

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

New Swadeshi Mills of Ahmedabad Ltd

(Sahas Chandra Sen, J.)

09.03.1983

JUDGEMENT

Sahas Chandra Sen, J.

(1.) AT the instance of the Commissioner of Income-tax, Central-V, Calcutta, the following two questions of law have been referred by the Tribunal under Section 256(1) of the I.T. Act, to this court. "1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the Income-tax Officer to allow the claim of Rs. 19,71,126 for deduction on account of liability for payment of gratuity based on actuarial valuation ? 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to agitate in the quantum appeal the ground in respect of the order passed by the Income-tax Officer levying interest under Section 215 of the Income-tax Act, 1961?"

(2.) THIS case relates to the assessment year 1974-75 for which the accounting period is the year ended 31st March, 1974. The first question relates to the deduction of gratuity liability made on actuarial basis. The ITO did not allow the deduction on the ground that there was no accrued gratuity liability. On appeal, the AAC confirmed the order of the ITO. On further appeal, the Tribunal held that since the liability was created on estimated actuarial valuation, the assessee was entitled to the deduction even though the assessee had not made any provision for payment of gratuity in its books of account. The second question relates to the charging of interest under Section 215 of the I.T. Act, 1961. The ITO had charged an amount of Rs. 31,49,378 as interest under Section 215 of the Act. Before the AAC, it was contended, on behalf of the assessee, that there was no direction in the order for charging such interest. In the assessment order, there was a direction "charge interest if leviable". It was also argued that the ITO should have waived interest under Section 215(1) read with Rule 40(1)(v). The AAC held that the ITO had directed charging of interest in the last paragraph of the assessment order. The AAC also held that the question of rate of interest was beyond the purview of Section 246 and he was unable to entertain that contention. The Tribunal, on further appeal, held that since the point of leviability of interest under Section 215 had been raised along with other grounds of appeal, it had to be entertained.

The Tribunal, therefore, restored this point to the AAC for fresh disposal on merits.

(3.) BEING aggrieved by the order of the Tribunal, the Commissioner applied for referring a number of questions of law arising out of the order of the Tribunal and the Tribunal referred the two questions of law, which we have set out earlier to this court. It has been argued by Mr. Bajoria, on behalf of the assessee that the assessee Was following the mercantile system of accounting. After the Payment of Gratuity Act was passed, there was a legal liability on the assessee for payment of gratuity. The assessee had made an estimate of that liability on actuarial basis for the relevant year of accounting and had claimed deduction of that amount on well-established commercial principles. It is true that the assessee had not made any provision for payment of gratuity in its books of account. But whether any such provision was made or not was quite immaterial for the purpose of claiming this deduction under Section 37 of the I.T. Act. Reliance in this connection was placed on a judgment of the Supreme Court in the case of *Kedamaih Jute Mfg. Co. Ltd. v. CIT*¹ It was contended that the existence or absence of any provision in the books of account of the assessee cannot be decisive or conclusive in a matter like this. The assessee had a statutory obligation to pay gratuity and the assessee was entitled to claim deduction on account of that liability. It was further contended that Section 40A(7) of the I.T. Act, 1961, which came into force with effect from 1st April, 1973, was applicable only to those cases where any provision had been made by an assessee for payment of gratuity to his employees on their retirement or on termination of their employment for any reason. In a case, as in the case before us, where the assessee has not made any provision for payment of gratuity, the provisions of Section 40A(7) will not apply and there was no legal impediment to allowance of this deduction to the assessee either under Section 28 or under Section 37. ;

Cases Referred

¹[1971] 82 ITR 363