

## **Commissioner Of Income-Tax, Kerala vs C.D. Lonappan on 16 November, 1965**

**Equivalent citations: [1966]60ITR247(SC), AIRONLINE 1965 SC 18, (1966) 60 ITR 247**

**Bench: J.C. Shah, K. Subba Rao, S.M. Sikri**

### **JUDGMENT**

Subba Rao, J.

1. This appeal by special leave is preferred against the judgment of the High Court of Kerala at Ernakulam in Income-tax Reference No. 22 of 1961.

2. C. D. Lonappan, the respondent, was carrying on business in groceries, rice, paddy, etc., under the name and style of C.L.V. Brothers at Mattancherry. During the accounting year ending with March 31, 1956, the respondent had 34 employees. He paid them a total annual salary of Rs. 16,000. As he had made a profit of Rs. 31,812 he paid them a bonus of Rs. 10,125. During the assessment year 1956-57 he claimed a deduction of the said amount from his taxable income. The Income-tax Officer found in most of the cases the payment of bonus was far in excess of three months salary and on that ground disallowed a sum of Rs. 5,936. The assessee preferred an appeal to the Appellate Assistant Commissioner, who rejected the appeal on the following grounds : (i) the actual cash payments to the various employees were much less than the salary and bonus found credited in their accounts; and (ii) the vouchers in annexure "C" were unsatisfactory and unacceptable. On further appeal, the Income-tax Appellate Tribunal, Madras Bench "B", took the same view. It gave, inter alia, the following reasons for its conclusion : (i) the bonus claimed had no relation to the salary or length of service; (ii) the bonus disbursement was only at the end of the year; (iii) the genuineness of the payment was doubtful; and (iv) there were over-writing and erasures in the ledger account of P. V. Lonappan. As the Tribunal refused to make a reference to the High Court, at the instance of the assessee, the High Court directed the Tribunal to state a case and refer to it the following question of law :

"Whether the Tribunal misdirected itself in law in disallowing a part of the bonus paid to the employees ?"

3. Thereupon, the Tribunal drew up a statement of case and referred the said question to the High Court. The High Court answered the question in the affirmative. Hence the present appeal.

4. Learned counsel for the revenue, Mr. N. D. Karkhanis, contended that no question of law arose on the Tribunal's order and, therefore, the High Court had no jurisdiction either to direct the Tribunal to refer the question to it or to express its opinion thereon.

5. It is commonplace that a reference lies only on a question of law. The High Court was not unaware of the limits of its jurisdiction. Indeed, the question *ex facie* involves a question of law and the High Court expressed its opinion, as it came to the conclusion that the Tribunal misdirected itself in law in disallowing a part of the bonus paid to the employees of the assessee. A perusal of the order Tribunal discloses that it has rejected the claim of the assessee mainly on the ground that the bonus claimed had no relation to the salary and on the basis of the suspicious nature of some of the entries found in the accounts of the assessee. The High Court took the view that the finding of the Tribunal was not based on any evidence falling under the following three heads mentioned in the proviso to section 10(2)(x) of the Indian Income-tax Act : (a) the pay of the employee and the conditions of his service; (b) the profits of the business of the year; and (c) the general practice in similar business. It pointed out that the average salary of the employees was quite meagre, that there was no evidence regarding the other conditions of service, that it was not suggested that the employees were afforded other amenities and facilities, that there was no evidence about the practice in similar businesses and that the profits during the relevant accounting year were substantial. It further held that the bonus given worked out to about 7 1/2 months salary and that, having regard to the low salary of the employees, it was impossible to say that the bonus paid was not reasonable. Under those circumstances the High Court held that the Tribunal, inasmuch as it did not take into consideration the relevant factors in terms of the said proviso, misdirected itself in law in disallowing a part of the bonus paid by the assessee to the employees. It will, therefore, be seen that the High Court answered the reference, as in the view expressed by it a question of law arose for its consideration. Therefore no question of want of jurisdiction arises in this case. The argument of the learned counsel, in substance, was not that the question referred to and answered by the High Court did not raise a question law, but that the circumstances mentioned by the High Court were also taken into consideration by the Tribunal.

6. A perusal of the order of the Tribunal does not justify that contention.

7. Apart from the merits of the case, we do not think that this is a fit case for interference in exercise of our extraordinary jurisdiction under article 136 of the Constitution. The amount involved in the appeal was a few thousand rupees; and no important question of law arises for our decision. The scope of clauses (1) and (2) of section 66 of the Income-tax Act has been laid down by authoritative decisions of this court more than once.

8. In the result, the appeal fails and is dismissed with costs.

9. Appeal dismissed.