Malayalam Plantations (India) Ltd. Vs Commissioner of Income Tax

Court: High Court Of Kerala

Date of Decision: Feb. 13, 1990

Acts Referred: Income Tax (Appellate Tribunal) Rules, 1963 â€" Rule 11, 27
Income Tax Act, 1961 â€" Section 254, 254(1), 37, 40A(5)

Citation: (1990) 3 ILR (Ker) 941 : (1990) 184 ITR 505

Hon'ble Judges: K.S. Paripoornan, J; D.J. Jagannadha Raju, J

Bench: Division Bench

Advocate: P.K. Kurian, C.M. Dewan and C.N. Ramachandran Nair, for the Appellant; P.K. Ravindranatha Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.
These are two connected cases. The Income Tax Appellate Tribunal, Cochin Bench, has referred these cases at the

instance of an assessee to Income Tax. Income Tax Reference No. 90 of 1984 relates to the assessment year 1977-78 and Income Tax

Reference No. 89 of 1984 relates to the assessment year 1978-79. We are concerned, in these cases, with regard to the eligibility of the assessee

for the deduction of amounts paid or payable by way of bonus for the said two years. The assessee is a non-resident sterling company. It is running

tea and rubber plantations in Kerala and Tamilnadu. Admittedly, it keeps its accounts on the mercantile basis. The accounting period for the above

two assessment years ended on March 31, 1977, and March 31, 1978, respectively. The respondent is the Revenue in both the cases.

2. The questions of law referred in Income Tax Reference No. 90 of 1984 (relating to the assessment year 1977-78) and Income Tax Reference

No. 89 of 1984 (relating to the assessment year 1978-79) are as follows :

Income Tax Reference No. 90 of 1984 :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in disallowing an amount of Rs. 19,53,904 being

bonus paid during the accounting year, but relating to the year preceding the accounting year, when this was treated as an allowable deduction for

computation of taxable income by the Income Tax Officer and when there was no appeal/cross-objection by the Department in respect of the

same before the Appellate Tribunal ?

(2) Having come to the conclusion that the assessee was entitled to deduct the provision of accrued liability for bonus payable to the employees for

the previous year, that is, Rs. 42,67,500, was the Appellate Tribunal right in disallowing the amount of Rs. 19,53,904 being bonus for the year

preceding the previous year ?

(3) Whether, on the facts and in the circumstances of the case, the assessee is not entitled to the deduction of the bonus paid to the employees in

the previous year towards liability for the same in the year preceding the previous year as well as the amount towards provision being accrued

liability in respect of bonus payable to the employees for the previous year ?

Income Tax Reference No. 89 of 1984 :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in dieallowing an amount of Rs. 37,84,808, being

bonus paid during the accounting year, but relating to the year preceding the accounting year, when this was treated as an allowable deduction for

computation of taxable income by the Income Tax Officer and when there was no appeal/cross-objection by the Department in respect of the

same before the Appellate Tribunal ?

(2) Having come to the conclusion that the assessee was entitled to deduct the provision of accrued liability for bonus payable to the employees for

the previous year, that is, Rs. 54,86,496, was the Appellate Tribunal right in disallowing the amount of Rs. 37,84,808 being bonus of the year

preceding the previous year ?

(3) Whether, on the facts and in the circumstances of the case, the assessee is not entitled to the deduction of the bonus paid to the employees in

the previous year towards liability for the same in the year preceding the previous year as well as the amount towards provision being accrued

liability in respect of bonus payable to the employees for the previous year ?

(4) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the entire expenditure

incurred by the assessee for the maintenance of their buildings given for the residence of their employees and the depreciation thereon should be

subjected to the disallowance u/s 40A(5) of the Income Tax Act, 1961 ?

3. Except the variation regarding the amounts, the questions that arise for consideration for both the years are substantially the same. We shall

proceed to state the facts with reference to the assessment year 1977-78 which is the subject-matter of Income Tax Reference No. 90 of 1984.

As stated, admittedly, the assessee follows the mercantile system of accounting. The practice of the assessee in the past, till the assessment year in

question, was to make a provision in the accounts for the bonus that is payable relating to the year of account, add back such provision to the

profits according to the profit and loss account and deduct from such amount the bonus that is actually paid during the previous year. For the first

time, in the assessment year 1977-78, the assessee desired to depart from this practice. It wrote a letter dated August 20, 1979, to the Income

Tax Officer. It stated that in addition to the claim for the payment relating to the preceding year, that was actually paid, for this assessment year the

assessee has decided to claim the bonus for the current year''s ""accrued liability"". The reason stated was that the company was converted into a

rupee company. The assessee claimed Rs. 42,67,500 as ""a provision"" for this (current) assessment year and Rs. 19,53,904 as bonus ""paid

relating to the preceding accounting year. The bonus related to the estate staff and labour. The Income Tax Officer held that the reason stated for

deviation from the practice hitherto adopted was untenable and allowed only the liability of the preceding accounting year, that was ""actually paid"",

as a deduction. This was confirmed in appeal by the Commissioner of Income Tax (Appeals). He added that regarding the bonus payment, the

assessee was following the cash system of accounting or the actual payment basis. Before the Appellate Tribunal, the assessee claimed that it is

entitled to deduction on actual payment basis relating to the previous year as also for the deduction of bonus payable for the current year on the

basis of accrued liability. The Tribunal noticed that the assessee was following the mercantile system of accounting, but at the assessment stage, the

bonus has been allowed only on ""actual payment"" basis and such assessments were not disputed by the assessee in the past. Relying on the

decision of the Calcutta High Court in Seth Chemical Works Vs. Commissioner of Income Tax, , the Tribunal directed the Income Tax Officer to

allow the sum of Rs. 42,67,500 in the place of Rs. 19,53,904 (limited to accrued liability). The decision of the Madras High Court in

Commissioner of Income Tax, Coimbatore Vs. Coimbatore Cotton Mills Ltd., , relied on by the assessee, was distinguished and held to be

inapplicable.

4. For the assessment year 1978-79, the assessee claimed bonus to estate staff and labour provided for this year and paid in the subsequent year

as a deduction. It was in a sum of Rs. 54,86,496. The Income Tax Officer allowed the payment actually made in the year and relating to the

preceding accounting year in a sum of Rs. 42,64,464. It was affirmed in appeal by the Commissioner of Income Tax (Appeals). In further appeal,

the Tribunal, referred to the order passed by it for the earlier assessment year and stating that the assessee has been following the mercantile

system of accounting, held that it was only entitled to the deduction of the bonus that had ""accrued"" as a liability during the previous year for the

assessment year. In this view of the matter, it was held that the assessee would be entitled to a deduction of the sum of Rs. 54,86,496 in the place

of Rs. 37,84,808, allowed by the Income Tax Officer. The original appellate order of the Tribunal for the assessment year 1978-79 dated May

21, 1983, was rectified or amended, wherein the Tribunal substituted a figure of Rs. 61,14,513 for Rs. 54,86,496 and Rs. 42,64,464 for Rs.

37,84,808. This amended order is dated December 22, 1983. It is, thereafter, at the instance of the assessee that the questions of law formulated

hereinabove have been referred by the Income Tax Appellate Tribunal for the decision of this court.

5. We heard counsel for the assessee, Mr. P.K. Kurian, as also counsel for the Revenue, Mr. P.K.R. Menon. Counsel for the assessee broadly

highlighted two points or aspects which are germane to answer the questions referred by the Appellate Tribunal for the decision of this court. They

are : (1) The Income Tax Officer allowed deduction of bonus that was actually paid during the previous year. This is on actual payment basis or on

cash basis. It was upheld by the Commissioner of Income Tax (Appeals). There was no appeal by the Revenue against that portion of the order.

Even at the assessment stage, the assessee had also claimed deduction for payment of bonus for the current year on the basis of accrued liability.

The Appellate Tribunal upheld this claim. In doing so, the Tribunal negatived the claim allowed by the Income Tax Officer and upheld by the

Commissioner of Income Tax (Appeals) on the basis of actual payment basis. The Appellate Tribunal was incompetent to do so in an appeal filed

by the assessee. The relief granted by the Income Tax Officer and upheld by the Commissioner of Income Tax (Appeals) cannot be interfered

with. This is all the more so in the absence of an appeal by the Revenue. Reliance was placed on the decisions in Commissioner of Income Tax,

Madras Vs. Mahalakshmi Textile Mills Ltd., , L. K. SHAIK MOHAMMED BROTHERS Vs. COMMISSIONER OF Income Tax,

MADRAS., , 623 and 624 (Mad) and Reform Flour Mills (Pvt) Ltd. Vs. Commissioner of Income Tax, . (2) No doubt, the assessee was

following the mercantile system of accounting. Consistent with the past practice, it is entitled to deduction of the bonus actually paid during the

previous year on actual payment basis. In addition, in view of the mercantile system of accounting adopted by the assessee, the assessee is also

entitled to claim bonus for the current year''s accrued liability. The deduction for payment of bonus, on both counts, can be claimed. Both of them

should have been allowed. Reliance was placed on the following decisions : Central Paints Ltd. Vs. Commissioner of Income Tax, , Commissioner

of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Ltd., and Commissioner of Income Tax,

Coimbatore Vs. Coimbatore Cotton Mills Ltd., .

6. On the other hand, counsel for the Revenue submitted that whatever may be the past practice adopted by the assessee, the assessee is entitled

to deduction of only that amount which is permissible-in law. The assessee is following the mercantile system of accounting. It is entitled to

deduction of payments to meet the liability for the current year which has accrued. It is not entitled to deduction of amounts paid by way of bonus,

actually paid during the previous year, since the said amount does not relate to the current year''s earning of the income. The assessee is not entitled

to deduction of payment by way of bonus on both counts, actual payment basis and accrual basis. It is entitled only to that amount which is

permissible in law. In the mercantile system of accounting, the assessee is entitled to deduction on the basis of accrual and not on actual payment

basis. Reliance was placed on the following decisions : Commissioner of Income Tax Vs. Travancore Timbers and Products, , Commissioner of

Income Tax Vs. K.A. Karim and Sons and Others, and Oil India Limited Vs. Commissioner of Income Tax, .

7. On evaluating the rival pleas urged before us, we are of the view that the Appellate Tribunal was justified in holding that the assessee is entitled

to deduction of amounts for payment of bonus only on the basis of accrual. The Appellate Tribunal was justified in directing the Income Tax

Officer to allow the provisions so made in the place of amounts actually allowed by him, on the basis of actual payment basis. We shall proceed to

give our reasons for the said conclusion. Section 254(1) of the Income Tax Act deals with the powers of the Appellate Tribunal to pass orders in

appeal. It is extracted hereinbelow :

254. Orders of Appellate Tribunal.--(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard,

pass such orders thereon as it thinks fit.

8. The Income Tax (Appellate Tribunal) Rules, 1963, contains rules and regulations relating to the proceedings of the Appellate Tribunal. Rules 11

and 27 of the said Rules, extracted hereinbelow, are also relevant.

11. Grounds which may be taken in appeal.--The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground

not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the

memorandum of appeal or taken by leave of the Tribunal under this rule :

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient

opportunity of being heard on that ground.

27. Respondent may support order on grounds decided against him.--The respondent, though he may not have appealed, may support the order

appealed against on any of the grounds decided against him.

9. The crucial words in Section 254(1) of the Income Tax Act are that the Appellate Tribunal shall pass such orders ""thereon"" (in the appeal) as it

thinks fit. The said words occurring in Section 254(1) of the Act restrict the jurisdiction of the Tribunal to the subject-matter of the appeal: See

Hukumchand Mills Ltd. Vs. Commissioner of Income Tax, Central Bombay and Others, . But, what is the subject-matter of an appeal before the

Appellate Tribunal is largely a question of fact. Section 254(1) of the Act should be read along with Rules 11 and 27 of the Income Tax (Appellate

Tribunal) Rules. In Commissioner of Income Tax, Madras Vs. Sundaram and Company Private Ltd., , the Madras High Court said :

. . . the subject of a tax appeal is the relief sought by the assessee and objected to by the Department, The grounds are only missiles employed by

the combatants to achieve their respective desired ends. It would not be possible to circumscribe the subject of the appeal by taking into account

the rival contentions or the reasons or the grounds which are put forward either by the Department or by the assessee.

10. In Commissioner of Income Tax Vs. Edward Keventer (Successors) P. Ltd., the Delhi High Court stated that the subject-matter of an appeal

should be understood not in a narrow and unrealistic manner but should be so comprehended as to encompass the entire controversy between the

parties which is sought to be got adjudicated upon by the Tribunal. In adjudicating the rival contentions of the parties, the Tribunal is not restricted

to the determination of questions raised before the lower authorities. All questions of fact and law which relate to the assessment of the assessee

may be raised before the Tribunal and adjudicated by the Tribunal. In Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., ,

after referring to the corresponding provision in the 1922 Act (Section 33(4) of the Act), the Supreme Court said as follows :

Under Sub-section (4) of Section 33 of the Indian Income Tax Act, 1922, the Appellate Tribunal is competent to pass such orders on the appeal

''as it thinks fit''. There is nothing in the Income Tax Act which restricts the Tribunal to the determination of questions raised before the

departmental authorities. All questions, whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal :

If for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is

justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty, to grant that relief. The right of

the assessee to relief is not restricted to the plea raised by him.

11. The Appellate Tribunal is competent to grant relief to an assessee, not merely under the head under which the assessee had made its claim, but

even in the alternative under another head, though not put forward (See Commissioner of Income Tax, Poona Vs. R.B. Rungta and Co.,). It is

settled law that the Tribunal is not precluded from adjusting the tax liability of the assessee in the light of its findings merely because the findings are

inconsistent with the case pleaded by the assessee. (See Commissioner of Income Tax, Madras Vs. S. Nelliappan,). Law is fairly clear that where

the Tribunal finds that disallowance of a particular expenditure under one section by the authorities below is not proper or is unjustified, it is open

to the Tribunal to sustain the disallowance, wholly or partially, under a different section under which it can be properly disallowed. In Steel

Containers Ltd. Vs. Commissioner of Income Tax, , the question arose thus : The authority below disallowed a portion of the remuneration paid to

Balmer Lawrie and Co. Ltd. as excessive in terms of Section 40(c)(i) of the Act. A portion of the expenditure claimed was disallowed. The

Appellate Tribunal found that Section 40(c)(i) of the Act could not apply to the allowance or remuneration paid to Balmer Lawrie and Co. Ltd., a

corporate entity. The disallowance could not be made under the said section, The allowable or permissible remuneration paid to B. L. could be

evaluated or fixed u/s 37 of the Act. One of the questions referred to the High Court was, whether it was open to the Appellate Tribunal, after

finding that Section 40(c)(i) of the Act was not applicable, to sustain the disallowance partially u/s 37 of the Act, in the absence of a cross-appeal

or cross-objections by the Revenue. Dealing with the rival contentions of the parties, at pages 1004 and 1005 of the reports, Sabyasachi Mukharji

J., delivering the judgment of the Bench, stated the law thus, at page 1006 :

. . . The Supreme Court observed that u/s 33(4) of the Indian Income Tax Act, 1922, which is in similar terms to Section 254 of the Income Tax

Act, 1961, the Tribunal was competent to pass such orders on appeal "as it thinks fit". There was nothing in the Income Tax Act which restricted

the Tribunal to the determination of the questions raised before the departmental authority. All questions, whether of law or of fact, which related to

the assessment of the assessee might be raised before the Tribunal. If for reasons recorded by the departmental authority in respect of a contention

raised by the assessee, grant of relief to him on another ground was justified, it would be open to the departmental authority and the Tribunal, and

indeed they would be under a duty, to grant that relief. Similarly, if the disallowance of certain expenditure to an assessee was warranted by a

certain provision of law where the allowance and disallowance were the subject-matter of the appeal, in our opinion, the Tribunal was competent

u/s 254 to deal with that question and decide the same in accordance with law....

12. Applying the above said principles to the case on hand, we should state that the question mooted before the Appellate Tribunal was the relief

the assessee was entitled to by way of deduction regarding payment of bonus, The assessee claimed it under two counts ; (1) actual payment

basis, and (2) accrual basis. The authorities below granted partial relief and allowed deduction in part, on actual payment basis. They disallowed

deduction claimed on accrual basis. When the matter came up before the Appellate Tribunal, the Tribunal, noticing that the assessee was following

the mercantile system of accounting, held that it is entitled in law to deduction for payment on accrual basis only. Relief was granted on that basis. It

followed that the assessee was not entitled to any deduction on actual payment basis. The Appellate Tribunal negatived that part of the plea and

allowed deduction on the basis of accrual basis which the assessee was entitled to in law. We are of the view that the course adopted by the

Appellate Tribunal is justified and is consistent in the light of the law laid down by the Supreme Court in Commissioner of Income Tax, Madras Vs.

Mahalakshmi Textile Mills Ltd., the decision in Steel Containers Ltd. Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs.

K.A. Karim and Sons and Others, .

13. In Seth Chemical Works Vs. Commissioner of Income Tax, , the assessee was maintaining its accounts on the mercantile basis. The bonus

paid to employees was claimed on cash basis up to the assessment year 1970-71. For the first time, from 1971-72, the system relating thereto

was changed from cash to mercantile system. In the said year 1971-72, the assessee claimed bonus actually paid in the previous year relevant to

the assessment year, and also the provision made for bonus for the assessment year 1971-72. The court held that the assessee was entitled only to

provision for bonus made on accrual basis for the assessment year 1971-72. It was further held that, in order to decide the question, it is necessary

to decide whether, according to the system of accounting followed by the assessee, the assessee was entitled to any relief. Therefore, the ground

of appeal was intimately connected with the question of allowing the appellant to follow a particular method of accounting. The court said that,

looked at from that angle, the real question was what system of accountancy was allowed to be followed by the assessee and, if so, under that

system what are the allowances or deductions the assessee is entitled to. Based on this test, the court held that since the assessee was following the

mercantile system of accounting, the system of accountancy was interlinked in deciding the said issue (re : permissible deductions) and, in that

perspective, the assessee was entitled only to deduction of such amount which he is entitled to on accrual basis. We are of the view that the

decision of the Calcutta High Court in Seth Chemical Works'' case [19831 140 ITR 507 is squarely applicable to the instant case.

14. We should bear in mind that, in these cases, the assessee was claiming a larger relief by way of deduction--may be under different, distinct and

alternate pleas--but, in substance, the sole question that arose was, as to what is the amount or quantum the assessee is entitled to, by way of relief

(deduction) for payment of ""bonus"". The assessee put forward the claim in two ways. The smaller amount was allowed by the Officer and the

appellate authority ; but the Tribunal allowed the larger amount and negatived the smaller amount. But, it should be noticed that the relief, by way

of deduction, was under ""one and the same head"". The assessing authority, having granted the smaller relief, could not appeal against it. But, when

the entire matter was before the Tribunal, it was within the competence of the Tribunal, to grant the larger relief. It was so done at the instance of

the assessee. It could be so done in order to adjust/adjudicate the exact relief the assessee was entitled to. It is not a case where the Revenue was

or could be aggrieved by the assessing authority allowing the smaller relief only. The Revenue could not file an appeal from the order of the

assessing authority. It was also not aggrieved by the grant of the smaller relief. It was the Appellate Tribunal which substituted the larger relief, in

place of the smaller one granted by the lower authorities and the Revenue can be aggrieved, if at all, only when such larger relief was granted. The

assessee has only gained an additional amount, by way of relief, at the hands of the Tribunal ; it was not in a worse and more disadvantageous

position. The assessee''s complaint that, in the absence of an appeal by the Revenue, the Appellate Tribunal, while granting the larger relief, in

effect and substance, negatived the smaller relief unauthorisedly, lacks substance. The Appellate Tribunal, as the final fact-finding authority, was

competent to do so, more particularly because, the assessee was not placed in a worse and more disadvantageous position.

15. We should also state that the decisions brought to our notice by counsel for the assessee are distinguishable and the decisions were rendered

on the particular facts. In none of them did a situation similar to the one in the instant case arise for consideration. That apart, we are of the view

that the aforesaid decisions did not consider the nature and extent of the jurisdiction of the Appellate Tribunal, in disposing of an appeal, with

reference to the statutory provisions, the scheme of the Act and the decisions of the Supreme Court and other High Courts adverted to in

paragraphs 7 and 10 (at pp. 511 to 514 and 515 supra). On the other hand, the decisions cited by the Revenue are in accord with the scheme

and provisions of the Income Tax Act, the extent of the jurisdiction of the Appellate Tribunal and are also in accord with the law laid down by the

Supreme Court and other High Courts discussed in paragraphs 7 and 10 (at pp. 511 to 514 and 515 supra).

16. In the light of the above, we are of the view that the common appellate order of the Tribunal, rendered for the years 1977-78 and 1978-79

dated March 25, 1983, is in accordance with law. We answer the questions thus :

Income Tax References Nos. 89 and 90 of 1984 :

Questions Nos. 1 and 2.-- In the affirmative, against the assessee and in favour of the Revenue, in both the cases.

Question No. 3. --In the negative, in favour of the Revenue and against the assessee, in both the cases.

Question No. 4 in I. T. R. No. 89 of 1984.--In the affirmative, against the assessee and in favour of the Revenue, in the light of the Full Bench

decision of this court in Commissioner of Income Tax Vs. Forbes, Ewart and Figgis (P.) Ltd. and Harrison and Crossfield Ltd., .

17. The references are answered as above.

18. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate

Tribunal, Cochin Bench.