

BOMBAY HIGH COURT

Commissioner of Income Tax

Vs

Patel Cotton Co Pvt Limited

(S.K.Desai, J.)

11.12.1975

JUDGEMENT

S.K.Desai, J.

(1.) THIS is a reference made to us by the Income -tax Appellate Tribunal, Bombay Bench 'C', under section 256(1) of the Income -tax Act, 1961. The reference is at the instance of the Commissioner.

(2.) THE assessee in this reference is a company carrying on business in cotton and cotton waste. We are dealing with the assessment year 1962 -63, the relevant previous year being the year ending on 31st August, 1961. The assessee -company had been carrying on this business for a number of years on a large and substantial scale. There was another firm carrying on similar business known as Volkart Brothers. In 1961 negotiations were carried on by assessee -company for taking over business in cotton and cotton waste of Volkart Brothers, and such negotiations and reached an advanced stage in the first half of 1961. A preliminary agreement was arrived at between the assessee and the said firm on 31st May, 1961. This was followed by a formal agreement which was entered into on 23rd October, 1961. The business in cotton of Volkart Brothers was taken over from 1st September, 1961. Under the agreement dated 23rd October, 1961, 1,300 shares of Rs. 500 each were to be allotted to Volkart Brothers or their associates at a premium of Rs. 300 each. A new company called Messrs. Volkart (Bombay) Private Ltd. was registered at or about that time to take over the other business carried on by Volkart Brothers. The assessee -company took over the plant, machinery and buildings and lands owned by Volkart Brothers in relation to its cotton and cotton waste business at various places. The staff of Volkart Brothers in the cotton department also came over to the assessee. Volkart Brothers had a scheme in force of retiring its employees at the age of 57 1/2 and paying them gratuity at the time of retirement. The assessee had a scheme of paying gratuity to its employees when their services came to an end, but there was no fixed age of retirement for the employees of the assessee -company. It had thus employees who had exceeded the age of 57 1/2 years. Under clause 35 of the agreement dated 23rd October, 1961, the assessee was to retire all its employees who had exceeded the age of 57 1/2 years on or before 31st August, 1961, and to pay to these employees the gratuity, provident fund, etc., due to them. It may be mentioned that in the preliminary agreement dated 31st May, 1961, there was no provision for or reference to the termination of the

services of any employees on this basis.

(3.) BY 31st August, 1961, the assessee's employees who had already reached the age of 57 1/2 years were given notices and they were paid gratuity amounting in the aggregate to the sum of Rs. 1,45,844. In their assessment for the year 1962 -63, the assessee claimed deduction of the sum of Rs. 1,45,844 paid as such gratuity to its employees, but the claim was rejected by the Income -tax Officer on the ground that the compulsory retirement or retrenchment of the staff was occasioned by or was directly relatable to the acquisition by the assessee of the new business, that it was done as part of the terms for purchase of the new business, and that it was nothing but a part of the purchase consideration. According to the Income -tax Officer, the expenditure was capital in nature and not allowable as deduction. It was further held that it was not incurred in the interest of the existing business but only of a new business to be acquired by the assessee. The assessee, thereafter, appealed to the Appellate Assistant Commissioner, who took the view that the payment was essentially in the nature of gratuity paid to the employees of the assessee and directed its allowance. The department, thereafter, came in appeal to the Tribunal. According to the department, the retirement of the employees was connected with the acquisition of a new business, and it was submitted, therefore, that the payment of retirement gratuity was a payment of capital nature only. On behalf of the assessee it was urged that the liability to pay retirement benefit was not undertaken as an obligation under the scheme of acquisition and that it was already a part of the term of employment under the assessee. It was further submitted that this was expediency as the employees who were retired were comparatively advanced in age. The Tribunal upheld the order the Appellate Assistant Commissioner directing allowance of the amount as the expenditure. It is from this order of the Tribunal that the following question has been referred to us at the instance of the Commissioner : 'Whether, on the facts and n the circumstances of the case, the Tribunal was justified in allowing the sum of Rs. 1,45,844 paid as gratuity to the assessee's employees as expenditure commercially expedient and allowable as a revenue deduction ?' ;