
(1994) 74 TAXMAN 572

Calcutta High Court

Case No: IT Reference No. 269 of 1991

Commissioner of
Income Tax

APPELLANT

Vs

Kamarhatty Co. Ltd.

RESPONDENT

Date of Decision: Nov. 9, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 256(2), 263, 34, 36, 36(1)(ii)
- Payment of Bonus Act, 1965 - Section 34

Citation: (1994) 74 TAXMAN 572

Hon'ble Judges: Shyamal Kumar Sen, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.

In this reference u/s 256(2) of the income tax Act, 1961 ("the Act") for the assessment year 1981-82, the following question has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the Commissioner cannot revise the order of assessment dated 8-4-1984 since it got merged in the order of the Commissioner of income tax (Appeals) dated 21-3-1985 when the payment of bonus which was the subject-matter of the Commissioner's order u/s 263 of the income tax Act, was not before the Commissioner of Income tax (Appeals) ?

Shortly stated, the facts are that the ITO in his order of assessment dated 8-8-1981 allowed deduction of Rs. 22,20,834 being ad hoc payment made to the workers over and above the minimum bonus payable under the payment of Bonus Act, 1965. The Commissioner of income tax found that the ITO allowed the said deduction without application of mind. He initiated proceedings u/s 263 of the Act and came to the conclusion that the order of the ITO allowing the aforesaid deduction was erroneous and

prejudicial to the interests of the revenue. The Commissioner, accordingly, withdrew the said deduction wrongly allowed by the tax officer.

2. Against the said action of the Commissioner the assessee came up in appeal before the Tribunal. It was contended before the Tribunal that the assessment for the year 1981-82 was the subject-matter of appeal before the Commissioner (Appeals) and the order of the ITO got merged with the order of the Commissioner (Appeals) dated 21-3-1985 and, hence, in view of the decision of this High Court in [General Beopar Co. \(Pvt.\) Ltd. Vs. Commissioner of Income Tax](#), the Commissioner could not pass order u/s 263. On behalf of the department it was urged that the issue regarding bonus was not before the Commissioner (Appeals) and, hence, the Commissioner was competent to revise the order of the ITO on the point of bonus.

3. The Tribunal considered the rival submissions. The Tribunal following the decision of this High Court in the case of General Beopar Co. (P.) Ltd (supra) held that the Commissioner could not revise the order of assessment dated 8-8-1981 since it got merged with the order of the Commissioner (Appeals) dated 31-3-1985. Accordingly, the Tribunal set aside the order of Commissioner passed u/s 263.

4. It is true that the question as framed only raised issue as to whether the order of the ITO had merged in the order of the Commissioner or not. This question undoubtedly is covered by the decision in the case of [Hamilton and Co. Pvt. Ltd. Vs. Commissioner of Income Tax](#),

5. However, Mr. Poddar, the learned advocate appearing for the assessee, has submitted that the basic question involved is whether the excess bonus was rightly disallowed by the Commissioner or not. In other words, whether the order passed u/s 263 by the Commissioner was proper or not. In other words, on the facts and circumstances of this case as recorded by the Commissioner can it be said that the order made by the income tax Officer is erroneous and is prejudicial to the interests of the revenue ?

6. In our view, this contention has substance. The Commissioner while dealing with the question has observed as follows:

One of the contentions of the assessee was that the extra sum was paid with a view to arriving at a better understanding with labour, thereby facilitating the running of the business. I do not deny that the amount was paid to facilitate the running of the business. Had it not been so, that to pay, if the payment was made for extra business consideration, the assessee's claim for a revenue deduction either u/s 36 or 37 of the Act would have been negated on that ground alone. The problem before me is slightly different. Here the payment was no doubt made in the interest of the business but the question is whether it is hit by provisions of section 36(1)(ii), I have already shown how the payment of Bonus Act, by virtue of the provisions of section 34, does not countenance any agreement which authorises the payment of the higher bonus than the minimum bonus

or, as the case may be, the maximum bonus admissible under that Act. And the agreement dated September 30, 1980 is clearly hit by section 34 of the Payment of Bonus Act. It should, therefore, follow that the payment made thereunder is equally hit by section 36(1)(ii) of the income tax Act, 1961.

In that view of the matter, we reframe the question as follows:

Whether, on the facts and circumstances of this case, the Commissioner of income tax was justified in passing the order u/s 263 of the Income tax Act, 1961 ?

It is not in dispute that the question on merits is now concluded by the decision of this Court. The first decision is in the case of [Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd.](#), The second decision on the issue is in the case of CIT v. Rahimia Lands & Tea Co. (P.) Ltd [1992] 197 ITR 310 (Cal.).

7. Having regard to the facts and circumstances of this case as recorded by the Commissioner of Income tax as reproduced and having regard to the principles laid down in the aforesaid decisions of this Court, we are of the view that the order passed by the Assessing Officer was not erroneous nor prejudicial to the interests of the revenue. Accordingly, the Commissioner was not justified in revising the order of the Assessing Officer u/s 263.

8. For the reasons aforesaid, we answer the reframed question in the negative and in favour of the assessee. There will be no order as to costs.

Sen, J.

I agree.