

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

ITA.No. 73 of 2014

AGAINST THE ORDER IN ITA 381/2013 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 11-10-2013

APPELLANT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX
TRIVANDRUM.

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/APPELLANT/RESPONDENT/ASSESSEE:

STATE BANK OF TRAVANCORE,
HEAD OFFICE, TAX CELL, POOJAPPURA
TRIVANDRUM.

R. BY ADV.SRI.P.BALAKRISHNAN (E)
R. BY ADV.SRI.MOHAN PULIKKAL
R. BY ADV.SRI.P.P.NARAYANAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER
U/S 143(3) DATED 22.12.2008.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF
INCOME TAX (APPEALS) DATED 30.3.2013.

ANNEXURE C: TRUE COPY OF THE ORDER OF THE INCOME TAX
APPELLATE TRIBUNAL DATED 11.10.2013.

ANNEXURE D: TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH
COURT DATED 15.12.2009.

ANNEXURE E: TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH
COURT DATED 30.11.2011.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

I.T.A.No.73 of 2014

Dated this the 21st day of July, 2015

JUDGMENT

Antony Dominic, J.

This appeal filed by the Revenue is directed against the order passed in ITA 381/13 on the file of the Income Tax Appellate Tribunal, Cochin Bench. On facts it is seen that during the assessment year 2006-2007, the assessee had contributed Rs.1.5 crores to medical benefit scheme for the benefit of its retired employees. This amount was disallowed by the Assessing Officer. However, the Commissioner of Income Tax set aside the order of the Assessing Officer and allowed deduction. Revenue preferred an appeal before the Tribunal which was dismissed by the impugned order. It is accordingly that this appeal is filed and the question of law framed is whether on the facts and circumstances of the case and also in the light of Section 40A(9) of the Income Tax Act, the assessee is entitled to claim deduction of the contribution made by it.

2. We heard the counsel for the appellant and the learned counsel appearing for the respondent.

3. While the Standing Counsel for the Revenue contended that in the light of Section 40A(9) of the Act the Tribunal could not have allowed deduction under Section 37 of the Act, the learned counsel for the assessee relied not only on Section 37 of the Act but also on the judgment of the Madras High Court in Commissioner of Income Tax, Madras II v. T. Stanes & Company Ltd. [105 ITR 251].

4. We have considered the submissions made. Section 37 provides that any expenditure (not being expenditure of the nature described in Section 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly or exclusively for the purpose of the business or profession shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession'. It was in the context of this provision that the Madras High Court rendered its judgment in *T.Stanes & Company Limited (supra)*. However, Section 40A provide for 'expenses or payments not deductible in certain circumstances', to the extent it is relevant reads thus:

“(1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in

any other provision of this Act relating to the computation of income under the head 'profits and gains of business or profession'.

(9) No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (iv) or clause (v) of sub-section (1) of section 36, or as required by or under any other law for the time being in force.]

5. Section 40A which starts with the non obstante clause. Prior to its amendment by Finance Act 2011, as per sub section (9) introduced by Finance Act, 1984 with effect from 1.4.1980, deduction of only payments for the purposes and the extent provided was permitted. Assessee does not have a case that the contribution made by it to the pension fund is payment which is permitted under Section 36. If that be so, in view of Section 40A(9), the payment made by the assessee could not have been allowed to be deducted and its disallowance by the Assessing Officer, is perfectly in line with the statutory provisions. We may also add that since sub section 9 was added to Section 40A by

Finance Act, 1984, the judgment of the Madras High Court in *T.Stanes & Company Limited (supra)* rendered in the context of assessment years 1959-1960 to 1964-1965 has no relevance in so far as the case of the assessee is concerned.

In such circumstances, answering the question of law in favour of the Revenue, this appeal is allowed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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