

Commissioner of Income-Tax, Madras

Vs

Andhra Prabha P. Ltd.

Civil Appeal No. 2008 of 1981

(R. S. Pathak, Sabyasachi Mukharji JJ)

08.01. 1986

JUDGMENT

1. This appeal by certificate is directed against the judgment dated February 27, 1979, of the Madras High Court disposing of a reference made by the Income-tax Appellate Tribunal.

The respondent carries on the business of printing the Vijayavada Edition of the daily newspaper "Indian Express" as well as its Sunday Edition for the Indian Express (Madurai) Private Limited, and for that purpose employs a substantial staff and labour force. For the assessment year 1969-70, for which the relevant accounting period ended April 30, 1968, the respondent claimed a deduction of Rs. 1,32,653 representing the gratuity amount payable to its employees. It claimed that the amount had been debited to the profit and loss account of the relevant accounting year. The claim was made before the Appellate Assistant Commissioner in an appeal against the assessment order for the assessment year 1969-70. The Appellate Assistant Commissioner disallowed the claim. The respondent proceeded in appeal to the Income-tax Appellate Tribunal. In disposing of the appeal, the Appellate Tribunal took into regard the circumstance that the respondent had adopted the mercantile system of accounting and that the liability for payment of gratuity arose in the case of working journalists under section 5 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955, and in the case of non-working journalists under an agreement dated March 13, 1968. The Appellate Tribunal noted that in both cases, the liability accrued in the year of account and it observed that the claim would be admissible provided the provision for gratuity was based "on a legal and scientific basis". Accordingly, it directed the Income-tax Officer to inquire into the claim and allow the gratuity provision as a deduction if he was satisfied that the provision for payment of gratuity was calculated on a legal and scientific basis. At the instance of the Revenue, the Appellate Tribunal referred the following question to the High Court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to the deduction of the estimated gratuity payable to non-working journalists if it is established that the provision for payment of gratuity is based on legal and scientific basis ?"

The High Court has answered the question in the affirmative, in favour of the assessee and against the Revenue.

We have heard the learned counsel for the Revenue and we are not satisfied that the High Court has erred. The case relates to the assessment year 1969-70 and is, therefore, governed by the statute as it existed before the insertion of sub-section (7) in section 40A of the Income-tax Act, 1961. The legal position has been analysed by this court in its recent decision in Shree Sajjan Mills Ltd. v. CIT

[1985] 156 ITR 585 and it is clear that the answer returned by the High Court to the question referred to it is in accord with that position.

Accordingly, the appeal is dismissed, but in the circumstances with no order as to costs.

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