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Commissioner of Income Tax Vs N. Radha Bai (Binod Cashew Corporation)

Income-tax Reference No. 138 of 1985

Court: High Court Of Kerala

Date of Decision: June 21, 1989

Acts Referred:
Income Tax Act, 1961 â€" Section 36(1), 40A

Citation: (1989) 180 ITR 429

Hon'ble Judges: K.S. Paripoornan, J; K.A. Nayar, J

Bench: Division Bench

Advocate: P.K.R. Menon and N.R.K. Nair, for the Appellant; B.S. Krishnan, for the Respondent

Judgement

K.S. Paripoornan, J.
At the instance of the Revenue, the Income Tax Appellate Tribunal, Cochin Bench, has referred the following

question of law for the decision of this court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in finding that the assessee is entitled for deduction of Rs.

2,62,506 u/s 36(1)(v) of the Income Tax Act; 1961 ?

2. The respondent is an assessee to Income Tax. The matter relates to the assessment year 1976-77. The previous year ended on September 30,

1975. The assessee provided for gratuity for the assessment years 1973-74 to 1975-76 at the rate of half month''s salary. For the assessment year

1976-77, no provision was made. A sum of Rs. 2,92,541 was paid as premium to the Life Insurance Corporation. It related only to the

assessment years 1973-74 to 1976-77. Out of the above, a sum of Rs. 30,034 was refunded subsequently. So, the assessee claimed a sum of Rs.

2,62,506 as a permissible deduction u/s 36(1)(v) of the Income Tax Act. The Income Tax Officer disallowed the claim. It was reversed by the

Commissioner of Income Tax (Appeals). On further appeal by the Revenue, the Income Tax Appellate Tribunal held that the payment was

allowable as deduction u/s 36(1)(v) of the Income Tax Act. Thereafter, at the instance of the Revenue, the question of law formulated hereinabove

was referred to this court for decision.

3. We heard counsel. At the time of hearing it was agreed that, in the light of the decision of the Supreme Court in Shree Sajjan Mills Ltd. Vs.

Commissioner of Income Tax, M.P., Bhopal and Another, , and the observations contained at pages 602 and 603, after the insertion of Section

40A of the Income Tax Act, deduction cannot be allowed on general principles under any other section of the Act. In order to claim deduction for

gratuity payment, the assessee should fulfil the conditions laid down in Section 40A of the Income Tax Act. In the light of the decision of the

Supreme Court, we hold that the Income Tax Appellate Tribunal was in, error in holding that the assessee is entitled to deduction of Rs. 2,62,506

u/s 36(1)(v) of the Income Tax Act. We answer the question referred to us in the negative, against the assessee and in favour of the Revenue.

4. The Registrar shall forward a copy of this judgment to the Income Tax Appellate Tribunal, Cochin Bench, forthwith.