(1989) 09 BOM CK 0108

In the Bombay High Court

Case No : Income-tax Reference No. 532 of 1976

Commissioner of Income Tax APPELLANT

Vs

P.C. Tangal RESPONDENT

Date of Decision : 27-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1990) 81 CTR 126 : (1990) 184 ITR 88

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Judgement

S.P. Bharucha, J.—It appears from a perusal of the appellate order of the Income Tax Appellate Tribunal that penalty had been imposed upon the assessee in the sum of Rs. 35,000 by the customs authorities on the ground that he had under-invoiced certain imports and thereby imported more goods than were authorised by the import licence. The assessee went in appeal and the penalty amount was reduced to Rs. 15,000. The assessee claimed before the Income Tax officer an allowance in the said sum of Rs. 35,000 on the ground that it was an expenditure incurred wholly, exclusively and necessarily for the purpose of his business. The Income Tax officer rejected the claim. In appeal, the Appellate Assistant Commissioner allowed an allowance of the reduced penalty amount of Rs. 15,000. The Tribunal, in second appeal, upheld the Appellate Assistant Commissioner''s order. It found that the assessee had, upon payment of the penalty amount, cleared the goods and sold them. Thereby he had made profits. Which had been offered for taxation. To earn that profit, he had to pay the penalty of Rs. 15,000.

2. From out of the order of Tribunal, the following question is referred to us :

"Whether on the facts and in the circumstances of the case in law, the fine of Rs. 15,000 paid by the assessee as penalty for infringement of import regulations was allowable as an admissible expenditure u/s 37(1) of the Income Tax Act. 1961 ?"

3. The facts before us are inadequate to give a satisfactory answer to the question. As the orders imposing the penalty of Rs. 35,000 and in appeal reduction of same to Rs. 15,000 are not annexed, we cannot determine whether the penalty was imposed because the assessee had himself committed an infraction of the law. Without being aware of all the facts, we cannot apply the law.

4. Accordingly, we see no reason to interfere with the finding of the Tribunal and answer the question in the affirmative and in favour of the assessee.

5. No order as to costs.

