
(1989) 09 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 257 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Rajdev Kirana Stores

RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1990) 181 ITR 285

Hon'ble Judges : G.G. Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : B.K. Rawat and R.K. Verma, for the Appellant; K.L. Israni, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion ;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing the deduction of Rs. 6,700 as business expenditure ?"

2. The material facts giving rise to this reference, briefly, are as follows : For the assessment year 1979-80 for which the accounting year ended on Diwali 1978, the assessee claimed deduction of expenditure amounting to Rs. 6,700 on account of penalty levied on the assessee under the M. P. General Sales Tax Act. The Income Tax Officer disallowed that claim. The appeal preferred by the assessee in this behalf was dismissed by the Commissioner of Income Tax (Appeals). On further appeal before the Tribunal, the Tribunal held that the amount paid by the assessee on account of penalty levied under the provisions of the Madhya Pradesh General Sales Tax Act was allowable as the imposition of penalty did not involve any moral culpability or mens rea. Aggrieved by this order passed by the Tribunal, the Revenue sought reference and it is at the instance of

the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the negative and in favour of the Revenue. Dealing with the question as to whether expenditure incurred by the assessee on account of levy of penalty under the Sales Tax Act can be held to be an allowable expenditure provided by Section 37(1) of the Act, a Division Bench of this court has held in Commissioner of Income Tax Vs. Malwa Vanaspati and Chemical Co. Ltd., following the decision of the Supreme Court in Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, that such expenditure cannot be held to be laid out wholly and exclusively for the purpose of the business of the assessee. It was further held that the question as to whether the breach of law involves moral turpitude or only a violation of some technical provision is not decisive of the question as to whether the expenditure incurred, would be allowable u/s 37(1) of the Income Tax Act. Learned counsel for the assessee was unable to point out any reason for not following the aforesaid decision. As the penalty in the instant case has been imposed on the assessee for breach of the law, the Tribunal was not right in directing the deduction of Rs. 6,700 as business expenditure.

4. For all these reasons, our answer to the question referred to us is in the negative and in favour of the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.