BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Fairdeal Corporation Pvt. Ltd

(Desai, C.J. V Tulzapurkar, J.)

23.11.1976

JUDGMENT

V. Tulzapurkar, J.

1. The short question raised in this reference pertains to the claim for deduction made by the assessee-company in respect of payment made to the widow of the ex-managing director in the accounting period relevant to the assessment year 1963-64 and the precise question which has been referred to us by the Tribunal in this reference made under section 256(1) of the Income-tax Act, 1961, runs thus :

> "Whether, on the facts and in the circumstances of the case, the payment of Rs. 24,000 by the assessee to the widow of the ex-managing director was an allowable deduction under section 37 of the Income-tax Act, 1961 ?"

2. The short facts giving rise to the question may be stated : The question relates to the assessment year 1963-64, the corresponding accounting period being the year ending on March 31, 1963. The assessee is a private limited company, carrying on business of manufacture of pharmaceutical products. One A. L. Chandavarkar was the managing director of this company for nearly 19 years, that is to say, ever since its inception on April 1, 1940, till April 6, 1959, when he died. Under the agreement made between the assessee-company on the one hand and A. L. Chandavarkar on the other on December 16, 1951, for the work that he was to do as a managing director of the assessee-company, Mr. Chandavarkar was entitled to a remuneration of Rs. 30,000 per year plus a commission at 10% on the net profits of the company as mentioned in the agreement. It appears that he was also entitled to a car allowance of Rs. 250 per month. It further appears that from the commencement of the agreement, right up to the time he died, Mr. Chandavarkar, though he was entitled to the remuneration of Rs. 30,000 per year, he drew very much less in each of these years. During the financial year 1952-53, he drew only Rs. 21,600

having forgone Rs. 8,400. For each of successive years 1953-54 up to 1957-58, he drew the remuneration of Rs. 14,400 having forgone Rs. 15,600 in each of the said years. For the year 1958-59, he drew Rs. 21,600 having forgone Rs. 8,400. In other words, during all these seven years, as against the total remuneration of Rs. 2,10,000 to which he was entitled, he drew in the aggregate remuneration of Rs. 1,15,000 forgoing in the aggregate Rs. 94,800. It may be stated that during the first five years, since the assessee-company was making loses it was understandable that Shri Chandavarkar should have drawn less remuneration as indicated above, but it may be stated that even during the 6th and 7th year, that is to say, during the financial years 1957-58 and 1958-59, even though the company made profits of Rs. 1,76,161 and of Rs. 1,69,220, respectively, he had forgone Rs. 15,600 and Rs, 8,400 and, what is more, even during those two years he had forgone the commission that became due and payable to him amounting to Rs. 34,538 and this presumably he did to enable the assessee-company to wipe off its past losses. In other words, the total amount forgone by him during the period from 1951 to 1959 was more than the amount that was actually drawn by him. It further appears that the board of directors at the several meetings held during the years acknowledged the gesture of the managing director in giving up a part of his remuneration in view of the financial position of the company. The general meeting of the shareholders also noticed with appreciation of the managing director's voluntary sacrifice in forgoing the commission due to him. On 21st March, 1963, some four years after Mr. Chandavarkar died during the currency of the agreement, the widow of Chandavarkar wrote a letter to the board of directors stating that though her husband was entitled to a remuneration of Rs. 2,500 per month, he was drawing only Rs. 1,200 per month for some years and Rs. 1,800 per month at the time of his demise and he having died she had orally requested the company to pay her a sum of Rs. 24,000 towards the gratuity for the services rendered to the company by her husband sincerely for about 20 years and for having helped the company in times of difficulty by drawing lesser amount than what was actually due to him. This letter was considered by the board of directors in its meeting held on 31st April, 1963, and under a resolution that was passed by the board of directors, a sum of Rs. 24,000 was decided to be paid to Smt. Mitrabai A. Chandavarkar as and by way of gratuity and after the payment was actually made to her the said amount was debited to the relevant account of the financial year 1962-63.

3. In the assessment proceedings for the assessment year 1963-64, the assessee-company claimed the aforesaid payment as a proper deduction either under section 28(i) or section 37 of the 1961 Act. The Income-tax Officer as well as the Appellate Assistant Commissioner to whom the matter was carried in appeal by the assessee-company rejected the claim of the assessee-company and disallowed the deduction principally on the ground that there was no established practice in the company to pay such gratuities, that the company had no scheme for payment of

gratuity and that there was no evidence to establish that the ex-managing director of the company had accepted a lower salary in expectation of gratuity on retirement or death nor could the payment be regarded as having been made out of considerations of commercial expediency for the purpose of facilitating the carrying on the assessee's business. In support of this conclusion the taxing authorities relied upon the decision of the Supreme Court in the case of *Gordon Woodroffe Leather Manufacturing Co. v. Commissioner of Income-tax*. When the assessee carried the matter further in second appeal to the Tribunal, the Tribunal took the view that, if at all, the payment to Smt. Chandavarkar could be regarded as properly deductible under section 37 of the Act, the payment could be regarded as having been made out of consideration of commercial expediency, such payment could be an inducement to directors and other employees of the company to make all sacrifices in serving the company, in the expectation that if they do not live long enough to see the prosperous day of the company, at least some provision will be made by the company for their legal heirs. the Tribunal observed that the taxing authorities below had taken the view that if there was no evidence that the lower salary was drawn in the expectation of receiving gratuity and there was no regular scheme for such payment, then automatically it followed that there was also no commercial expediency in the payment which was an erroneous approach to the question, but according to it, the Supreme Court in gordon Woodroffe's case has not stated that the test about commercial expediency was dependent on the two other tests but each of the three tests was independent of the other and even if the payment could be allowed on the basis of the any one of the tests, the deduction would be justified. At the instance of the Commissioner of Income-tax, Bombay City-I, the question set out at the commencement of this judgment has been referred to us for our opinion.

4. Mr. Joshi appearing for the revenue has strongly relied upon three or four factual aspects which emerged on record, viz. :

(a) that though the deceased managing director (Shri A. L. Chandavarkar) held about 300 and odd shares out of the total shareholdings in the assessee-company, it was a private limited company, to which the provisions of section 104 were applicable and the three Chandavarkar brothers (including the deceased) had substantial interest in the company;

(b) there was no past practice nor any approved scheme under which the gratuities were payable by the assessee-company to its employees;

(c) there was no evidence to show that the ex-managing director has accepted a lower salary in expectation of gratuity on retirement or death;

(d) that the payment was in fact made to the widow in recognition of the past services

rendered to the company by the late managing director as per the resolution of the board of directors passed on the 31st April, 1963; and

(e) that the payment was really in the nature of ex gratia payment made in the widow out of sympathy and pity. Having regard to these aspects Mr. Joshi contended that the payment in question is not justifiable on the grounds of commercial expediency as the same could not be said to have been made for the purposes of facilitating the carrying on of the business of the assessee. In support of his contention strong reliance was placed by him upon the Supreme Court judgment in *Gordon Woodroffe Leather Manufacturing Company v. Commissioner of Income-tax.* He also relied upon three more decisions, one of the Allahabad High Court in *J. K. Woollen Manufacturers Ltd. v. Commissioner of Income-tax*[1] the other of the Madhya Pradesh High Court in *Lakhamichand Muchhal v. Commissioner of Income-tax*[2] and the third of this court in Sassoon J. *David & Co. P. Ltd. v. Commissioner of Income-tax*[3] On the other hand, Mr. Munim appearing for the assessee has contended that the principal question that is required to be considered is as to whether the expenditure of Rs. 24,000, which was claimed as a permissible deduction under section 37 of the Act, could be said to have been laid out wholly and exclusively for the purposes of the business of the assessee and that question has to be decided on the facts and in the light of the circumstances of each case. In that behalf he also relied upon two or three glaring aspects which emerged clearly on record, namely -

(i) that the ex-managing director has served the assessee-company for nearly 19 or 20 years.

(ii) that though under the agreement dated 16th December, 1951, he was entitled to an annual remuneration of Rs. 30,000 as also the commission at 10% net profits of the company, he had made great sacrifice for the assessee-company by accepting very much less remuneration annually than that to which he was entitled and had also forgone the commission to which he was entitled during the last two years prior to his death when the assessee-company had made profits, and

(iii) that though there was no past practice, or any approved scheme under which gratuities were payable by the assessee-company to the managing directors, or other high executives working in the assessee-company, it is not as if that the payment was made on any ad hoc basis to the widow of the ex-managing director, but the basis of the computation had also been indicated, namely, the amount represented 15 days' salary for each completed year of service and that the amount involved could never be regarded as unreasonable having regard to the sacrifice that was made by the ex-managing director for

the assessee-company.

5. Having regard to these aspects which emerge very clearly on record he contended that though in the resolution passed by the board of directors it had been stated that the sum of Rs. 24,000 was paid to Smt. Chandavarkar, as gratuity for the services rendered to the company by her late husband, the payment in all the circumstances of the case could not be regarded as having been made solely in recognition of the past services rendered by him and having regard to the great sacrifice that was made by the ex-managing director, it could not be regarded as ex gratia payment made to the widow out of sympathy or pity. He urged that the resolution of the board of directors or the language employed therein could not be decisive of the matter but all the circumstances in connection with that payment will have to be taken into account and, according to him, if regard be had to all the circumstances which obtained in the matter, the payment could be regarded as having been made out of consideration of commercial expediency and as such the deduction was perfectly permissible as expenditure which could be said to have been wholly and exclusively laid out for the purpose of the assessee's business. He supported the Tribunal's view that the tests laid down by the Supreme Court in Gordon Woodroffe Leather Manufacturing Company's case must be regarded as independent of each other or alternative tests and that any one of them will have to be applied to determine the question whether the payment could be treated as a permissible deduction or not. As against three or four decisions, on which reliance was placed by Mr. Joshi, Mr. Munim placed a strong reliance on the case of *Commissioner of Income-tax v. Laxmi Cement Distributors Pvt. Ltd*[4].

6. Before we deal with the facts pertaining to the payment of Rs. 24,000 made to the widow of the ex-managing director, in the instant case, we would first like to deal with the legal position that will have to be considered in the matter and in that behalf a brief reference to the authorities on which reliance was placed by the counsel on either side becomes necessary. In the leading case on the subject *Gordon Woodroffe Leather Manufacturing Company v. Commissioner of Income-tax*[5]the facts as appears from the head-note were these :

> "A person who was an employee of the managing agent of the assessee-company from 1922 to 1935 and was an employee of the assessee from 1935 and also its director from 1940, was paid a gratuity of Rs. 40,000 by the assessee-company 'in appreciation of his long and valuable services to the company'. The company had no scheme for payment of gratuities nor did it pay such gratuities in practice. There was nothing to show that the employee has accepted a low salary in expectation of a gratuity on retirement or that the gratuity was paid for the purpose of facilitating the carrying on of the business of the company or as a matter of commercial expediency."

7. In these circumstances the Supreme Court held that the amount of gratuity paid by the assessee was not an expenditure laid out or expended for the purposes of the assessee's business within the meaning of section 10(2)(xi) of the Indian Income-tax Act, 1922 (equivalent to section 37(1) of 1961 Act), and was not deductible in computing the profits and gains of the company. In the last paragraph of the judgment, the Supreme Court has indicated certain tests which could be applied for determining the question that had arisen before it and this is what the court has stated (page 555) :

> "In our opinion the proper test to apply in this case is, was the payment made as a matter of practice which affected the quantum of salary or was there an expectation by the employee of getting a gratuity or was the sum of money expended on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business. But this has not been shown and, therefore, the amount claimed is not a deductible item under section 10(2)(xv)."

8. The aforesaid passage itself clearly brings out the fact that the three tests which have been indicated by the Supreme Court in this case are alternative tests and each one is independent of the other and in our view what the Tribunal has observed in its order is quite correct. The Tribunal clearly stated that the test about commercial expediency is not dependent on the other two tests and that even if there was no specific understanding that the lower salary would be compensated eventually and even if there is no regular scheme, the payment of gratuity to an employee or his legal heir may yet be one dictated by commercial expediency. Incidentally, we might observe that the Gujarat High Court in *Commissioner of Income-tax v. Laxmi Cement Distributors P. Ltd. [1976] 104 ITR 711 (Guj)*(Supra) has also made this position very clear by stating that the tests laid down in Gordon Woodroffe's case are independent or alternative tests and that any one of them can be applied to determine whether such payment could be treated as a permissible deduction or not.

9. In the case of *J. K. Woollen Manufacturers Ltd. v. Commissioner of Income-tax*[6] payment was made to the widow of the general manager of the assessee-firm, an ex-employee of the business after the employee had died, and the payment was made as and by way of gratuity to the widow as the heir of the employee. The assessee's claim for deduction of such payment was disallowed by the Tribunal on the ground that the payment was of a capital nature and was made by the company under the agreement by which it had undertaken the liabilities of the firm whose employee the deceased manager was. When the matter went before the High Court on a reference the only point raised was that the company having assumed all the liabilities with effect from July 1, 1947, the payment was made not under the agreement but as an item of expenditure incurred by itself and the High Court held that even if the payment was considered to be a

payment made by the assessee itself, the burden was on the assessee to prove that the payment was not an ex gratia or isolated payment but was made under an understanding undertaking or practice between the assessee and its employee. As the assessee had not discharged that burden it was not entitled to the deduction of the sum under section 10(2)(xv) of the Indian Income-tax Act, 1922. Following the Supreme Court judgment in Gordon Woodroffe's case , the Allahabad High Court negatived the assessee's claim for deduction on the ground that the assessee had failed to establish any established practice of paying such gratuities to its employees and the court regarded the payment made to the widow as an ex gratia payment made out of sympathy and pity. In the case of *Lakhamichand Muchhal v. Commissioner of Income-tax [1963] 48 ITR 562 (MP)(supra)* the assessee-firm has paid to its munim a sum of Rs. 21,000 as gratuity on his retirement and had claimed the amount as a deduction. It was admitted that it was not the practice of the firm to give gratuity to its employees and this payment was the first of its kind. There was also no evidence to show that the munim expected a gratuity when he entered service or that the gratuity was given as part of the scheme to give gratuities to employees in future as an incentive to them to give their best service. On these facts following the Supreme Court's judgment in Gordon Woodroffe's case , the Madhya Pradesh High Court held that the payment of gratuity to the munim was not allowable as a deduction under section 10(2)(xv) of the 1922 Act. In the Bombay High Court decision, Sassoon J. David and *Company Pvt. Ltd. v. Commissioner of Income-tax [1972] 85 ITR 83 (Bom)(Supra),* it was a case where there was a sale of the whole of the issued capital and transfer of management of the company to Tata Sons Ltd., and under clause 6 of the deed of sale of the assessee-company agreed to arrange for the termination of services of all its employees; the board of directors of the company passed a resolution terminating the services of its employees on payment of retrenchment compensation. The company also paid a sum of Rs. 21,200 in commutation of pension to its employees and an amount of Rs. 16,188 was paid to its managing director in lieu of six months' notice to which he was entitled. The company claimed the aggregate of these sums amounting to Rs. 1,64,899 as business expenditure, which claim was rejected by the Tribunal and on a reference the company contended that a part of the sum paid was gratuity of its employees. This court took the view that the fact that the wage bill had been reduced by means of the payments was insufficient to arrive at the conclusion that they were made for commercial considerations. In the administration of the company there was no practice of payment of gratuity and no legally enforceable claim for such payment against the company. The payments has been described as retrenchment compensation and had been effected not for purposes of economy but to comply with the requirements of the agreement for sale. Ultimately, this court took the view that the sum of Rs. 21,200 paid as commutation of pension was an expenditure on account of an existing liability of the company and was deductible. The amount of Rs. 16,188 paid to the managing director under his contract of employment was also deductible as business expenditure under section 10(2)(xv) of Indian

Income-tax Act, 1922. But the rest of the disbursements amounting to Rs. 1,27,551 was not allowable. It will appear clear that the disbursements which were disallowed by this court in that case were disallowed on the basis that those payments were made not for the purposes of economy but with a view to comply with the agreement for sale. In this case also the principles indicated by the Supreme Court in Gordon Woodroffe's case were accepted and applied. Turning to the last decision on which reliance has been placed by Mr. Munim on behalf of the assessee, namely, the Gujarat High Court's decision in*Commissioner of Income-tax v. Laxmi Cement Distributors Pvt. Ltd. [1976] 104 ITR 711 (Guj)(Supra)*, the facts were these : the assessee-company was the selling agent of the STC for certain cement and abestos products. In June, 1963, the assessee-company sent its secretary, M, to the U.S.A. for training in sales technology of asbestos and cement products. M died suddenly in the U.S.A. in July, 1963. In 1964, the company paid a compensation of Rs. 12,500 to the daughter of the deceased M, and it claimed deduction of this amount in its assessment for the assessment year 1965-66 under section 37 of the 1961 Act. The Income-tax Officer disallowed the claim. In second appeal, the Appellate Tribunal held that the payment was an admissible expenditure under section 37. On a reference, the Gujarat High Court, after analysing the facts as well the principles enunciated by the Supreme Court in Gordon Woodroffe's case , has laid down three propositions :The first proposition is that the question as to whether an amount claimed as a permissible deduction was laid out or expended wholly and exclusively for the purposes of the business of the assessee has to be decided on the facts and in the light of the circumstances of each case;Secondly, that the tests laid down in Gordon Woodroffe's case are independent or alternative tests and that any one of them can be applied to determine whether such payment could be treated as permissible deduction; and Thirdly, it has observed that in applying the tests of commercial expediency, the question of the reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the revenue.

10. On the facts of the case, the Gujarat High Court held that though there was no scheme or past practice or antecedent obligation to pay compensation to the next of kin of an employee of the assessee-company who died in harness, that circumstance, though relevant, was not decisive of the matter; for, even the absence of such practice or obligation, the payment could still be treated as a permissible deduction if the test of commercial expediency ws satisfied. The Tribunal had found as a matter of fact of that case that the payment was made to maintain good relations between the employer and employees and to engender confidence in the management, and that finding had become conclusive and that even apart from that, when compensation was given in circumstances such as those which obtained in that case, the court held that it would not be unreasonable to uphold the claim of the employer that the predominant motive behind the gesture was to demonstrate the interest which the employer took in the ultimate well-being of his

employees and their dependents with the end in view of securing the loyalty and devoted services of all his employees without whose whole-hearted co-operation his business could not possibly be carried on which efficiency and profit, and that the Tribunal was justified in taking the view that the payment made to the daughter of the deceased employee of the assessee-company was permissible deduction under section 37. It is true that the Gujarat High Court has gone on to make certain observations which might have to be regarded as too wide and unnecessary for the decision of the case before it. The court has, in relation to payment of family pension or gratuity to the dependents of the deceased employee made general observations to the effect that such payment is now regarded as a payment under a recognized concept in the field of employment, that it has received statutory recognition, that it cannot be treated any longer as a bounty or a philanthropic gesture actuated by compassionate objective, that even if such payment is not provided for by any scheme or contract of employment or otherwise, a demand for the same could still be raised by way of an industrial dispute by employees governed by labour legislation and such demand may well be accepted in the course of an industrial adjudication having regard to the paying capacity of the employer and other relevant circumstances and that if a prudent employer, conscious of the new trend and ethos, voluntarily makes such payment in order to avoid such dispute and to buy industrial peace and contentment amongst workers, it could certainly be treated as having been made on the ground of commercial expediency. These observations, with great respect, are, in our view, rather too wide. Admittedly, the deceased employee to whose daughter the compensation of Rs. 12,500 has been paid by the assessee-company, was holding the post of secretary in the assessee-company and that secretary who had been sent to the U.S.A. for training in sales technology of asbestos and cement products had died suddenly in the U.S.A. while he was receiving training there. Surely, in regard to such a highly placed executive an industrial dispute is not ordinarily conceivable. However, as we have said on the facts and particularly in view of the finding that had been recorded by the Tribunal itself, the Gujarat High Court rightly took the view that that payment made to the daughter of the deceased secretary was a permissible deduction under section 37 of the Act. Moreover, there are one or two aspects indicated by the Gujarat High Court with which we are in complete agreement. For instance, the Gujarat High Court has clearly stated that though in that case the resolution sanctioning the amount stated that the payment was in recognition of the past service of the deceased employee, too much emphasis could not be placed on the wording of the resolution and that the circumstances in which the resolution was adopted will have to be considered as a whole and, on a consideration of such circumstances, the relevant question will have to be decided. Similarly, the Gujarat High Court had further observed that in applying the test of commercial expediency, the question of reasonableness of the expenditure has to be judged from the point of view of the businessman and not of the revenue. These observations of the Gujarat High Court are relevant to the issue which is arising before us in the instant case.

11. Turning to the facts that obtain before us, two or three aspects on which reliance was placed by Mr. Joshi may be fairly conceded in favour of the revenue. It cannot be disputed that there was no evidence on record to show that there was any established practice in the assessee-company to pay gratuities to its directors or high executives, nor was there any evidence to show that there was any approved scheme under which payment of gratuities had been undertaken by the assessee-company. It is also true that there was no material to show that when late A.L. Chandavarkar first agreed to render services to the assessee-company as managing director his remuneration had been fixed at a lower figure in anticipation or expectation that any recompense or gratuity will be paid to him on his retirement or death, etc. But, as has been pointed out by the Gujarat High Court in *Commissioner of Income-tax v. Laxmi Cement Distributors Pvt. Ltd.[1976] 104 ITR 711 (Guj)(Supra), t*he three tests which have been indicated by the Supreme Court in Gordon Woodroffe's case must be held to be alternative tests, each one being independent of the other and the principal ground on which the payment of Rs. 24,000 to the widow of the late Chandavarkar is sought to be deducted by the assessee-company while computing its profits and gains during the assessment year is that the said payment was made out of considerations of commercial expediency, and for applying this test Mr. Munim appearing for the assessee-company has placed strong reliance on two or three aspects which emerge clearly on record. It is an undisputed fact that right from the inception of the company, namely, from April 1, 1940, up to his death which occurred on April 6, 1959, late A. L. Chandavarkar worked as a managing director of the assessee-company, that is to say, for nearly 19 to 20 years. There is nothing non record to show what was being paid to him as such managing director till 1951. But under the agreement, dated December 16, 1951, he was entitled to an yearly remuneration of Rs. 30,000 (Rs. 2,500 per month) plus a commission on the net profits of the company on certain basis mentioned in the agreement; and the fact which stands out glaringly is that in all the seven years under the agreement during which he worked as managing director, late Chandavarkar drew as his annual remuneration, amounts which were considerably less than the amount to which he was entitled and while narrating the facts we have pointed out that during all these seven years as against the total remuneration of Rs. 2,10,000 to which he was entitled, he had drawn remuneration to the tune of Rs. 1,15,000 and had forgone a large amount aggregating to Rs. 94,800. It is not unusual to find a managing director forgoing a part of his remuneration during the formative years of the company in which he is working as a managing director but in the instant case it is significant to observe that even during the last two years, i.e., 1957-58 and 1958-59, though the assessee-company made profits to the tune of Rs. 1,76,161 and Rs. 1,69,220 respectively, late Chandavarkar had forgone Rs. 15,600 in the first year and Rs. 8,400 in the second year.

12. Not only had he forgone a large part of his annual remuneration but he had also forgone total

commission of Rs. 34,538 to which he was entitled as the company had made profits in those two years. In other words, it cannot be disputed that during the last 7 years of his career as managing director and before the expiry of his full period of his managing directorship he has forgone a total amount of Rs. 1,29,338, that is to say, the amount a forgone by him during the period from 1951 to 1959 far exceeded the amount which he actually drew.

13. Secondly, it is true that the resolution of the board of directors under which the payment of Rs. 24,000 was made to his widow stated that the said amount should be paid to the widow as a gratuity, "for the services rendered to the company by late Shri A. L. Chandavarkar, managing director". But it is quite clear that that was not the only ground or the basis on which such payment has been decided by the board of directors to be made to the widow; the resolution has to be read in the context of the earlier request which the widow had made to the board of directors by her letter which she wrote on March 21, 1963; in this letter dated March 21, 1963, the widow of late Chandavarkar had categorically referred to the fact that, though her husband was entitled to a remuneration of Rs. 2,500 per month, he drew only Rs. 1,200 per month for some years and Rs. 1,800 per month at the time of his demise and she had also expressly stated that, apart from her husband having rendered sincere services to the assessee-company for nearly 20 years, he had helped the company in times of difficulty by drawing lesser amount than what was actually due to him. When this letter was placed before the board of directors, it cannot be said that the facts stated in the letter were ignored by the board and there is no doubt that the payment of Rs. 24,000 which was decided by the board of directors to be made to the widow of late Chandavarkar was not merely in recognition of his past services but was also in recognition of the great sacrifice which the ex-managing director has done for the assessee-company not only during the lean years of the company but also when the assessee-company had made some profits. It is, therefore, not possible to accept the contention of Mr. Joshi that the payment of Rs. 24,000 which was made to the widow of late Chandavarkar was only in recognition of the past services which was rendered by late Chandavarkar to the assessee-company or that it was by way of any ex gratia payment made by the assessee-company to the widow out of sympathy or pity.

14. Thirdly, it is not as if that the amount was fixed on any ad hoc basis but it had been worked out on the basis of 15 days' salary for each completed year.

lastly, the amount that was agreed to be paid to the widow will have to be regarded as most reasonable from the businessman's point of view having regard to the extent of sacrifice which late Chandavarkar made for the assessee-company and the profits made by it during the relevant year. It is having regard to these facts and circumstances which emerge very clearly on the record that one has to consider the question as to whether the payment in question could be supported on the ground of commercial expediency. In this behalf the Tribunal has categorically observed

that though the 1961 Act has specifically made provision for allowing payment of gratuity, provided there is an approved scheme for gratuity, even payments outside the scheme would also become eligible for deduction if the condition of commercial expediency is satisfied and after making this observation the Tribunal has gone to record a finding that a payment which was made to the widow of a managing director who had devoted the best years of his life in the service of the company, who had also sacrificed a good portion of his remuneration over a long period of years and who suddenly died, could certainly be an inducement to directors and other executives of the assessee-company to make all sacrifices in serving the company, in the expectation that if they do not live long enough to see the prosperous day of the company at lest some provision will be made by the company for their legal heirs. In our view, having regard to the peculiar facts which obtain in the instant case, the Tribunal's view that the payment to the widow of late Chandavarkar was dictated by commercial prudence and commercial expediency was correct; in any case the view cannot be said to be unreasonable and we uphold the same.

15. In the result, the question that has been referred to us is answered in the affirmative and in favour of the assessee. The revenue will pay the costs of the reference.

Cases Referred.

1[1962] 46 ITR 1123 (All)
2[1963] 48 ITR 562 (MP)
3[1972] 85 ITR 83 (Bom)
4[1976] 104 ITR 711 (Guj)
5[1942] 44 ITR 551 (SC)
6[1962] 46 ITR 1123 (All)