

(2011) 10 MAD CK 0093

Madras High Court

Case No: T.C. (A) . No. 11 of 2005

Commissioner of
Income Tax Chennai-I

APPELLANT

Vs

VGP Golden Beach
Resort Ltd. VGP
Square, Saidapaet
Chennai - 600 015

RESPONDENT

Date of Decision: Oct. 20, 2011

Hon'ble Judges: P. Jyothimani, J; Janarthana Raja, J

Bench: Division Bench

Advocate: T. Ravi Kumar, for the Appellant; J. Balachander for M/s. S. Sridhar, for the Respondent

Final Decision: Allowed

Judgement

P. Jyothimani, J.

This tax case appeal filed by the Revenue pertains to the assessment year 1992-1993 and is against the order the Appellate Tribunal dated 14.6.2004 made in ITA. No. 497/Mds/1997, by which the Tribunal has allowed the appeal filed by the assessee partly.

2. This appeal was admitted by this Court for consideration of the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was right in remitting the matter back to the Assessing Officer for reconsideration, when the provisions of Section 43B categorically say that unless bonus is actually paid within the time limit specified, it shall not be allowed as a deduction?

2. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the disallowance u/s 40A(2) on the ground that the rent was accepted in the hands of the recipient?

3. Whether in the facts and circumstances of the case, the Tribunal was right in remitting the matter to the Assessing Officer, giving the assessee an opportunity to produce evidence to defend against the enhancement made, when the enhancement was made by the First Appellate Authority, namely the Commissioner of Income Tax (Appeals)?

3.1. The first question of law relates to the payment of bonus by the assessee to its employees in the assessment year 1992-1993, for which the return was to be filed by 31.12.1992. Since the bonus was disbursed to the employees on 14.6.1994 and 5.7.1994 and not during the period stipulated, it was held by the Commissioner of Income Tax (Appeals) that the claim of the assessee was hit by Section 43B of the Act. However, the Tribunal, in the impugned order, remanded the said issue to the Assessing Authority for passing fresh orders.

3.2. As far as the payment of bonus is concerned, Section 43B of the Act, which enables certain deductions on actual payment, makes it clear u/s 43B(c) of the Act that it relates to any sum referable u/s 36(1)(ii) of the Act. The section makes it also very clear that the deduction shall be in respect of the amount actually paid. Section 43B(c) reads as under:

Section 43B. Certain deductions to be only on actual payment. Notwithstanding anything contained in any other provision of this Act a deduction otherwise allowable under this Act in respect of-

(a)...

(b)...

(c) any sum referred to in clause (ii) of sub-section (1) of section 36

3.3. Section 36(1)(ii) of the Act, which is as follows:

Section 36. Other deductions. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred Error! Hyperlink reference not valid.

(i)...

(ia)...

(ib)...

(ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission

includes the amount of bonus payable. Therefore, on a combined reading of the said sections, it is very clear that the assessee would be entitled to claim deductions only if the

actual payment is made and such payment must be within the prescribed period.

3.4. On the facts of the present case, it is not in dispute that the bonus has been paid by the assessee to its employees beyond the prescribed period. Even though the proviso to the Section 43B of the Act enables the assessee to pay the amount within an extended time, in the facts of the present case, even after the expiry of the extended period, the assessee has not paid the bonus.

3.5 In such view of the matter, in respect of the first question of law, remitting the matter to the Assessing Authority will not serve any useful purpose when the dates are admitted. Therefore, the first substantial question of law is answered in favour of the Department.

4. In respect of the second question of law, a reference to the impugned order of the Tribunal shows that in the assessee's own case for the assessment year 1993-1994, the Tribunal had deleted the disallowance made out of rent paid, which is not in dispute. The learned counsel for the Revenue is unable to controvert the said position. In such view of the matter, the second question of law is answered in favour of the assessee.

5.1. Regarding the third substantial question of law which relates to enhancement made, the point raised by the learned counsel for the Revenue is that the enhancement itself was made in the first appellate stage and therefore, the remand should have been made to the First Appellate Authority and not to the Assessing Officer.

5.2. On the other hand, on a reference to the order of the Commissioner of Income Tax (Appeals), it is clear that while ordering enhancement, the Commissioner of Income Tax (Appeals) had only directed the matter to be reheard by the Assessing Authority after giving fresh demand notice having regard to the enhancement. The relevant portion of the order of the Commissioner of Income Tax (Appeals) is as follows:

49. In the result, the appeal is disposed of resulting in the enhancement as indicated hereinabove. Assessing Officer shall issue a fresh demand notice having regard to the enhancement made by this Court. Assessing Officer is also directed to forward a copy of his order giving effect to this appellate order.

5.3. Inasmuch as the Commissioner of Income Tax (Appeals) himself has directed the Assessing Authority to give opportunity to the parties and pass fresh orders having regard to the enhancement, we answer the third question of law against the Revenue.

In the result, the appeal stands partly allowed only in respect of the first substantial question of law. No costs.