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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

The Honourable Mr. Justice T.S.SIVAGNANAM  
and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

T.C.A.No.611 of 2014

Commissioner of Income Tax,  
Chennai.

...Appellant

-vs-

The Karur Vysya Bank Ltd.,  
Erode Road, Karur-639 002.

...Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 10.01.2014 made in M.P.No.205/Mds/2013 in I.T.A.No.931/Mds/2011 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2006-07.

Against the order of the Commissioner of Income Tax (Appeals) Tiruchirappalli dated 30.03.2011 in IT.A.No. 379/08-09 and against the order of the Additional Commissioner of Income Tax, Range-I, Trichy dated 31.12.2008 in PAN No.AAACT3373J for the Assessment year 2006-2007.

For Appellant : Mr.M.Swaminathan

For Respondent : Mr.R.Vijayaraghavan

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/Revenue, filed under Section 260A of the Income Tax Act, 1961, is directed against the order dated 10.01.2014 made in M.P.No.205/Mds/2013 in I.T.A.No.931/Mds/2011 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2006-07.

2.The appeal was admitted on 04.09.2014, on the following substantial question of law:-



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"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction in respect of ex-gratia payment made to employees when such payments cannot be treated as business expediency or legal requirement allowable under Section 37 (1) of the Act?"

3. Identical substantial question of law was considered by a Division Bench of this Court in CIT vs. Lakshmi Vilas Bank Ltd., [T.C.(A) No.897 of 2013] to which, one of us (TSSJ) was a party and by judgment dated 16.04.2014, the appeal filed by the Revenue was dismissed. The relevant paragraphs of the judgment read as follows:-

"2. While completing the assessment under Section 143(3) of the Income Tax Act, 1961, the Assessing Officer found that the assessee had claimed deduction on the ex-gratia payment made to employees who were not covered by the provisions of the Payment of Bonus Act. The assessee contended that it was a type of incentive given to those employees, who did not fall under the provisions of the Payment of Bonus Act. The claim of the assessee was rejected holding that the same could not be treated as one falling under business expediency referred to under Section 37(1) of the Income Tax Act, 1961 specifically excluding the expenditure covered under Sections 32 to 36 of the Act and more so, in particular, when Section 36(1)(ii) specifically deals with payment of bonus as a head of deduction. The Assessing Officer held that the assessee was not entitled to have the deduction considered under Section 37(1) of the Act. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer. Hence, the assessee went on further appeal before the Income Tax Appellate Tribunal. The Tribunal pointed out that the payment in the instant case was made to those employees who did not fall within the purview of the Payment of Bonus Act. The provisions under Section 36(1)(ii) of the Income Tax Act, 1961 covered specific instances stated therein and that ex-gratia payment made to employees in



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excess of statutory limit was considered as a head of deduction. In this the Tribunal referred to the decision of the Calcutta High Court reported in (1994) 208 ITR 1002(Cal) [CIT vs. National Engineering Industries Ltd.]. The Tribunal further considered that the payment was a matter of business expediency. Even assuming for a moment that the amount paid was in excess of what is prescribed in the Payment of Bonus Act, the same would merit consideration as a deduction and that being the case, the Tribunal held that the payment made by the assessee to its employees who were not covered under the provisions of the Payment of Bonus Act was in the nature of exgratia payment as an incentive to the employees to be considered for deduction under the provisions of Section 37(1) of the Income Tax Act, 1961.

3. Aggrieved by this view of the Tribunal, the present appeal has been preferred by the Revenue.

4. We agree with the view expressed by the Tribunal that there being no restriction or prohibition under Section 37 of the Income Tax Act, 1961 on the claim for deduction on the ex-gratia payment given in the form of an incentive to the workman out of business expediency and the payment being a business expenditure, the Revenue's case deserves to be dismissed at the admission stage itself.

5. In the result, the Tax Case (Appeal) is dismissed. No costs. Consequently, the connected miscellaneous petition is closed."

4. In the aforementioned decision, the Division Bench referred to the decision of the Calcutta High Court in CIT vs. National Engineering Industries Ltd. reported in (1994) 208 ITR 1002 (Cal), which decision was followed by the Tribunal in the impugned order. Therefore, we find that the substantial question of law, raised in this appeal, has to be answered against the Revenue by following the above decision.



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5. In the result, the tax case appeal is dismissed and the substantial question of law is answered against the Revenue. No costs.

Sd/-

Assistant Registrar (CS IV)

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Sub Assistant Registrar

abr

To

1. The Income Tax Appellate Tribunal 'A' Bench,  
Chennai.
2. The Commissioner of Income Tax (Appeals),  
Tiruchirappalli.
3. The Additional Commissioner of Income Tax,  
Range-I, Trichy.
4. The Commissioner of Income Tax,  
Chennai.

+1 cc to Mr. M. Swaminathan, Advocate Sr. No. 38934

+1 cc to M/s. Subbaraya Aiyar, Advocate Sr. No. 38941

T.C.A.No.611 of 2014

AJS[co]

NSK 01/09/2021