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T.C.A.No. 493 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2025

PRONOUNCED ON : 24.03.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

T.C.(A).No.493 of 2013

M/s. Sanmar Speciality Chemicals Limited
No.9, Cathedral Road,
Chennai.

.. Appellant

VS

The Assistant Commissioner of Income-Tax
Company Circle, VI (1), Chennai

.. Respondent

Prayer : Appeal filed under Section 260A of the Income-Tax Act against order of the Income Tax Appellate Tribunal, B Bench, Chennai dated 07.03.2013 made in ITA No.1411/Mds/2012.

For Appellant : Mr.Vijayaraghavan
For M/s. Subbarayaaiyar Padmanabhan
Ramamani

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel



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JUDGMENT

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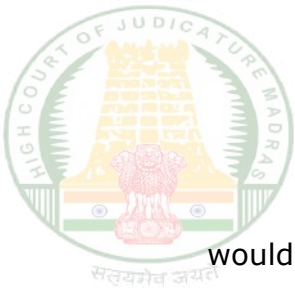
(Per :- Dr. ANITA SUMANTH.,J)

This Tax Case (Appeal) relates to Assessment Year (AY) 2008 – 09. The appellant / assessee is engaged in the business of manufacturing and sale of specialty Chemicals and Biotechnology products. In respect of AY 2008 – 09, returns were filed under the Income-Tax Act, 1961 (Act) and an intimation under Section 143(1) was issued on 09.03.2010. The assessment was taken up for finalization and completed vide an order dated 27.12.2010.

2. One of the issues picked up for assessment relates to a provision made towards gratuity fund with the Life Insurance Corporation of India (LIC). The assessing officer notes that the claim had been made as per the provisions of Section 40(A)(7)(b) of the Act. He was however of the view that though the narration in the schedules to the balance-sheet and profit and loss account stipulated that the amount was towards gratuity, it was only a provision.

3. Hence, the claim was hence hit by the provisions of Section 43B of the Act which requires certain claims to be allowed only on the basis of actual payment. The provision was thus disallowed and the amount of Rs.31,24,172/- added back to total income.

4. In appeal before the Commissioner of Income-Tax Appeals (CIT(A)), assailing the aforesaid disallowances amongst others, the assessee adopted the stand that the provisions of Section 40(A)(7)(b)



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would override all other provisions of the Act including Section 43B, being a specific provision. The CIT(A) allowed the appeal vide order dated 29.03.2012. In doing so, he takes note of the order of the CIT(A) in this assessee's case for the immediately preceding assessment year, AY 2007 – 08, where too the stand of the assessee had been accepted.

5. As against the above order, the Revenue filed an appeal before the Income Tax Appellate Tribunal ('Tribunal' / 'ITAT'). The specific ground raised, relying on the decision of the High Court of Calcutta in *CIT v Sri Kamakhya Tea Company Private Limited* [199 ITR 714] was that the provisions of Section 43B would override the provisions of Section 40A(7).

6. The Tribunal allowed the appeal vide impugned order dated 07.03.2013, as against which the present appeal has been filed by the assessee raising the following substantial questions of law that have been admitted for resolution on 19.08.2013:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Rs.31,24,172/- made by the assessee towards the approved gratuity fund with LIC of India and approved by the Commissioner of Income Tax is not an allowable deduction under Section 40(A)(7)(b) of the Act?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that notwithstanding the allowability of provision made for gratuity under Section 40A(7), the actual payment of the amount to the Trust has to be effected before the same can be allowed?

3. Whether on the facts and in the circumstances of the case and in law the



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Tribunal was right in holding that the provisions of Section 43B(b) overrides the provisions of Section 40(A)(7)(b) of the Act?"

7. Mr.Vijayaraghavan appearing for the assessee, would reiterate the submissions made before the authorities below, relying on the decisions in (i) *Shasun Chemicals and Drugs Limited v CIT* [73 Taxmann/cp, 293 (SC)]; (ii) *CIT v Commonwealth Trust (I) Ltd* [269 ITR 290 (Ker)]; (iii) *CIT v Bechtel India (P) Ltd* [75 CHH 1132 (Del)]; (iv) *Mewar Sugar Mills Ltd v DCIT* [61 TTJ 633 (Jaipur) & Order of Income Tax Appellate Tribunal in ITA No. 738/Mds/2010 dated 18.08.2017.

8. He would point out that the order of the CIT (A) had taken note of the correct position in law. That apart, the orders of the CIT (A) for the earlier year as well the subsequent two years i.e., AY 2007-08 and 2009 – 10 / 2011 – 12 allowing the Assessee's appeal on this point, had travelled to the Tribunal at the instance of the Revenue, and by an order dated 18.12.2015, the matter had been restored to the file of the assessing officer for adjudication afresh. The assessing authority has given effect to the order of the Tribunal accepting the contentions of the assessee.

9. Per contra, Mr.Narayanaswamy, who appears for the Income-Tax Department would defend the order of the Tribunal arguing that the claim was liable to be rejected as it is the provisions of Section 43B that would prevail. The specific argument advanced by the Departmental Representative (DR) before the Tribunal had been that there was no material on record to indicate that the assessee had effected payments to LIC either during the relevant previous year or before the due date for



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filing return of income.

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10. Thus, according to the DR, the stipulations both under Sections 40A(7) as well as 43B were to be satisfied for the reason that, admittedly, the claim made by the assessee was only in relation to a provision, and there was nothing on record to establish that it had actually been paid. Learned Standing Counsel relies on the decision of the Patna High Court in *Bihar State Warehousing Corporation Limited vs Commissioner of Income Tax 1 Patna [2016 (7) TMI 940]*.

11. Before adverting to the relevant facts in the matter, particularly in relation to the contribution towards gratuity, we proceed to discuss the cases cited by the parties, advert first to the case cited by learned Standing Counsel and decide the legal issue. The facts arising in this matter will be applied to the law thereafter.

12. In Bihar State warehousing Corporation, the Patna High Court was concerned with a provision towards gratuity admittedly not having been made towards an approved gratuity fund. It had also been admitted that the provision had not been made on actuarial valuation basis. There are findings of fact to aforesaid effect, that there was nothing on record to show that the provision made by the Bihar State Warehousing Corporation was neither towards an approved gratuity fund or on actuarial basis.

13. The Corporation had adopted the generic argument that the provision for gratuity was ascertained and not contingent as it was being made year on year, and that it had been made towards an approved gratuity fund towards sums that had become payable during the relevant



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previous year.

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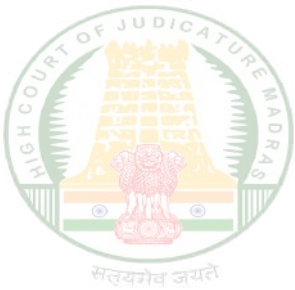
14. However, as the Tribunal had recorded a finding of fact that there was no material to support the submission that the provision was towards contribution to an approved gratuity fund, the High Court held that the plea that the contributions were towards the approved gratuity fund had been made for the first time before it and such plea was belated being a pure question of fact that has not been tested before any of the lower authorities.

15. Thus, the Court declined consideration of a new factual averment at that stage. As a consequence, the applicability of Section 40A (7) lost all force, since that provision is premised on the contributions having been made towards an approved gratuity fund only. We will presently advert to the factual position in the present case on the aspects referred to in the paragraphs supra.

16. Section 40A adumbrates those categories of expenses/payments that are not deductible under certain circumstances. Sub-section (1) to Section 40A contains a categorical, non-obstante declaration to the effect that the provisions of Section 40A shall have effect, notwithstanding anything to the contrary contained in any other provision of the Income-Tax Act, 1961 relating to the computation of income under the head 'Profits and Gains of Business or Profession'.

17. Sub-section 7(a) of Section 40A reads thus:-

"40(A) Expenses or payments not deductible in certain circumstances.-



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(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".

....

(7)(a) No Subject to the provisions of clause (b), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

(b) Nothing in clause (a) shall apply in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year.

....."

18. Clause (a) of Section 40A(7) states that no deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity to their employees on their retirement or on termination. Clause (b) carves out an exception to the stipulation under clause (a), to the extent of a contribution made towards an approved gratuity fund or for the purpose of payment of any gratuity that has become payable during the previous year.

19. Section 43B too commences with a non obstante clause that '*notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of – ' expenditures adumbrated in clauses (a) to (h) of that Section shall be allowed only if actually paid by that assessee.*

20. We are concerned with two special provisions as both Sections



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43B and 40A commence with non obstante clauses. In such situations, one may make useful reference to a series of judgments of the Supreme Court dealing with preference to be accorded in the case of an interpretation involving two special provisions.

21. Three Judges of the Supreme Court in *Sarwan Singh and anr v KasturiLal* [AIR 1997 SC 265] stated that, where both the enactments in question contain a non obstante clause and '*when two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise since statutory interpretation has no conventional protocol case of such conflict has to be decided in reference to the object and purpose of the laws under consideration*'.

22. In *R.S.Ragunath v State of Karnataka and Ors* [AIR 1992 SC 81], the Supreme Court noted its earlier observations in the case of *Justiniane Augusto De Piedade Barreto v Antonio Vincente Da Fortseca and ors* [AIR 1979 SC 984] to the effect that a law which is essentially general in nature may contain special provisions on certain matters and in respect of these matters it would be classified as a special law. Therefore unless the special law is abrogated by express repeal or by making provisions which are wholly inconsistent with it, the special law cannot be held to have been abrogated by mere implication.

23. In *Ashoka Marketing Limited and anr v Punjab National Bank and others*, [AIR 1991 SC 855], a Constitution Bench of the Supreme Court also considered two special enactments, the Public Premises Act and



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the Rent Control Act and which would override the other. They concluded as follows:-

One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores contrarias abrogant, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).

24. The Rule that a general provision should yield to specific provision springs from the common understanding that when two directions are given one encompassing a large number of matters in general and another to only some, the latter directions should prevail as being more specific in nature. Section 40A has been inserted by the Finance Act, 1968 with effect from 01.04.1968 whereas Section 43B has been inserted later vide Finance Act, 1983 with effect from 01.04.1984.

25. One of the parameters to determine priority of one legislation / provision over the other, is as to which was the later provision and the general understanding is that the later would prevail. However, in the present case, the provisions of Section 40(A)(7), particularly clause (b) are specific to a claim of deduction based on a provision for payment towards an approved gratuity fund.

26. This is a stipulation which does not feature in the other



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provision i.e., Section 43B which is general its application and, relates to a 'gratuity fund' in clause (b) thereof in general terms. Seen in that context, the two provisions could be reconciled easily as, in our considered view, there is no real conflict inter se.

27. Had Section 43B also made reference to an approved gratuity fund, a conflict might have arisen. In the present circumstances, where Section 40(A)(7)(b) refers specifically to an approved gratuity fund and Section 43B, in generic terms, to a gratuity fund, we see no conflict in applying the provision of Section 40(A)(7)(b) in preference to Section 43B in the case of an approved gratuity fund.

28. The decisions in *Commonwealth Trust (I) Limited* (Kerala High Court) and *Bechtel India Private Limited* (Delhi High Court), support the legal position canvassed by the assessee on all fours. In *Commonwealth Trust* (supra), the Court answered this issue in favour of the assessee after a detailed discussion where the provisions of Sections 43B and 40(A)(7) have been compared and several case law referred.

29. In *Betchal India* (supra) the Court was concerned with the computation under Section 115JB of the Act, being Minimum Alternate Tax. On the issue of allowability of the claim for gratuity, the Court accepts the assessee's stand noting thus:

"6. Further, we are in agreement with the Tribunal that s.40A(7)(b) of the Act will have an overriding effect over s.43B of the Act. In the first place s.40A(1) is an unequivocal non obstante clause and since s. 40A(7)(b) specifically permits a deduction of a sum constituting the provision towards an approved gratuity fund, the said



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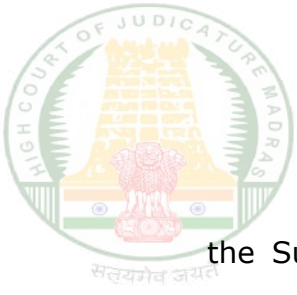
provision will take precedence over a comparatively general provision like s.43B. Secondly, s.40A(7)(a) which disallows deduction of any provision of gratuity to employees on their retirement is itself made subject to s.40A(7)(b) which allows such deduction as long as it is made towards an approved gratuity fund. There is no dispute that in the instant case the provision made is towards contribution to an approved gratuity fund. Therefore the claim by the assessee for deduction on this score was clearly justified. We are accordingly of the opinion that no substantial question of law arises in this regard as well."

30. We find support for our conclusion at paragraph 20 supra, in the observations of the Delhi Court above to the effect that a specific provision such as Section 40A(7)(b) will take precedence over 'a comparatively general provision like Section 43B'.

31. In fact, the issue has been more or less answered by the Supreme Court in the case of *Shasun Chemicals (supra)*, where the interplay between Sections 43B and Section 40A(9) is noted. The provisions of Section 43B mandate that certain deductions would be allowed only on actual payments.

32. Section 40A(9) states that no deduction shall be allowed in respect of any sum paid by the assessee as an employer towards setting up, or its contribution to any fund/trust/company/AoP/DOI/Society/Institution, except where the sum is paid in accordance with the relevant provisions of Section 36 or as required by, or under any other law for the time being in force.

33. The analogy drawn by the assessee is qua the observation of



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the Supreme Court in the context of Section 40A(9) by that assessee, pointing out that that provision, Section 40A(9), has been held to override the provisions of Section 43B by operation of the non-obstante clause in Section 40A(1). So too in the present case, we agree that the provisions of Section 40A(7) would override Section 43B if the assessee in question satisfies the stipulations under clauses (a) and (b) thereof.

34. It thus remains for us to see whether the contributions made by the assessee are to an approved gratuity fund or otherwise, as that would be critical to determine eligibility in terms of Section 40A(7)(b).

35. The case of the assessee all along has been that the contributions are being made to an approved gratuity fund. The records in respect of these contributions for the previous and subsequent years are well available before the assessing officers, who has accepted the case of the assessee after remand by the Income Tax Appellate Tribunal for those years.

36. The giving effect order passed in respect of AY 2008 – 09 is dated 10.06.2013. In that order, the assessing officer notes, on verification of allowability of the provision made, that the amount in question for that year had been paid to the LIC in January 2008. However, since relief had been granted to the assessee under Section 40A(7)(b) for AY 2007-08 per the order of the CIT(A) for that year, the claim for AY 2008-08, was restricted to that extent. The claims of the assessee for AY 2009-10 and 2011-12 have been accepted by the assessing officer vide orders dated 31.03.2017.



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37. For the present year, which falls in between the previous and subsequent years where the stand of the assessee on this issue has been accepted, the assessee places on record the following particulars to establish that the payments have been made to the LIC gratuity fund duly approved by the Commissioner of Income-Tax, Tamil Nadu, I, Chennai.

38. A copy of original trust deed dated 1.03.1978 has been produced. That deed is between the Chemicals Plastics India Limited and the Trustees of the aforesaid Company, and provides for setting up of a group gratuity fund for various benefits to the employees. The fund is deemed to have taken effect from 1.1.1978. Vide proceedings of CIT Tamilnadu – 2, Madras – 34, dated 23.05.1979, recognition and approval have been accorded to the employees gratuity fund.

39. Variations were made to the aforesaid deed of trust on 15.04.1988, with the previous approval of the CIT to such variations obtained under C.No.1252-II(4)/78/dated 15.3.1988. One of the variations is to sub-clause(a) of the preamble to trust deed dated 1.3.1978 extending the scope of applicability of trust deed to 'the employees of any of its subsidiaries/associates' also.

40. With the above variation having been approved to take effect on 15.04.1988, the contributions of the assessee company also stand covered under the ambit of the approved gratuity fund. The aforesaid variation has been carried forward throughout deed of trust dated 01.03.1978, thus bringing the subsidiaries/associates of Chemicals and Plastics Limited also within the cover of approved gratuity fund dated



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1.03.1978 with effect from 15.04.1988.

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41. A letter from the LIC dated 01.03.2008 is produced setting out the actuarial valuation under Group Gratuity Scheme/ Master Policy bearing Number 40282. The actuarial value of past services is computed at a sum of Rs.18,24,96,153/-. This is in respect of the Group Companies as the letter has been addressed to the trustees of Chemplast Sanmar Limited. The break-up of the contribution qua the present assessee is set out at page 2 of typed-set dated 17.12.2024 in the following manner:-

Liability as on 31.3.2008 of SSL as per LIC	1,98,90,145/-
Opening Balance of liability	1,19,70,058/-
Payment during the year	67,62,000/-
Net liability to be provided	11,58,087/-
Add : Current Service Cost	13,10,000/-
Interest cost	13,04,593/-
Less : Expected gain on Planned asset	(6,57,234)/-
Total provision required	31,15,446/-
Provision debited to P&L	31,24,172/-

42. The above documents have been supplied to the learned Senior Standing Counsel and sufficient time and opportunity afforded to him to obtain instructions from the Assessing Officer. Learned Counsel, fairly, does not dispute the position that the Assessee has been granted the benefit of the claim under examination now, for the previous and subsequent years. The documentation produced now is identical to the documentation on the basis of which the claim had been accepted by the Department for the other years.

43. In light of the aforesaid discussion, the judgements discussed and the admitted factual position that obtains in the matter, we have no hesitation in answering the substantial questions of law in favour of the



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assessee and against the revenue.

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44. This Tax Case (Appeal) is allowed. No costs.

[A.S.M., J] [G.A.M., J]
24.03.2025

Index:Yes
Neutral Citation:Yes
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To
The Assistant Commissioner of Income-Tax
Company Circle, VI (1), Chennai.



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DR. ANITA SUMANTH.,J.
and
G.ARUL MURUGAN.,J.

ssm

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