Commissioner of Income Tax Vs Kerala State Co-operative Marketing Federation Ltd.

IT Ref. No. 250 of 1999

Court: High Court Of Kerala

Date of Decision: April 10, 2003

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

Citation: (2003) 183 CTR 404

Hon'ble Judges: J.M. James, J; G. Sivarajan, J

Bench: Division Bench

Advocate: P.K.R. Menon, for the Appellant; A. Kumar, for the Respondent

Judgement

G. Sivarajan, J.
The following question of law is referred to this Court u/s 256(1) of the IT Act, 1961, at the instance of the Revenue :

Whether, on the facts and in the circumstances of the case and in the absence of the Tribunal bringing on record any facts or evidence to conclude

that the three conditions as provided in Section 36(1)(ii) have been fulfilled by the company, the Tribunal is right in law and fact in allowing the

deduction of the sum of Rs. 1,96,070?

2. The respondent-assessee had paid bonus to its employees in excess of what is provided under the Bonus Act. Under the said Act, the maximum

bonus that is payable is only 8-1/3 per cent. The assessing authority has disallowed bonus debited in the accounts in excess of 8-1/3 per cent. In

appeal by the assessee, the first appellate authority confirmed the same, In further appeal by the assessee, the Tribunal allowed the entire claim by

holding that in several cases, they have taken a view that wherever a bonus does not exceed 20 per cent of the total wages paid to the employees,

such payment has to be allowed taking into consideration the prevailing custom, and that for consistency, they hold that the assessee is entitled to

deduction of the sum of Rs. 1,96,070.

3. The learned Central Government standing counsel for taxes appearing for the applicant submits that the Tribunal had not independently

considered the question as to whether it is customary for the assessee to pay 20 per cent bonus and that the Tribunal had only made a general

observation with regard to the custom and its allowability, He also relied on the decision of this Court in Sree Bhagavathi Textiles Ltd. v. CIT 244

ITR 495 , and submitted that the Tribunal must be directed to consider the assessee"s case in the light of the observations made in the said

judgment. We have also heard the learned counsel appearing for the respondent-assessee. He submits that the Tribunal has found that it was

customery in the trade to pay bonus to its employees in excess of the statutory amount, but not exceeding 20 per cent, and, therefore, there is no

illegality in the order of the Tribunal.

4. As we have already noted, the Tribunal did not independently consider the case of the assessee as to whether it is customary in the business

conducted by the assessee that bonus is paid in excess of statutorily permissible amount, and as to what is the customary bonus, if any, which was

being paid. The Tribunal has only stated that if the bonus does not excess 20 per cent, that can be allowed.

5. We are of the view that the Tribunal is obliged to consider the matter independently on the facts and circumstances of each case, and

particularly with reference to the decision of this Court and Supreme Court, if any, in that regard. The counsel for the Revenue has brought to our

notice the decision of this Court mentioned supra which also lays down the principles to be applied in the matter of grant of customary bonus.

6. In these circumstances, we set aside the order of the Tribunal on this issue, and direct the Tribunal to consider the matter in accordance with

law, and in the light of the observations made hereinabove.

In that view of the matter, we decline to answer the question referred.