(2005) 02 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 29 of 1987

Commissioner of Income Tax — APPELLANT

Vs

Sohan Lal Kharait Ram — RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Citation : (2005) 198 CTR 403 : (2007) 290 ITR 694

Hon'ble Judges : Satish Kumar Mittal, J;N.K. Sud, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant; Sanjay Bansal and Shweta Kaushik, for the Respondent

Judgement

N.K. Sud, J.—In pursuance to the directions of this Court, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short ''the Tribunal''), has referred the following question of law arising out of its order dt. 31st May, 1985 relating to the asst. yr. 1980-81 for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal, Amritsar, is right in holding that an expenditure of Rs. 35,129 on account of market fee pertaining to earlier year is an allowable deduction when, it confirmed the finding of the ITO that assessee''s system of accounting is mercantile ?"

2. In the return of income for the asst. yr. 1980-81, the assessee had claimed deduction on account of market fee of Rs. 1,92,747. During the course of assessment proceedings, the AO observed that the assessee had made purchases of Rs. 74,82,866 and the market fee payable thereon @ 2 per cent worked out to Rs. 1,49,657. The balance amount of Rs. 43,090 (1,92,747 -1,49,657) was found to be pertaining to market fee payable in the immediately preceding year. The AO held that since the assessee followed mercantile system of accountancy, the liability of the previous year could not be allowed as a deduction. He accordingly disallowed Rs. 43,090.

3. Assessee filed an appeal before the CIT(A) who upheld the disallowance.

Aggrieved by the said order, the assessee preferred a second appeal before the Tribunal. Before the Tribunal, the assessee explained that although out of the amount of Rs. 43,090, sum of Rs. 35,129 did relate to the market fee payable for the immediately preceding year but the liability for the same had arisen in the year under assessment. The Tribunal has accepted this claim and has accordingly allowed the deduction of Rs. 35,129.

4. The facts of this case are not disputed. The market fee was enhanced by the State Government to 3 per cent vide Ordinance No. 2 of 1978. This ordinance was challenged before the Supreme Court in Kewal Krishan Puri and Others Vs. State of Punjab and Another, . The Supreme Court vide interim order dt. 25th Sept., 1978, stayed the levy beyond 1.5 per cent. Thus, in the previous financial year, i.e., 1978-79, the assessee paid market fee only @ 1.5 per cent. However, the Supreme Court vide order dt. 31st July, 1979, finally disposed of the matter and upheld the levy of market fee @ 2 per cent instead of 3 per cent. Thus, the liability to pay the balance market fee @ 0.5 per cent pertaining to the financial year 1978-79 arose on 31st July, 1979. The amount of Rs. 35,129 is on account of this liability. It is, therefore, evident that the liability to pay the amount of Rs. 35,129 arose, when the Supreme Court decided the matter on 31st July, 1979. Prior to that date, there was no liability to pay market fee in excess of 1.5 per cent. Since the liability arose on 31st July, 1979, which date fell within the accounting year 1979-80 relevant to the assessment year under consideration, i.e., 1980-81, the Tribunal was justified in allowing the deduction of this amount on the basis of mercantile system of accountancy. We, therefore, do not find any infirmity in the finding of the Tribunal.

In view of the above, the question is answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

