IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

T.C. (Appeal).No.880 of 2008

Commissioner of Income Tax
Chennai ...Appellant

vs

M/s.India Motor Parts &
Accessories Ltd.,
46, Whites Road
Royapettah
Chennai – 600 014 ...Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 31.12.2007 made in ITA No.2322/mds/2006.

For Petitioner : Mr.Vijay Kumar Punna
Junior Standing Counsel

for Karthik Ranganathan
Senior Standing Counsel

For Respondent : Mr.Vikram Vijayaraghavan

JUDGMENT

Heard Mr.Vijay Kumar Punna, learned junior standing counsel appearing on behalf of Mr.Karthik Ranganathan, learned senior standing counsel for the appellant.

2. This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal in I.T.A.No. ITA No.2322/mds/2006 dated 31.12.2007 relevant to the Assessment Year 2003-04.

3. This appeal has been admitted on the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the amount of Rs.50,000/- per month paid to the widow of the Managing Director of the company, who passed away is allowed as a deduction?"*

4.The facts leading to the filing of the appeal are as follows:

The respondent Assessee was established during the year 1970 and at the time of inception one Mr.K.R.Sundaram joined the respondent Assessee as General Sales Manager, he was promoted to the post of General Manager in the year 1979 and further promoted as Managing Director of the Company in 1988 and while he was functioning as Managing Director of the Company, he died in harness during September 1998. The Assessee company took into consideration the service rendered by Mr.K.R.Sundaram in developing the company, which initially started with one branch and on account of his hard work, the number of branches increased to 44 and taking into consideration the immense contribution during his life time, the Board of the respondent company felt that a minimum pension has to be paid to his wife Mrs.Vasantha Sundaram. The Board was aware of the fact that there was no pension scheme framed by the company for its employees and took note of an earlier instance where one Mr.Krishnan of the Delhi Branch died in a car accident leaving behind his wife and two minor children. The Board of the respondent company took a decision to meet the entire educational expenses of his two children throughout. Taking note of all those aspects, resolution was passed by the Board of the respondent company to pay a minimum pension to the widow of Mr.K.R.Sundaram. This was treated as a step towards commercial expediency. The Assessing Officer rejected the claim made by the Assessee and passed the Assessment order dated

16.02.2018, which order has been confirmed by the Commissioner of Income Tax (Appeals) and has been reversed by the Tribunal by the impugned order.

5. We have gone through the order passed by the Assessing Officer and we find that the Assessing Officer failed to understand the meaning of the expression 'Dying in harness'. The Assessing Officer has confused this expression with that of 'Dying in the course of employment'. The Assessing Officer should have known that 'Died in Harness' would mean that a person dies while he was in service and does not mean that while on duty. This erroneous interpretation has led to an erroneous Assessment Order. Unfortunately, the CIT (A) also did not take note of the factual position that a resolution was passed by the Respondent Board and came to the conclusion that the payment given to the widow of Mr.K.R.Sundaram is purely discretionary and not a pension. The question would be whether the board of Respondent company could pass a resolution granting payment in the nature of pension to the widow or legal heirs of the employee as there should be a pension scheme in place for effecting such payment to treat such payment as business expenditure. This has been answered in ***Commissioner of Income Tax Vs. Lucas Indian Service Ltd***. reported in ***(1999) 239 ITR 0429***.

6. The facts of the said case was that the Board of the Assessee Company therein passed a resolution including the pension payable to the widow of a former employee and this was claimed to be a business expenditure, which was rejected by the Assessing Officer. On appeal before the Hon'ble Division Bench, it was held that a resolution would be sufficient and even if there is no practice for payment of pension, the amount paid to the widow of the former employee is allowable as business expenditure. The Hon'ble Division Bench followed the decisions of the Bombay High Court in the case of ***CIT Vs. Fairdeal Corporation (P) Ltd.,*** reported in ***(1977) 108 ITR 280(Bom)*** and dismissed the appeal filed by the Revenue. The operative portion of the Judgment reads as follows:

> *"9.The third test viz., that the money was paid out of commercial expediency is also satisfied. It is seen that the payment was made only to generate confidence in the mind of the employee as he would be taken care of after his retirement and after his demise his legal heirs, would be taken care of. The resolution by the assessee authorizing the payment of family pension would establish that the assessee has taken care of the well-being of the employees and their dependents which, in turn, would ensure full and active co-operation of the employees in he smooth running of the business. The resolution would*

generate in the minds of the employees goodwill towards the assessee and would promote good relationship between the employer and employees. We are of the view that the payment was made on the ground of commercial expediency.

10. Considering the development in law in the payment of family pension, the Gujarat High Court in CIT Vs. Laxmi Cement Distributors (P) Ltd., (1976) 104 ITR 711 (Guj) held as follows (headnote):

"The payment of family pension or gratuity to the dependants of a deceased employee is now a recognized concept in the field of employment and it has received statutory recognition. It cannot any longer be treated as a bounty or a philanthropic gesture actuated by compassionate objective. Even if such payment is not provided for by any scheme or contract of employment or otherwise, a demand for the same could still be raised by way of an industrial dispute by employees governed by labour legislation and such demand may will be accepted in the course of an industrial adjudication having regard to the paying capacity of the employer and other relevant circumstances. If a prudent employer, conscious of the new tread or ethos, voluntarily makes such payment in order to avoid such dispute and to by industrial peace and contentment amongst workers, it could certainly be treated as having been made on the ground of commercial expediency."

11. The Bombay High Court in the case of CIT Vs. Fairdeal Corpn. (P) Ltd., 1977 CTR (Bom) 815: 1977 108 ITR 280 (Bom): TC 16R.1457 has held that the payment of pension to the widow, even where there was no practice for payment of pension is allowable as business expenditure. Applying the said decisions to the facts of the case, we are of the view that the Tribunal has come to a correct conclusion that the payment was made on the basis of commercial consideration. Once it is found that the payment was made on the basis of commercial consideration, there is no difficulty in holding that the payment made to Mrs.Ghaswala is an allowable deduction under s.37 of the Act. We have already seen that two of the tests laid down by the Supreme Court in Gordon Woodroffe Leather Mfg. Co Vs. CIT (supra), are fully satisfied on the facts of the case. The resolution authorizing the payment of pension shows an expectation on the part of the employee of getting the pension. Further the pension was made out of commercial consideration and in order to facilitate the carrying on the business smoothly. It is well-settled that the tests laid down by the Supreme Court are independent and alternative and on satisfaction of any one test, the payment can be treated as a permissible deduction."

6. In the case on hand also, there is a resolution, which has been passed by the Board of the Assessee company recognizing the service

rendered by Mr.K.R.Sundaram for over 30 years. The Commissioner of Income Tax (Appeals) while considering the decision in the case of Lucas Indian Service Ltd., has made a hair-splitting exercise of the facts of the said case and sought to distinguish the judgment by observing that initially there was a resolution passed, which was modified by another resolution granting pensionary benefit to the employee and thereafter to his wife for a fixed period of 10 years. Unfortunately, the Commissioner of Income Tax has lost its sight that the ratio decidendi in the case of Lucas Indian Service Ltd., is that it is sufficient that the company passes a resolution granting monetary benefit to the legal heir of a former employee and such resolution is sufficient even if the company does not have a pension scheme. The said resolution was taken into consideration and the claim by the Assessee therein that the payment made was business expenditure was accepted. Therefore, the reasons assigned by the Commissioner of Income Tax in not applying the decision in Lucas Indian Service Ltd. is not acceptable.

Thus, for the above reasons, we are of the view that the order passed by the Tribunal does not call for any interference. Accordingly, this Tax Case appeal is dismissed and the substantial question of law framed for consideration is answered in favour of the assessee and against the revenue. No costs.

[T.S.S.J.,] [N.S.S.,J]

04.04.2018

gpa

To

The Income Tax Appellate Tribunal Madras 'A' Bench
Chennai

T.S.SIVAGNANAM.J.,
&
N.SESHASAYEE.J.,

gpa

T.C.A.No.880 of 2008

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