43 B(a) of the Income Tax Act as to whether there had been an actual payment of duty or not. Pointing out to the provisions of Section 43 B of the Income Tax Act, the Apex Court observed as follows:

"The requirement of section 43B of the Act is actual payment and not deemed payment as condition precedent for making the claim for deduction in respect of any of the expenditure incurred by the assessee during the relevant previous year specified in section 43B. The furnishing of bank guarantee cannot be equated with actual payment which requires that money must flow from the assessee to the public exchequer as required under section 43B. By no stretch of imagination can it be said that furnishing of bank guarantee is actual payment of tax or duty in cash."

9. Going by the enunciation of law by the Apex Court that the deemed payment could not be treated as actual payment to qualify for deduction under Section 43B of the Income Tax

Act, we do not agree with the submission of the learned counsel appearing for the assessee herein that depositing the amount in a bank, even if it be in a separate account, would satisfy the provisions of Section 43 B as actual payment. Reading the decision reported in (2010) 326 ITR 308 (Commissioner of Income Tax V. Sri Venkatesa Mills Ltd.) along with the decision reported in (2009) 314 ITR 167 (Commissioner of Income-Tax V. McDowell and Co. Ltd.), one can only observe that the law declared in both the above judgments are one and the same, in the sense, that both the decisions held that under Section 43 B only actual payment and not any notional or deemed payment that would be relevant for considering the deduction. Thus, the mere fact that the assessee had quantified the bonus payment and deposited it in a separate account maintained by the assessee does not mean that the requirement of law as to the actual payment stood satisfied. Thus, one can even go to the extent of saying that going by the observation of the Apex Court that the requirement of Section 43 B is an actual payment and not deemed payment, even creating an irrevocable trust would not satisfy the requirement of law. Thus after the decision of the Apex Court, the decisions reported in (2004) 266 ITR 623 (Commissioner of Income Tax V. Chackolas Spinning and Weaving Mills Ltd.) and (2009) 319 ITR 306 (Commissioner of Income Tax Kolkata III V. Alom Extrusions Limited) could not be of any assistance to the assessee herein.

10. In the light of the above, we agree with the contention of the Revenue placing reliance on the decision reported in (2009) 314 ITR 167 (Commissioner of Income-Tax V. McDowell and Co. Ltd.). Accordingly, the order of the Tribunal stands confirmed and the Tax Case (Appeal) stands dismissed. No costs.

Index :Yes/No
Internet:Yes/No
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(C.V.,J) (K.R.C.B.,J)
19.07.2012

To

1. The Income Tax Appellate Tribunal 'C' Bench.
2. The Commissioner of Income Tax (Appelas) V, Chennai 34.
3. The Joint Commissioner of Income Tax, Special Range I, Chennai-34.

CHITRA VENKATARAMAN,J.
AND
K.RAVICHANDRA BAABU,J.

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T.C.(A) No.635 of 2006

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