(2012) 07 MAD CK 0091

Madras High Court

Case No: Tax Case (Appeal) No. 635 of 2006

Thanjavur Textiles Ltd.	APPELLANT
Vs	
Jt. CIT	RESPONDENT

Date of Decision: July 19, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 139(1), 43B, 43B(a)

Citation: (2012) 07 MAD CK 0091

Hon'ble Judges: K. Ravichandra Baabu, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: P.J. Rishikesh, for the Appellant; T. Ravikumar, for the Respondent

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.
This Tax Case (Appeal), filed at the instance of the assessee as against the order of the Income Tax Appellate Tribunal relating to the assessment year 1997-98, was admitted by this court on the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal ought to have considered the fact that the act of depositing the bonus amounts payable to the workers into a separate bank account is to be construed as actual payment made in the present accounting year?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that bonus paid based on settlement reached after the accounting year is allowable in present assessment year?

It is seen from the facts narrated herein that in respect of the accounting year relevant to the assessment year 1997-98, there was a dispute between the management and employees as regards the percentage of bonus payable by the assessee. While the

assessee declared 15% bonus, the employees insisted bonus at 20% as in the earlier year. On the refusal of the same by the management, the workers went on strike since 20-10-1996. It is seen from the documents placed before this Court that consequent on the conciliation talk, there was a settlement, whereby the management agreed to pay 19% bonus and the strike was withdrawn from 16-11-1996. According to the assessee in respect of the admitted percentage of bonus payable, the assessee deposited the said amount in a separate bank account called Thanjavur Textiles Employees Bonus Account. The amount was deposited on 26-11-1997 and the amount was paid on 15-12-1997 to the workers based on the agreement entered into on 13-12-1997. The Assessing Authority viewed that as per the provisions of section 43B of the Income Tax Act, payment of bonus would be an admissible deduction if and only the amount was actually paid before the due date for filing the return. Since the amount was paid long after the due date for filing the return, mere depositing it in a bank account would not entitle the assessee for deduction. Accordingly, the claim was rejected.

2. Aggrieved by this, the assessee went on appeal before the Commissioner (Appeals), who agreed with the assessee following the earlier order passed in the assessees own case for the year 1994-95. Accepting the case of the assessee that the reasons for belated payment was on account of the workers going on strike and not accepting the payment of bonus, which compelled the assessee to deposit the said amount in a separate account maintained by the assessee, the Commissioner of Income Tax (Appeals) allowed the appeal filed by the assessee.

3. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal pointed out that the assessee had not produced any evidence that it had created irrevocable trust called Workers Bonus Payment Trust. The Tribunal, keeping in mind the object of section 43B of the Income Tax Act that the claim for deduction is allowable on actual payment, set aside the order of the Commissioner (Appeals) and restored the order of the Assessing Authority holding that setting apart particular amount towards bonus would not tant amount to actual payment. Aggrieved by this, the assessee is before this Court.

4. Learned counsel appearing for the assessee placed reliance on the decisions in The Commissioner of Income Tax-III Vs. The Sri Venkatesa Mills Ltd., Commissioner of Income Tax Vs. Chackolas Spinning and Weaving Mills Ltd., /and Commissioner of Income Tax Kolkata-III Vs. Alom Extrusions Limited, only to contend that when the assessee had in fact set apart the amount payable by it to the workers, deposited it in a separate bank account, on account of refusal of the workers to receive, such remitting of the amount in a deposit should be treated as an actual payment. Referring to the withdrawal therein immediately after the settlement reached, learned counsel submitted that a perusal of the pass book would show that the assessee had not dealt with the money for any of its business purpose; thus the conduct of the assessee would prove that the amount had in fact been set apart and the same should be treated as a deemed payment for the purpose of granting deduction. Referring to the decision of the Supreme

Court in Alom Extrusions Ltd. (supra), wherein the Supreme Court had considered the effect of the omission of the second proviso to section 43B of the Income Tax Act under Finance Act, 2003, as having retrospective effect from 1-4-1988, he submitted that going by the deposit made in the separate account, which cannot be in any manner used by the assessee, the deduction has to be granted.

5. In the decision in Alom Extrusions Ltd. (supra) the Apex Court pointed out that the object of section 43B, inserted under the Finance Act, 1983, with effect from 1-4-1983, was to disallow deduction claimed merely by making a book entry based on mercantile system of accounting. Referring to the deletion of the second proviso, the Apex Court pointed out to the amendment to the first proviso brought about uniformity by equating tax, duty, cess and fee with contribution to welfare funds and with the uniformity brought about in the first proviso, the Finance Act, 2003 is curative in nature and hence would apply from 1-4-1988.

6. A reading of the amendment thus made under Finance Act 2003 to the first proviso and on the deletion of the second proviso would show that the position that the deduction is available only on the sum actually paid by the assessee on or before the due date for furnishing the return of income u/s 139(1) of the Income Tax Act remained as it was.

7. In the decision in Commissioner of Income Tax, Udaipur Rajasthan Vs. Mcdowell and Co. Ltd., he Apex Court considered the question as to whether furnishing of bank guarantee would entitle the assessee to claim deduction u/s 43B of the Income Tax Act. On the bank guarantee furnished by the assessee in respect of excise duty payable on wastage of liquor in transit, the Apex Court pointed out that the deduction claimed by the assessee was to be tested on the touchstone of section 43B(a) of the Income Tax Act as to whether there had been an actual payment of duty or not. Pointing out to the provisions of section 43B of the Income Tax Act, the Apex Court observed as follows:

The requirement of section 43B of the Act is actual payment and not deemed payment as condition precedent for making the claim for deduction in respect of any of the expenditure incurred by the assessee during the relevant previous year specified in section 43B. The furnishing of bank guarantee cannot be equated with actual payment which requires that money must flow from the assessee to the public exchequer as required u/s 43B. By no stretch of imagination can it be said that furnishing of bank guarantee is actual payment of tax or duty in cash.

8. Going by the enunciation of law by the Apex Court that the deemed payment could not be treated as actual payment to qualify for deduction u/s 43B of the Income Tax Act, we do not agree with the submission of the learned counsel appearing for the assessee herein that depositing the amount in a bank, even if it be in a separate account, would satisfy the provisions of Section 43B as actual payment. Reading the decision in Sri Venkatesa Mills Ltd. (supra) along with the decision in Mc Dowell & Co. Ltd. (supra), one can only observe that the law declared in both the above judgments are one and the

same, in the sense, that both the decisions held that u/s 43B only actual payment and not any notional or deemed payment that would be relevant for considering the deduction. Thus, the mere fact that the assessee had quantified the bonus payment and deposited it in a separate account maintained by the assessee does not mean that the requirement of law as to the actual payment stood satisfied. Thus, one can even go to the extent of saying that going by the observation of the Apex Court that the requirement of section 43B is an actual payment and not deemed payment, even creating an irrevocable trust would not satisfy the requirement of law. Thus after the decision of the Apex Court, the decisions in Chackolas Spg. & Wvg. Mills Ltd. (supra) and Alom Extrusions Ltd. (supra) could not be of any assistance to the assessee herein. In the light of the above, we agree with the contention of the Revenue placing reliance on the decision in McDowell& Co. Ltd. (supra). Accordingly, the order of the Tribunal stands confirmed and the Tax Case (Appeal) stands dismissed. No costs.