(1989) 01 GAU CK 0009

In the Gauhati High Court

Case No : Income-tax Reference No. 2 of 1980

Commissioner of Income Tax APPELLANT

Vs

Pheros and Co. (P.) Ltd. RESPONDENT

Date of Decision : 20-01-1989

Acts Referred:
Assam Sales Tax Act, 1947 — Section 35A
Income Tax Act, 1961 — Section 35, 37, 37(1)

Citation : (1989) 79 CTR 243 : (1989) 178 ITR 472

Hon'ble Judges : S.K. Homchoudhuri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : D.N. Choudhury, for the Appellant; A.K. Saraf, for the Respondent

Judgement

Hansaria, J.—The Income Tax Appellate Tribunal, Gauhati Bench, Gauhati, has referred the following question of law for our decision :

"Whether, on the facts and in the circumstances of the case, interest paid u/s 35A of the Assam Sales Tax Act, 1947, for delay in payment of sales tax was allowable as deduction u/s 37 of the Income Tax Act, on the ground that it was not penal in nature ?"

2. We have heard Shri Choudhury for the petitioner and Shri Saraf for the respondent After the decision of the apex court in Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, the law has been settled that where interest is levied on account of deprivation of the benefit of the tax for the period during which it has remained unpaid, the same is compensatory in nature, and is not imposed by way of penalty. It was observed in this decision that the expression "penal interest" which has a clear usage is in fact an inaccurate description of the levy.

3. As the interest levied on the above account is not penal in nature, some of the old decisions which have held that penalty for infraction of law is not deductible u/s 37 of the Income Tax Act, 1961, for short "the Act", have ceased to be good

law.

4. We may next refer to Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, wherein the Supreme Court was called upon to decide the nature of the interest payable u/s 3(3) of the U. P. Sugarcane Cess Act, 1956. Under that section any arrear of cess not paid on the date prescribed carried interest at the rate of 6% per annum from such date to the date of payment. As to this type of interest, it was stated that in reality it was part and parcel of the liability to pay cess. The enlargement of the cess liability on account of interest payable was regarded as automatic. The decision in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, has been followed in a number of cases by different High Courts of the country amongst which is Commissioner of Income Tax Vs. Western Indian State Motors, to which we have been referred by Sri Saraf and in which it was held that the interest paid to the Sales Tax Department on arrears of sales tax under the relevant provisions of the Act was not a penalty but was a revenue expenditure deductible u/s 37(1) of the Act.

5. According to us also, the decision in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, squarely applies to the present case inasmuch as u/s 35A of the Assam Sales Tax Act, 1947, any default in paying the full amount of tax carries with it interest and the enlargement of the tax liability is automatic. It has also been brought to our notice by Shri Saraf that there is a separate provision u/s 38 of the Sales Tax Act for levying penalty where the return is not submitted in due time. It is contended by learned counsel that under the provisions of the Sales Tax Act, the amount payable as sales tax as per the dealer has to be paid along with the submission of the return. So, failure to pay the amount of tax as per the dealer within due time would also entail penalty as contemplated u/s 38 of the Sales Tax Act. In this view of the matter, the interest payable u/s 35A of the Sales Tax Act cannot be regarded as penalty but has to be treated as part and parcel of the sales tax payable by the assessee. As sales tax is deductible u/s 37 of the Act, interest paid on it u/s 35A of the Sales Tax Act would also be deductible u/s 37 of the Act.

6. Accordingly, we answer the question in the affirmative, that is, in favour of the assessee.