
(1989) 03 CAL CK 0068

In the Calcutta High Court

Case No : Income-tax Reference No. 569 of 1979

British Paints (India) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 36(1)

Citation : (1990) 84 CTR 136 : (1991) 190 ITR 196

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : R.N. Saha, for the Appellant; Bagchi, for the Respondent

Judgement

This Judgment has been overruled by : Peddireddy Subbareddi and others Vs. State of Andhra Pradesh, AIR 1991 SC 1356 : (1991) CriLJ 1391(1)

Suhas Chandra Sen, J.—The Tribunal has referred the following questions of law to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in presuming that payments of the Assessee-company's Income Tax liability were made during the previous year out of its overdraft from the Chartered Bank when all the company's sale proceeds and receipts during the year covering its profits far in excess of such tax liability were being deposited in that overdraft account and as such in holding that a proportionate part of the interest on the said overdraft was referable to the tax payments ?

2. Without prejudice to question No. 1 above, whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs. 14,917 being the interest purported to be referable to the company's overdrafts from the Chartered Bank to the extent of the payment of its aforesaid Income Tax liability did not qualify for allowance u/s 36(1)(iii) of the Income Tax Act, 1961 ?"

2. The assessment year is 1973-74 for which the accounting year was the year ending December 31, 1972. A sum of Rs. 14,917 paid by way of interest to a bank was disallowed by the Income Tax Officer on the ground that this interest was really for the purpose of money borrowed for payment of Income Tax.

3. In the appeal before the Appellate Assistant Commissioner, it was pointed by the assessee that as against payments of Rs. 12,94,485 the net profits of the company were as much as Rs. 18,35,992. The overdraft account with the Chartered Bank was not utilised by the assessee for payment of taxes. The Appellate Assistant Commissioner observed :

"The Income Tax Officer had failed to establish that the applicant had actually borrowed moneys from the banks to meet the tax liabilities. In view of the fact that the applicant had adequate profits to meet the entire tax liability for the relevant previous year, the Income Tax Officer's presumption that part of the overdraft could have been utilised for payment of taxes is not warranted if the overall facts and circumstances of the case are taken into account."

4. The Department went up in appeal to the Tribunal. Before the Tribunal, it was also specifically argued that though the tax payments were admittedly made through the overdraft account, nevertheless, having regard to the fact that the sale proceeds were being credited to that account and the inputs exceeded the outputs, the taxes had not been paid by taking additional loans. Without prejudice to this argument, it was also submitted that even if the interest was paid on money borrowed for payment of taxes, that should also be allowed as deduction. The Tribunal, however, allowed the appeal against the order of the Appellate Assistant Commissioner. So far as the first question is concerned, the principle of law has now been settled by a judgment of this court in the case of *Indian Explosives Ltd. Vs. Commissioner of Income Tax*, , where on similar facts, the interest paid by the assessee on the overdraft account was held to be deductible. In coming to this conclusion, the court followed the earlier judgments of this court in the case of *Reckitt and Colman of India Ltd. Vs. Commissioner of Income Tax*, and *Woolcombers of India Ltd. Vs. Commissioner of Income Tax (Central)*, . Following the principles laid down in these cases, we answer the first question in the negative and in favour of the assessee. In the facts of the case, question No. 2 is also answered in the negative and in favour of the assessee.

5. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

6. I agree.