

D. V. Bapat, Income-Tax Officer, Companies Circle, Bombay

Vs

Tata Iron & Steel Co. Ltd.

Civil Appeal No. 1247 of 1980

(R. S. Pathak, Sabyasachi Mukharji JJ)

08.01.1986

ORDER

1. This appeal by certificate is directed against the judgment dated February 26, 1975, of the Bombay High Court allowing a writ petition filed by the respondent in which he challenged the disallowance of a deduction c] aimed by him.

The respondent, which maintains its accounts on the mercantile system, follows the financial year as its accounting period. Up to and including the assessment year 1971-72, the respondent claimed, and was granted, deduction in respect of its liability for gratuity to its employees on the basis of actual payments made during each relevant accounting period. For the assessment year 1972-73, however, the respondent claimed a deduction of a sum of Rs. 1,28,09,135 on the basis that the said amount represented its liability on account of gratuity on an actuarial valuation. The claim was accepted by the Income-tax Officer pursuant to a Circular dated September 21, 1970, issued by the Central Board of Direct Taxes. For the subsequent year 1973-74, the respondent claimed a deduction of Rs. 2,77,52,991 as its gratuity liability on the basis of an actuarial valuation. During the assessment proceedings before the Income-tax Officer, a Circular dated September 26, 1974, was issued by the Central Board of Direct Taxes. That circular superseded the earlier circular and on its basis, the Income-tax Officer rejected the claim to deduction made by the respondent. A writ petition was filed in the High Court and the High Court has granted relief inasmuch as a writ has been issued directing the Income-tax Officer to allow the gratuity liability as a deduction in computing the assessable income of the respondent, but while considering the actual amount claimed by the respondent, the Income- tax Officer was to determine whether the computation had been made on a scientific basis after providing for the discounting of all possible contingencies.

In this appeal, it is urged by the learned counsel for the appellant that the provisions of section 40A(7)(b)(ii) of the Income-tax Act, 1961, have not been satisfied and, therefore, the respondent was not entitled to the deduction of the gratuity amount. The provisions of section 40A(7)(b)(ii) have been recently construed by this court in *Shree Sajjan Mills Ltd. v. CIT* [1985] 156 ITR 585, and it seems to us necessary that the High Court should examine whether those provisions have been complied with in the present case having regard to what has been laid down in that case. There is no dispute between the parties that the first condition in that provision has been satisfied by the respondent. What remains is to determine whether the second and third conditions are also satisfied.

In the circumstances, we think it appropriate to set aside the judgment under appeal and remand the case to the High Court for a fresh consideration of the case in the light of the observations made by us in this judgment. The appeal is allowed and the judgment of the High Court is set aside and the case is remanded to the High Court for disposal of the writ petition in accordance with the

observations made by us.

There is no order as to costs.

Appeal allowed. Case remanded.

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