

(1998) 11 MAD CK 0116

In the Madras High Court

Case No : Tax Case No"s. 652 and 653 of 1984 (Reference No"s. 578 and 579 of 1984)

Commissioner of Income Tax

APPELLANT

Vs

Chemical Constructions

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 10A
Income Tax Act, 1961 — Section 37

Citation : (2000) 243 ITR 858

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; V. Chittranjandas, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred at the instance of the Revenue is as follows :

"Whether, on the facts and circumstances of the case, the penalty paid by the assessee u/s 10A of the Central Sales Tax Act, 1956, is an admissible deduction in computing the income from the business of the assessee ?"

2. The assessment year is 1977-78.

3. The assessee is a private limited company engaged in the business of constructing buildings. It had obtained "C" form and availed of the concessional rate of sales tax at the rate of 3 per cent, even though it was not entitled to "C" form, having regard to the fact that the assessee was not a re-seller and the goods obtained by it had not been consumed in the manufacture, of other goods. Consequently, the assessee suffered a penalty u/s 10A of the Central Sales Tax Act. The penalty that was levied was the difference between the rate at which the tax had been actually paid and the rate at which it was properly payable.

4. The assessee's claim that the amount so paid by it was business expenditure was rejected by the Assessing Officer and the appellate authority, but was

reversed by the Tribunal. The Revenue has called into question, the correctness of the Tribunal's view.

5. The fact that a levy is termed as a penalty in a statute is not by itself decisive of its true character, as observed by the Supreme Court in *Malwa Vanaspati and Chemical Co. Vs. Commissioner of Income Tax*, . "The use of the word "penalty" in the provision is neither here nor there". It is only when a levy does not have any compensatory character that it has to be regarded as penalty.

6. In the case of *Malwa Vanaspati and Chemical Co. Vs. Commissioner of Income Tax*, , the Supreme Court was concerned, inter alia, with the levy of penalty u/s 8 of the Madhya Pradesh General Sales Tax Act, which provides for a penalty in cases where raw materials purchased by a registered dealer are utilised for any purpose other than the purpose specified in Sub-section (1) of Section 8 of that Act. The penalty was to be an amount not less than the difference between the amount of tax leviable under the statute and the amount of tax payable u/s 8(1) of the Act and not exceeding 1 1/4th times the amount of tax. Construing the provision, it was held by the Supreme Court that Section 8(2) of the Madhya Pradesh General Sales Tax Act provides both the elements of compensation and penalty. Compensation in so far as payment of tax at the full rate is obligatory, and penalty in so far as something more up to 25 per cent. thereon being payable, should the Commissioner so direct.

7. It is, therefore, necessary for the authority to ascertain as to whether the levy termed penalty can only be regarded as such and not in any other manner. Reliance was placed by counsel on the decision of the Supreme Court in the case of *Maddi Venkataraman and Co. (P) Ltd. Vs. Commissioner of Income Tax*, . That was a case where penalty had been levied under the provisions of the Foreign Exchange Regulation Act for the violation of the relevant provisions of the Act and no question of compensatory element being part of such penalty arose for consideration in that case. Reliance was also placed on the decision of the apex court in the case of *Swadeshi Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax*, . In that case, the court observed that on the facts of that case there was "nothing on the record to show that the amount of penalty had a compensatory element in it." It is clear from the observation that the compensatory element in a levy termed as penalty is eligible for being regarded as business expenditure. It is only that part, which is purely penal, that has to be excluded.

8. Section 10A of the Central Sales Tax Act empowers the authority to impose upon a person, who is guilty of an offence under Clause (b), (c) or (d) of Section 10 by way of penalty a sum not exceeding one and a half times the tax which would have been levied under Sub-section (2) of Section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section. In this case, the tax payable by the assessee, had the assessee not violated the terms of the statute was 10 per cent. What was actually paid by him was only 3 per cent. The penalty that has been imposed is only the difference. The amount so recovered though termed penalty is in fact compensatory as the assessee had

only been now made to pay what he should have paid initially as tax. Had the authority imposed any further liability over and above the amount of tax payable, such imposition would have assumed the character of penalty.

9. The Tribunal was, therefore, right in holding that the assessee is entitled to deduct the amount paid by him though termed as penalty u/s 10A of the Act while computing its income from its business. The question referred to us is answered in favour of the assessee and against the Revenue. The assessee shall be entitled to costs in the sum of Rs. 1,000.