
(1980) 01 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 44 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Gurinder Singh Karion

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 37(1)
Income Tax Rules, 1962 — Rule 5

Citation : (1982) 133 ITR 300

Hon'ble Judges : M.R. Sharma, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Bhagirath Dass and B.K. Gupta, for the Respondent

Judgement

B.S. Dhillon, J.—The following questions of law have been referred to this court for its opinion at the instance of the revenue :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing depreciation at the rate of 15% on the ice plant machinery valuing Rs. 3,84,132 during the assessment year 1970-71 ?

2. Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 24,532 for the assessment year 1970-71, by way of payment of interest to M/s. National Small Industries Corporation Ltd., New Delhi, was an admissible deduction u/s 37(1) of the Income Tax Act, 1961?"

2. Briefly stated the facts are that the assessee runs a cinema in the name of Nandan Theatre, a cold storage, and also derives income from share in firms. On December 21, 1962, the assessee entered into an agreement with M/s. National Small Industries Corporation, New Delhi, for the purchase of some Ammonia Compressors on hire purchase basis. The assessee failed to pay the instalments due to the above , Corporation and, hence, a sum of Rs. 38,218 by way of interest up to April 30, 1970, in respect of the instalments which had fallen in

arrears was demanded by the said Corporation from the assessee. In his assessment for the assessment year 1970-71, the assessee claimed a deduction of Rs. 38,218 on account of the said interest.

3. The ITO disallowed the claim to the extent of Rs. 24,538 on the ground that the entire loan on which interest was claimed was not for the purposes of the assessee's business. The ITO calculated interest on a sum of Rs. 76,000 at the rate of 18%, as, according to him, only this much loan related to the assessee's business. Thus, out of the total claim of Rs. 38,218, a sum of Rs. 13,680 was allowed and the balance of Rs. 24,538 was disallowed. The AAC affirmed the finding of the ITO. The assessee's appeal was accepted by the Tribunal and, hence, the revenue has come on a reference to this court.

4. After hearing the learned counsel for the parties, we are of the opinion that question No. 1 has to be answered in the affirmative, in favour of the assessee and against the revenue. It is not disputed that with effect from April 1, 1970, the relevant rule was amended and depreciation on refrigeration plants, etc., was allowed to the extent of 15%.

5. Mr. Awasthy, learned counsel for the revenue, has vehemently contended that the plant owned by the assessee in the present case is not covered by the term "refrigeration plants" and thus this entry is not relevant for that purpose. This view was taken by the AAC and the Appellate Tribunal rightly reversed this view. We find that the Tribunal has elaborately discussed the connotation of the word "refrigeration". Reference has also been made to Webster's Dictionary, Oxford Dictionary and Encyclopaedia Britannica, Vol. 19, p. 70. We may reproduce the relevant portion in Encyclopaedia Britannica, Vol. 19, p. 63, which is as follows :

"Refrigeration technology draws its basic knowledge from three interrelated yet distinct areas of science, namely, thermodynamics, heat transfer, and fluid flow. As refrigeration technology has advanced, improved process and materials have made possible many consumer products and industrial applications, from kitchen refrigerators and ice-cube makers to spot-cooling of electronic devices and simulating Arctic conditions for testing and research."

6. In view of what has been stated above, we are of the opinion that the assessee was entitled to the depreciation at the rate of 15% and we order accordingly.

7. As regards the second question, it may be observed that the ITO also allowed interest to the assessee, but at a lower figure of the amount, as according to the ITO only that much capital was invested in the business of the assessee. The revenue did not challenge this finding of the ITO.

8. The contention of Mr. Awasthy, learned counsel for the revenue, that in cases where the machinery has been purchased on hire purchase basis interest was not allowable, is without any merit. The learned counsel for the revenue has placed reliance on a Supreme Court decision in *SWADESHI COTTON MILLS CO. LTD. Vs.*

COMMISSIONER OF Income Tax, U. P. (NO. 2)., . In the above case, the machinery which was agreed to be purchased was in fact never purchased and the interest was paid even though the assessee had not utilised the machinery for his business. In this view of the matter, the said authority, is of no help to the learned counsel for the revenue. The Tribunal, after taking into consideration the facts and circumstances of the case, came to the conclusion that the assessee was entitled to a deduction of interest for a total amount of Rs. 28,511 and accordingly enhanced the amount allowed by the ITO by Rs. 14,831 on account of payment of interest. This is essentially a finding of fact. We have no reason to take a view different from the one taken by the Tribunal. The second question is, therefore, answered in favour of the assessee and against the revenue, in the affirmative.