

**Lakhamichand Muchhal Vs. Commissioner of Income-tax, M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Sep-10-1962

**Reported in :** [1963]48ITR562(MP); 1962MPLJ1146

**Appellant :** Lakhamichand Muchhal

**Respondent :** Commissioner of Income-tax, M.P.

**Judgement :**

DIXIT C.J. - This is a reference under section 66(1) of the Indian Income-tax Act at the instance of the assessee, Messrs. Lakhamichand Muchhal of Indore. The question stated for our opinion is :

'Whether, in the facts and circumstances of this case, the sum of Rs. 21,000 paid to the munim, Jagannathji, was an allowable deduction under section 10(2)(xv) of the Act ?'

The assessee is a registered firm. In the assessment proceedings for the year 1955-56 the claimed a deduction of Rs. 21,000 on the ground that the amount was paid to its ex-munim, one Shri Jagannathji, as gratuity at the time of his retirement. The Income-tax Officer disallowed the deduction holding that there was no evidence to show that the assessee used to pay such gratuity to its employees or that the payment was made in the future interest of the business. He relied on *Gordon Woodroffe Leather . v. Commissioner of Income-tax*. The Appellate Assistant Commissioner also rejected the assessee's claim for deduction. Before him also it was admitted by the assessee that the payment of gratuity to Jagannath was the first instance of any gratuity paid to an employee by the assessee firm. The assessee that Jagannathji was paid this amount of gratuity as he used to look after the entire business when the partners of the firm were very young and inexperienced. In reply to a query made by the Appellate Assistant Commissioner, the assessee addressed a letter saying that the firm was started some forty years back and that some ten years after Jagannathji entered the service of the firm on a salary of Rs. 150 per month which was raised to Rs. 200 after a period of ten years and then again raised to Rs. 250 after five years and ultimately in Samvat 2008 Jagannathji was being paid a salary of Rs. 350 per month. In the letter it was also admitted by the assessee that there was no system of giving any gratuity, pension or provident fund to its employees on retirement. The Appellate Assistant Commissioner held that the case was fully covered by the decision of the Madras High Court in *Gordon Woodroffe Leather . v. Commissioner of Income-tax*. The Tribunal also found that and that it was for the first time in the history of the business that Jagannathji was paid a gratuity equivalent to his 60 months salary at the time of his retirement. On this finding the Tribunal held that the deduction could not be allowed under section 10(2)(xv) of the Act.

The point raised in this reference is concluded by the decision of the Supreme Court in *Gordon Woodroffe Leather . v. Commissioner of Income-tax* upholding the decision of the Madras High Court in *Gorden Woodroffe Leather . v. Commissioner of Income-tax*. That was a case in which an employee of the managing agent of the assessee company was paid a gratuity of by the assessee company 'in appreciation of his long and valuable services to the company'. It was not the practice of the company to pay such gratuities and in fact the company had no scheme for payment of gratuities. There was also no evidence to show that the employee had accepted a low salary in expectation of a gratuity on retirement or to show that the gratuity was paid for the purpose of facilitating the business of the company or was paid as a matter of commercial expediency. In these circumstances the Supreme Court held that the claim was not a deductible item under section 10(2)(xv). It was observed by the Supreme Court that the proper test to be applied in such a case is, 'was the payment made as a matter of practice which affected the quantum of salary or was there an expectation by the employee of getting a gratuity or was the sum of money expended on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business.'

In the present case, the assessee admitted that it was not the practice of the firm to give gratuities to its employees and that the payment of gratuity to Jagannathji was the first instance of its kind. There is no evidence whatsoever to show that Jagannathji expected to get a gratuity when he entered the service of the firm on a salary of Rs. 150 per month. There is also nothing to indicate that the gratuity was given to Jagannathji as a part of any scheme of the assessee firm to give in future to all its employees gratuity as an incentive to them to give their best service to the firm and that thus the amount was expended on the ground of commercial expediency. The burden of proving the circumstances for allowing a deduction, as stated by the Supreme Court, was clearly on the assessee. The assessee has failed to do so. That being so, the question referred to us must be answered in the negative.

Shri Chitale, learned counsel for the assessee, while admitting that there was no evidence to show that the gratuity was paid to Jagannathji on the ground of commercial expediency and in order indirectly to facilitate the firms business said that the case should be referred back to the Tribunal for a supplementary statement with regard to the question whether the money paid to Jagannathji was expended on the ground of commercial expediency for facilitating the firms business. It was never the assessee's case before the income-tax authorities or the Tribunal that the gratuity amount paid to Jagannathji was on the ground of commercial expediency for facilitating the carrying on of the firms business. That being so, we cannot, in the exercise of our jurisdiction under section 66(4) of the Act, raise a new question and ask the Tribunal to entertain a fresh line of enquiry and record fresh finding of fact after hearing the parties in regard to that question. This is clear from the decision of the Supreme Court in *New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax*.

For these reasons our answer to the question propounded is that the sum of Rs. 21,000 paid to Jagannathji is not a deductible item under section 10(2)(xv) of the Act. The assessee shall pay the costs of this reference. Counsels fee is fixed at Rs. 200.

Order accordingly.