

(1986) 04 CAL CK 0009

In the Calcutta High Court

Case No : Income-tax Reference No. 340 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Ganesh Sugar Mills Ltd.

RESPONDENT

Date of Decision : 21-04-1986

Acts Referred:

Income Tax Rules, 1962 — Rule 7

Citation : (1986) 56 CTR 17 : (1986) 161 ITR 540 : (1986) 28 TAXMAN 96

Hon'ble Judges : Paritosh Kumar Mukherjee, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : A.C. Moitra and Sunil Mukherji, for the Appellant; None, for the Respondent

Judgement

Dipak Kumar Sen, J.—The facts found or admitted in this reference are shortly as follows. Ganesh Sugar Mills Ltd., Calcutta, the assessee, is a limited company and carries on business of manufacture of sugar. The assessee also owns and runs two farms—one at Chehri and the other at Bagapar, where sugarcane is cultivated. The sugarcane produced in the two farms is mainly utilised by the assessee as raw material for manufacture of sugar in its own factory.

2. In the assessment year 1963-64, the corresponding accounting year ending on September 30, 1962, the assessee in its accounts debited on account sugarcane produced in its farms and utilised in the manufacture of sugar at its factory price at the rate the ex-factory gate price fixed by the Government for sugarcane, viz., Rs. 4"34 per quintal, and in addition claimed as deduction Rs. 77,288 on account of transport expenses incurred in bringing the sugarcane from the farms to the factory.

3. The assessee was assessed to Income Tax in the said assessment year. The Income Tax Officer was of the view that as the assessee had already debited the market price of sugarcane at ex-factory gate price fixed by the Government, it was not entitled to any further deduction on account of transport of such sugarcane from its farms to its factory. The claim for deduction of Rs. 77,288

was disallowed.

4. Being aggrieved, the assessee went up on appeal before the Appellate Assistant Commissioner against the said decision of the Income Tax Officer. The Appellate Assistant Commissioner found that there were two rates fixed by the Government in respect of price of sugarcane--one was the price to be paid if the sugarcane was supplied at the factory gate--being Rs. 4.34 per quintal and the other when delivery of sugarcane was taken at the road or rail centre when the price would be Rs. 4.02 per quintal. The Appellate Assistant Commissioner noted that a higher price was fixed for delivery at the factory gate as in that case, the factory did not have to incur any extra cost of transport for bringing the sugarcane to the factory. The Appellate Assistant Commissioner also noted the regulations of the Government which directed purchase of sugarcane either at the factory gate or at the rail or road centres. He found that the extra transport expenses incurred by the assessee for carrying the cane from the appellant's farms up to the rail or road centre could not be considered to be an expense pertaining to the business of the assessee and at best pertained to the agricultural activity of the assessee in running its farms and accordingly such expenses were not allowable under Rule 7 of the Income Tax Rules, 1962.

5. The Appellate Assistant Commissioner upheld the decision of the Income Tax Officer.

6. Being aggrieved, the assessee went up on a further appeal before the Income Tax Appellate Tribunal. The Tribunal held that if the assessee proceeded on the basis that the average market price of sugarcane grown at its own farms was the ex-factory gate price fixed by the Government, there was no question of allowing any further transport expenses up to the factory gate. The Tribunal, however, noted and accepted the contention of the assessee that since the assessee had an out-centre as also its farms, the difference between the price fixed by the Government for the out-centres and that fixed at the factory gate should be permitted to be disallowed and nothing more. The Tribunal directed the Income Tax Officer to reduce the disallowance on account of transport expenses to the difference between the said two prices, viz., the price fixed at the factory gate and the price fixed for the out-centres, in respect of sugarcane grown by the assessee in its farms and utilised in its factory for the manufacture of sugar.

7. On an application of the Revenue u/s 256(1) of the Income Tax Act, 1961, the following question has been referred as a question of law arising out of the order of the Tribunal:

"Whether, on the facts and in the circumstances of the case, on a correct interpretation of Rule 7 of the Income Tax Rules, 1962, and having regard to the fact that in respect of sugarcane grown on the assessee's own farms and utilised in the manufacture of sugar, the assessee had taken the cost at Rs. 4.34 per quintal, i.e., the ex-factory gate price fixed by the Government and over and above that had claimed as a deduction, the cost of transport of Rs. 77,288 for

bringing the sugarcane from the agricultural farm out-centres to the factory gates, the Appellate Tribunal was justified in holding that while computing the income under the head "Profits and gains of business", the disallowance out of transport expenses should be limited to the difference, between the prices fixed by the Government at the factory gate and at the out-centres ?"

8. At the hearing, learned advocate for the Revenue drew our attention to Rule 7 of the Income Tax Rules, 1962, the relevant part of which is as follows :

" Rule 7. Income which is Partially agricultural and Partially from business.--(i) In the case of income which is partially agricultural income as defined in Section 2 and partially income chargeable to Income Tax under the head "Profits and gains of business" in determining that part which is chargeable to Income Tax, the market value of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as a raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind."

9. Construing the said rule, learned advocate contended that the assessee was entitled to deduction only in respect of the sugarcane utilised by it in its own factory as raw material and no further expenses. The expenditure incurred for transportation of such sugarcane from the farms of the assessee to its factory gate, it was submitted, would be an expenditure incurred by the assessee as a cultivator and not allowable as deduction.

10. In this connection, learned advocate fairly drew our attention to a decision of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Nizam Sugar Factory Ltd., , where a Division Bench of the Andhra Pradesh High Court held, after construing the said Rule 7 of the Income Tax Rules, 1962, that the expenditure incurred by the assessee towards transportation of the sugarcane to the assessee's factory is not an expenditure incurred by a cultivator for cultivating sugarcane and that the assessee would be entitled to deduct such transport charges in respect of sugarcane supplied by it to its own factory. It was held that deduction claimed of such expenditure would relate to the business of the assessee.

11. With respect, we agree with the view expressed by the Andhra Pradesh High Court. In the instant case, it appears that the Tribunal has partly disallowed the deduction claimed on the ground that deduction has been allowed of the price of the sugarcane ex-factory gate, where a part of the transport charges from the out-centre to the factory gate should be deemed to be included. But the balance of such transport charges, which had been actually incurred by the assessee in transporting the sugarcane to the factory, was allowable for deduction. We see no reason to question the correctness of the view taken by the Tribunal and agree with the same. For the above reasons, we answer the question referred in

the affirmative and in favour of the assessee. In the facts and circumstances of this case, there will be no order as to costs.

Paritosh Kumar Mukherjee, J.

12. I agree.