

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAIWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.452 of 2014

The Commissioner of Income Tax,
Chennai.

... Appellant

Vs.

M/s.Metropolitan Transport Corporation
(Chennai) Ltd.,
"Pallavan House", Anna Salai,
Chennai - 600 002.

... Respondent

Prayer: Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "B" Bench, dated 07.08.2013 in I.TA.No.1170/Mds/2013 for the assessment year 2006-07, preferred against the order of the Commissioner of Income Tax(Appeals)-V, No.121, Mahatma Gandhi Road, Chennai-600 034 made in ITA.No.256/2010-11, Date of order:25.02.2013, PAN NO:AAACP1935C and Assessment year:2006-2007 and against the order of the Assistant Commissioner of Income Tax, company Circle IV(2), Chennai, PAN.No.AAACP1935C, Ward/Circle/Range: Company Circle IV (2), Chennai-600 034, Status: Company, Assessment year:2006-2007 and date of order:20.12.2010.

For Appellant : Mr.Karthick Ranganathan,
Senior Standing Counsel

For Respondent : Mr.R.Vijayaraghavan

JUDGMENT
(Judgment was delivered by M.DURAIWAMY, J.)

Challenging the order passed in I.TA.No.1170/Mds/2013 in respect of the assessment year 2006-07 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench, the Revenue has filed the above appeal.

2.The appeal was admitted on the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the provision for wage arrears of Rs.5.80 crores is an ascertained liability, notwithstanding the fact that the said provision has been accounted on cash basis?"

3.When the appeal was taken up for hearing, Mr.Karthick Ranganathan, learned senior standing counsel appearing for the appellant- Revenue fairly submitted that the question of law involved in the present appeal is covered by the following decisions of the Hon'ble Supreme Court against the Revenue:

(i)[2000] 112 Taxman 61 (SC) [Bharat Earth Movers Vs. Commissioner of Income Tax]

"...

6.So is the view taken in Calcutta Co. Ltd. v. CIT [1959] 37 ITR 1, wherein this Court has held that the liability on the assessee having been imported, the liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. There may be some difficulty in the estimation thereof but that would not convert the accrued liability into a conditional one; it was always open to the tax authorities concerned to arrive at a proper estimate of the liability having regard to all the circumstances of the case.

Applying the above-said settled principles to the facts of the case at hand, we are satisfied that the provision made by the appellant-company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking a view to the contrary.

7. The appeal is allowed. The judgment under appeal is set aside. The question referred by the Tribunal to the High Court is answered in the affirmative, i.e., in favour of the assessee and against the revenue.

Before parting we would like to observe that when this

appeal came up for hearing on 24-3-1999, we felt some difficulty in proceeding to answer the question arising for decision because the orders of the authorities below and of the Tribunal did not indicate how the leave account was operated by the appellants and leave salary provision was made. To appreciate the facts correctly and in that light to settle the law we had directed the Tribunal to frame a supplementary statement of the case based on books of account and other relevant contemporaneous records of the appellant which direction was to be complied with within a period of six months. The hearing was adjourned sine die. After a lapse of sixteen months, the matter was listed before the Court on 20-7-2000. The only communication received by the Court from the Tribunal was a letter dated 20-6-2000 asking for another six months time to submit the supplementary statement of the case which prayer being unreasonable was declined. Under section 258 of the Act, the High Court or the Supreme Court have been empowered to call for supplementary statement of the case when they find the one already before it not satisfactory. Article 144 of the Constitution obliges all authorities, civil and judicial, in the territory of India to act in aid of the Supreme Court. Failure to comply with the directions of this Court by the Tribunal has to be deplored. We expect the Tribunal to be more responsive and more sensitive to the directions of this Court. We leave this aspect in this case by making only this observation.

8. We have culled out the necessary facts stated in the earlier part of this judgment from the statement of facts filed by the assessee-appellant before the Tribunal. The correctness of the requisite factual information relating to the leave encashment scheme, as stated in the said statement, does not appear to have been disputed before the Tribunal and was not disputed before this Court too."

(ii) [1959] 37 ITR 1 (SC) [Calcutta Co. Ltd., Vs. Commissioner of Income Tax]

"...

Turning now to the facts of the present case, we find that the sum of Rs. 24,809 represented the estimated expenditure which had to be incurred by the appellant in discharging a liability which it had already undertaken under the terms of the deeds of sale of the lands in question and was an accrued liability which according to the mercantile system of accounting the appellant was entitled to debit in its books of

account for the accounting year as against the receipts of Rs. 43,692-11-9 which represented the sale proceeds of the said lands. Even under section 10(2) of the Income-tax Act, it might possibly be urged that the word "expended" was capable of being interpreted as "expendable" or "to be expended" at least in a case where a liability to incur the said expenses had been actually incurred by the assessee who adopted the mercantile system of accounting and the debit of Rs. 24,809 was thus a proper debit in the present case. We need not however base our decision on any such consideration. We are definitely of opinion that the sum of Rs. 24,809 represented the estimated amount which would have to be expended by the appellant in the course of carrying on its business and was incidental to the same and having regard to the accepted commercial practice and trading principles was a deduction which, if there was no specific provision for it under section 10(2) of the Act, was certainly allowable deduction, in arriving at the profits and gains of the business of the appellant under section 10(1) of the Act, there being no prohibition against it, express or implied, in the Act.

It is to be noted that the appellant had led evidence before the Income-tax authorities in regard to this estimated expenditure of Rs. 24,809 and no exception was taken to the same in regard to the quantum, though the permissibility of such a deduction was questioned by them relying upon the provisions of section 10(2) of the Act.

It, therefore, follows that the conclusion reached by the High Court in regard to the disallowance of Rs. 24,809 was wrong and it should have answered the referred question in the affirmative.

Before we conclude, we are bound to observe that having accepted the receipts of Rs. 43,692-11-9 in their totality even though a sum of Rs. 29,392-11-9 only was actually received by the appellant in cash, thus making the appellant liable for income-tax on a sum of Rs. 14,300 which had not been received by it during the accounting year, it was hardly open to the Revenue to urge that the sum of Rs. 24,809 should not have been allowed as a permissible deduction before arriving at the profits or gains of the appellant which were liable to tax. Consistently enough with this attitude, the Revenue ought to have expressed its willingness to treat only a sum of Rs. 29,392-11-9 as the actual receipt of the appellant during the accounting year and made up the computation of the

profits and gains of the appellant's business on that basis. The Revenue, however, did nothing of the sort and insisted upon having its pound of flesh, asking us to delete the whole of the item of Rs. 24,809 from the debit side of the account which it was certainly not entitled to do.

We accordingly allow the appeal, set aside the judgment of the High Court and answer the referred question in the affirmative."

4.Mr.R.Vijayaraghavan, learned counsel appearing for the respondent - assessee submitted that in view of the judgments of the Hon'ble Supreme Court, the appeal may be dismissed.

5.Following the ratio laid down by the Hon'ble Supreme Court in the judgments reported in [2000] 112 Taxman 61 (SC) [Bharat Earth Movers Vs. Commissioner of Income Tax] and [1959] 37 ITR 1 (SC) [Calcutta Co. Ltd., Vs. Commissioner of Income Tax], the question of law is decided against the Revenue and in favour of the assessee. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Income Tax Appellate Tribunal,
Chennai, "B" Bench.
- 2.The Commissioner of Income Tax(Appeals)-V,
No.121, Mahatma Gandhi Road,
Chennai-600 034.
- 3.The Assistant Commissioner of Income Tax,
Company Circle IV(2),
Chennai.

+1cc to Mr.Subbarayan Aiyar, Advocate, S.R.No.18137

T.C.A.No.452 of 2014

GSM(CO)
CB(17/04/2021)