

ITA 548 of 2008
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA-I
Versus
M/S. KAMARHATTY COMPANY LTD

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 22nd April, 2015.

Appearance :
Mr. R.K.Sinha, Advocate...
for the appellant.

The Court: The appeal is directed against the order of the learned Tribunal passed on 21st November, 2007 pertaining to the assessment year 2003-04 and 2004-05. The following questions appear to have been suggested at the time of admission of the appeal.

1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in holding that the provision for gratuity payable amounting to Rs.2,10,48,340/- in respect of employees who retired in the earlier years was allowable although the provision represented sums that were neither actually paid nor had become payable during the period relevant to Assessment year 2004-05 and was thus disallowable in terms of the provisions of section 40A(7) (a) of the Income Tax Act, 1961 ?

2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in holding that the provision for gratuity payable amounting to

Rs.50,16,000/- in respect of employees who retired in the earlier years was an ascertained liability for the purposes of computation of book profit under Section 115JB although the said provision was admitted by the assessee as being an estimated sum ?"

Whereas the learned Tribunal's order is as follows:-

"In the result, assessee's appeal for assessment year 2003-04 is deemed to be allowed for statistical purpose and appeal for assessment year 2004-05 is partly allowed."

The success of the assessee before the learned Tribunal for the assessment year 2003-04 for statistical purposes is as follows:-

"Coming to the facts of the present case, we find that it has been contended by the learned counsel that majority of the payment in respect of employees' contribution towards P.F. and E.S.I. have been incorporated before the due date including the grace period. For the chart which has been incorporated in the assessment order, we find that payments have been made after the due date, but whether such payment is within grace period or not would require verification at the end of the A.O. Therefore, we deem it proper to restore the matter back to the file to the A.O. for verification and readjudication as per decision of Special Bench of I.T.A.T. referred to above. Needless to mention that the A.O. will allow adequate opportunity of being heard to the to the assessee. Accordingly, ground Nos.2,3 & 4of the assessee's appeal are deemed to be allowed for statistical purposes. "

It would appear that the matter was remanded to the assessing officer. The question is yet to be answered by the A.O. Therefore, the question No.1 is premature and need not be answered.

So far as the assessment year 2004-05 is concerned, the learned Tribunal held as follows:-

" The A.O. simultaneously made addition of Rs.50,16,000/- to the book profit as per clause (c) of Explanation below second proviso to Sec.115-JB. Clause (c) is reproduced below:

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities.

We are unable to agree with the Revenue that the provision for liability of gratuity is unascertained liability. The assessee had made the provision in respect of employees who have already retired. Therefore, the liability is ascertained liability which has already accrued. Accordingly, the addition made vide clause (c) of Explanation to sec.115-JB in assessment year 2003-04 is deleted."

The view expressed by the learned Tribunal is evidently in accordance with law. Mr. Sinha was unable to point out any mistake in the aforesaid view of the learned Tribunal. The question No.2 suggested at the time of admission of the appeal apparently has no connection with the judgement under challenge. Therefore, need not be answered.

The appeal is dismissed.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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