(1989) 02 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : IT Reference No. 19 of 1981 & Income-tax Reference No. 19 of 1981

Commissioner of Income Tax — APPELLANT

Vs

Suri Sons — RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 37

Citation : (1989) 2 ILR (P&H) 236 : (1989) 177 ITR 406

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; N.K. Sood and S.C. Nagpal, for the Respondent

Judgement

Gokal Chand Mital, J.—The assessee was doing business and was a running concern. In the accounting year relevant to the assessment year 1977-78, it purchased a plot of land to raise a building for business purposes. In the previous year, it had to pay Rs. 1,890 as municipal taxes on the purchased plot and claimed deduction u/s 37 of the Income Tax Act, 1961 (for short "the Act"), during the assessment for the assessment year 1977-78. The Income Tax Officer declined the deduction on the ground that the plot had not been utilised for business purposes, and, therefore, the expenses would not be of a revenue nature. The order was upheld in appeal but on the assessee''s further appeal, the Income Tax Appellate Tribunal, Amritsar, allowed the deduction in view of certain decided cases of other High Courts, wherein it was observed that even if a new property is purchased and is not put to business use by a running concern, the municipal tax and the amount of interest paid for raising the loan to purchase that property would be permissible deductions. At the instance of the Revenue, the following question has been referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has erred in law in holding that municipal tax of Rs. 1,890 paid in respect of Dev Nagar Plot is business expenditure ?"

2. There is no dispute that if a new business is set up for the first time, the expenditure in doing so would be of capital nature and deduction would not be permissible u/s 37 of the Act, but if by a running concern the property is purchased in the shape of a plot for setting up an additional business building, even if the building is not constructed, the interest paid on the loan to raise the building and the municipal taxes would be permissible deductions, as they are incurred on the new asset acquired by a running concern. Moreover, the municipal tax is paid not for acquisition of any business asset but for retention of the same, and, therefore, it would be allowable as a business deduction u/s 37 of the Act, This view of ours finds full support from the decision of the Calcutta High Court in Commissioner of Income Tax Vs. J.K. Industries (P.) Ltd., , of the Karnataka High Court in Addl. Commissioner of Income Tax, Karnataka Vs. Southern Founders, and of the same High Court in C.T. Desai Vs. Commissioner of Income Tax, Karnataka, . Accordingly, we answer the question in favour of the assessee, that is, in the negative, viz., that the Tribunal did not err in allowing deduction of municipal taxes on the purchased plot before it was put to use for business purposes. No costs.