(1997) 07 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : IT Reference No. 4 of 1984

Baldev Singh Kanwar APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:
Income Tax Act, 1922 — Section 10(2)(xv)

Citation : (1998) 96 TAXMAN 507

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant;

Judgement

Ashok Bhan, J.—The Tribunal, Amritsar Bench, has referred the following question of law to this Court for its opinion at the instance of the assessee : "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs. 54,638 paid by the assessee-firm by way of penalty to the J & K Government was not deductible as business expenditure under the income tax Act, 1961 ?"

The assessee is a rosin contractor who had taken contract for the extraction of rosin of Arnas Range during the assessment year. He was called upon to make payment of Rs. 54,638 as penalty on account of damages caused by blazes. It was explained by the assessee that according to the agreement, he was to extract rosin by placing blazes of a standard size and shape. In the process of extracting rosin, sometimes (frequently) these standards and norms were not scrupulously kept by the contractor. According to the terms of agreement, the assessee was, in such circumstances, called upon to pay damages. The assessee had claimed deduction of the sum of Rs. 54,638. Following the decision of this Court in the case of Cineramas Vs. Commissioner of Income Tax, the ITO held that payment was made for breach of contractual obligations, which could not be considered a business outgoing. Claim of the assessee for deduction was disallowed and the same was added to the profit of the year. This order was confirmed in appeal by the AAC. Before the Tribunal again, the order of the authorities below was confirmed. At the instance of the assessee, the aforesaid question of law has been referred to us for opinion.

2. It has been reported that the assessee has died. His legal representatives have not come on record. We called upon Mr. B.S. Gupta, senior advocate, appearing for the department to assist us in the case. The point in issue is squarely covered by a judgment of this Court in COMMISSIONER OF Income Tax Vs. HIMALAYA ROSIN-TURPENTINE MANUFACTURING COMPANY.,

In that case, the assessee was carrying on the business of extracting rosin from forest lease for that purpose and selling the extracted commodity thereafter. He entered into an agreement with the Tehri Garhwal State under which he was bound to extract rosin according to certain terms and conditions and was liable to pay compensation for failure to observe the same. As the assessee transgressed the terms and conditions of the agreement, he was called upon to pay a sum of Rs. 5,000 as fine. After paying the fine, the assessee claimed deduction of that amount as business expenditure u/s 10(2)(xv) of the Indian income tax Act, 1922. The Tribunal had allowed the claim of the assessee. Reversing the decision of the Tribunal, it was held by this Court that the sum of Rs. 5,000 was not an item which was expended for the purpose of enabling the assessee to earn profits in the trade but was imposed as a penalty for the breach of the rules and he was, therefore, he not entitled to the deduction claimed. Respectfully following the view in Himalaya Rosin-Turpentine Mfg. Co.''s case (supra), the question referred to us by the Tribunal is answered in the affirmative, that is, against the assessee and in favour of the revenue. No costs.