

Madras High Court

Deputy Commissioner Of Income Tax vs M/S.Sri Shanmugavel Mills Ltd on 18 July, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-07-2011

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN
AND
THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Tax Case (Appeal) No.695 of 2004

Deputy Commissioner of Income Tax
Special Range I, Coimbatore. . . Appellant.

Versus

M/s.Sri Shanmugavel Mills Ltd.
1, Venkatachalam Extension,
Mangalam Road, Coimbatore. . . Respondent.

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal "B" Bench, dated 16

For Appellant: Mr.J.Naresh Kumar

For Respondent: Mr.R.Vijayaraghavan

JUDGMENT

(Judgment of the Court was made by M.JAICHANDREN,J.) The Tax Case Appeal relates to the assessment year 1990-1991.

2. The assessee is a closely held company, which had filed a return, for the assessment year 1990-1991, on 24.12.1990, declaring a total income of Rs.36,63,900/- and a sum of Rs.32,72,274/-, as per the computation, under Section 115J of the Income Tax Act, 1961.

3. The assessee had made a provision for labour welfare expenses, amounting to Rs.9,33,430/-. The said amount was disallowed by the Assessing Officer on the ground that it was a mere provision, and that such a provision had been disallowed during the previous assessment year.

4. Aggrieved by the orders passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Coimbatore. The assessee contended that the payment in question was not in the nature of bonus, but an incentive based on the performance of the workers. The workers had been poorly paid and since, no increments were allowed the minimum bonus of 8.33% was paid to them. 20% of their wages was given to them as an incentive, in lieu of the increments and higher bonus. As such, the amounts paid to the workers formed a part of their wages or salary. The actual payments made in the subsequent year was Rs.10,25,069/-, which was, in fact, in excess of the provision. Further, the nature of the claim had already been dealt with in an earlier order, dated 16.6.1990, relating to the assessment year 1987-1988. In such circumstances, the deduction claimed by the assessee should be allowed.

5. The Commissioner of Income Tax (Appeals), quoting the earlier order, relating to the assessment year 1987-1988, dated 16.6.1990, allowed the appeal filed by the assessee, deleting the disallowance. He stated that there were no changes in the facts, during the present assessment year, for taking a different view in the matter. He held what was being paid was not bonus or anything in the guise of bonus. But the incentives was paid to the workers, as a part of their salary or wages, based on their performance, in lieu of the annual increments in salary. The actual payment made in the subsequent year was more than what had been provided for. The provisions of Section 43B(c) would not apply to the disputed payments. Accordingly, the disallowance of Rs.9,33,430/- was deleted.

6. Aggrieved by the said order of the Commissioner of Income Tax (Appeals), dated 27.6.1991, the Revenue filed an appeal before the Income Tax Appellate Tribunal, Chennai Bench. The only ground raised by the Department, in the said appeal, was that the Commissioner of Income Tax (Appeals) erred in allowing a sum of Rs.9,33,430/-, as a provision for labour welfare expenses, when a sum of Rs.10,25,069/- had been, actually, spent during the subsequent year.

7. The Tribunal dismissed the appeal filed by the Revenue. On a perusal of the materials available on record the Tribunal found that, for the assessment year 1988-1989, the department had filed an appeal before the Tribunal, on an identical issue, challenging the order of the Commissioner of Income Tax (Appeals), in I.T.A.No.431/Mds/1992, relating to the same assessee. By its order, dated 29.11.2000, after a careful consideration of the facts and circumstances of the case, the Tribunal had decided the issue in favour of the assessee, confirming the order of the Commissioner of Income Tax (Appeals). As the facts and circumstances of the present case was similar to the one decided by the Tribunal, the appeal filed by the Revenue stood rejected. Aggrieved by the order of the Tribunal, dated 16.3.2001, the Revenue has filed the present appeal before this Court.

8. Learned standing counsel appearing on behalf of the Revenue contended that the Tribunal erred in law in not considering the fact that the provision made by the assessee was not actually for welfare expenses, but for bonus and incentives and that the actual payment made in the subsequent year was more than what had been provided for. The Tribunal should have seen that Section 43B(c) of the Income Tax Act, 1961, would apply to the facts of the present case.

9. On the submissions made on behalf of the appellant, as well as the respondent, and on a perusal of the records available, it is found that, the Department had filed an appeal before the Tribunal, on

an identical issue, for the assessment year 1988-1989, in respect of the same assessee. The said issue was decided in favour of the assessee. It is noted that a similar provision had also made by the assessee, for the assessment year 1990-1991. It is also found that what was being paid to the workers was not bonus or any other payment in the guise of bonus. On the other hand incentives were paid, based on the performance of the workers, in lieu of the increase in salary and as part of the salary or wages.

10. The facts of the case, thus show that the provisions made was not tax payment of bonus but payment, as part of the wages and as an incentive for the performance of the workers. It is also noted that an amount of Rs.10,25,069/- was paid to the workers, in the subsequent year, in excess of the provision. Considering the fact provision for Rs.9,33,430/- had been made towards the incentive for the performance of the workers, we do not find any reason to differ from the findings of the Appellate Tribunal. Hence, the Tax Case Appeal stands dismissed. No costs.

Index:Yes/No

(C.V.,J) (M.J)

Internet:Yes/No

18-07-2011

csh

To

1 Deputy Commissioner of Income Tax
Special Range I, Coimbatore.

2. The Assistant Commissioner of Income Tax,
Company Circle-I, Coimbatore-18.

CHITRA VENKATARAMAN,J

and

M.JAICHANDREN,J.

csh

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