

(1985) 07 RAJ CK 0063

In the Rajasthan High Court

Case No : Income Tax Reference No. 19 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Udaipur Distillery

RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 37

Rajasthan Sales Tax Act, 1954 — Section 11B

Citation : (1986) 53 CTR 244 : (1986) 160 ITR 444 : (1985) RLW 642 : (1986) 63 STC 126 : (1985) 2 WLN 397

Hon'ble Judges : S.M. Jain, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

S.K. Mal Lodha, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short " the Tribunal "), has referred the following question for the opinion of this court, which has arisen out of its order dated April 12, 1977, passed in I.T.A. No. 145/JP/76-77, in respect of the assessment year 1972-73;

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the interest paid to the Sales Tax Department on the arrears of sales tax u/s 11B of the Rajasthan Sales Tax Act, 1954, was an admissible deduction u/s 37 of the Income Tax Act, 1961 ? "

2. It is not necessary to recount the facts in detail, for, it is sufficient to state that the assessee had claimed interest paid on the delayed payment of sales tax as allowable expenditure u/s 37 of the Income Tax Act, 1961 (No. 43 of 1961) (for short " the Act "). The Income Tax Officer by his order dated January 24, 1975, rejected the claim of the assessee (non-petitioner) with respect to the amount, of interest paid by it on delayed payment of sales tax. On appeal, the Appellate Assistant Commissioner, in his order dated February 20/28, 1976, held that the Income Tax Officer was not justified in disallowing the assessee's claim for deduction of interest paid on the delayed payment of sales tax. He, therefore,

allowed the assessee's claim in that respect. The Department filed further appeal. The Tribunal was of the view that the payment of interest on the delayed payment of sales tax is an allowable deduction as the said interest has been paid by the assessee wholly and exclusively for the purpose of its business and the payment has not been made by it in any capacity other than that of a trader. An additional reason was given by the Tribunal in support of its conclusion that the payment of interest to the Sales Tax Department on its outstanding dues is qualitatively not different from what the assessee has to pay on delayed payments to his suppliers. An application u/s 256(1) of the Act was submitted by the Commissioner of Income Tax. In the opinion of the Tribunal, a question of law arose from its order and, therefore, it has referred the aforesaid question.

3. We have heard Mr. B. R. Arora, learned counsel for the Revenue, and Mr. Rajendra Mehta for the assessee (non-petitioner).

4. In order to examine the question whether the amount of interest paid on delayed payment of sales tax is an allowable deduction, it is necessary to find out the nature of the expenditure and for this purpose, we may notice Section 11B(1) (a) of the Rajasthan Sales Tax Act, 1954 (XXIX of 1954) (hereinafter referred to as " the Act of 1954 "), which is as under :

" 11B. Interest on failure to pay tax, fee or penalty.--(1)(a) Where any registered dealer or any other dealer has furnished returns but has not paid the tax as per return or within the time allowed by or under the provisions of this Act, he shall be liable to pay interest on the whole or that part of the amount of tax which was not paid as per returns within the time as aforesaid, at the rate of one and a quarter per cent. per month from the date by which he was required to pay the tax by or under the provisions of this Act for a period of three months and at one and a half per cent. per month thereafter until the date of payment. "

5. " Dealer " has been defined in Section 2(f) of the Act of 1954 to mean any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration. The definition given in Section 2(f) is an inclusive one and it enumerates certain types of dealers. Section 11B of the Act of 1954 applies to a dealer who has to furnish the return and is required to pay sales tax. Section 11B of the Act of 1954 provides for payment of interest on the failure of the dealer to pay sales tax, fee or penalty. It is clear from Section 11B that the payment of interest in accordance with its terms is automatic. No specific order is required for payment of interest. The rates of interest have also been provided in it.

6. Having considered the provisions of Section 11B of the Act of 1954, now we proceed to notice Section 37 of the Act. Section 37 of the Act is a residuary provision and it lays down what expenditure incurred by the assessee can be claimed as an allowable deduction in respect of income derived from business or profession, where such expenditure is not expressly covered by any other

specific provision of the Act. The important words in Section 37(1) of the Act are "laid out or expended wholly and exclusively for the purposes of business or profession". If any amount is laid out or expended or incurred wholly and exclusively for carrying on of the business, then, it is a permissible deduction u/s 37 of the Act at the time of computation of income. This expression "wholly and exclusively" has been considered by the Supreme Court in various decisions and for the limited purpose before us, it is not necessary to make a detailed reference to them and also to the decisions of the various High Courts of the country.

8. In *Commissioner of Income Tax, Delhi Vs. Delhi Safe Deposit Company Limited*, their Lordships of the Supreme Court have made the following illuminating observations (at p. 760) :

"The true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trader." (emphasis* supplied)

9. Reference was made to the observations of Subba Rao J. (as he then was), in *Commissioner of Income Tax, Kerala Vs. Malayalam Plantation Ltd.*,

"The aforesaid discussion leads to the following result: The expression "for the purpose of the business" is wider in scope than the expression "for the purpose of earning profits". Its range is wide : it may take in not only the day to day running of a business but also the rationalization of its administration and modernisation of its machinery ; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business ; it may comprehend many other acts incidental to the carrying on a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business." (Underlying* is ours).

10. A careful examination of Section 11B of the Act of 1954 shows that interest is payable by a dealer-assessee on his failure to pay tax, fee or penalty or his failure to pay the amount of tax within the period allowed by the provisions of the Act of 1954, mentioned therein or within the period specified in the notice of demand. This is a statutory obligation cast u/s 11B of the Act of 1954 and it is automatic. A somewhat similar question arose before their Lordships of the Supreme Court in *Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax, Delhi*. In that case, Section 3(3) of the U.P. Sugarcane Cess Act, 1956 (for short "the U.P. Act"), came up for examination. u/s 3(3) of the U.P. Act, there is a separate provision for recovery of penalty provided in Section 3(5). Interest was

paid by the appellant-company engaged in the business of the manufacture and sale of sugar u/s 3(3) of the U.P. Act, on arrears of cess payable " on the entry of cane into premises of a factory for use, consumption or sale therein ". The Income Tax Appellate Tribunal opined that the interest paid on the arrears of cess constituted a permissible deduction. The Delhi High Court did not agree with the Income Tax Appellate Tribunal, as according to it, the amount of interest did not fall within the scope of Section 10(2)(xv) of the Indian Income Tax Act, 1922 ("the old Act"), because it was paid by way of penalty for infringement of the U.P. Act. On appeal, the Supreme Court, while reversing the view taken by the High Court, held that the interest paid u/s 3(3) of the U.P. Act was not penalty paid for infringement of the law and was an allowable deduction u/s 10 of the old Act. In that connection, the following observations were made (at pp. 433 and 434) :

" Interest payable on arrear of cess u/s 3(3) is in reality part and parcel of the liability to pay cess. It is an accretion to the cess. The arrear of cess " carries " interest; if the cess is not paid within the prescribed period, a larger sum will become payable as cess. The enlargement of the cess liability is automatic u/s 3(3). No specific order is necessary in order that the obligation to pay interest should accrue. The liability to pay interest is as certain as the liability to pay cess. As soon as the prescribed date is crossed without payment of the cess, interest begins to accrue. It is not a penalty for which provision has been separately made by Section 3(5). Nor is it a penalty within the meaning of Section 4 which provides for criminal liability and criminal prosecution. The penalty payable u/s 3(5) lies in the discretion of the collecting officer or authority. In the case of the penalty u/s 4, no prosecution can be instituted unless, u/s 5(1), a complaint is made by or under the authority of the Cane Commissioner or the District Magistrate..... In truth, the interest provided for u/s 3(3) is in the nature of compensation paid to the Government for delay in the payment of cess."

11. The question regarding payment of interest on sales tax also arose in Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, . In that case, Section 8(1 A) of the U.P. Sales Tax Act, 1948, which is of course not in pari materia with Section 11B of the Act of 1954, but none the less somewhat similar to that, came up for consideration. It was held that in order to recover interest on the sales tax u/s 8(1A) of the said Act, the Sales Tax Officer is not required to make an assessment order in respect of the interest or to issue a notice of demand in respect of such interest and that the liability to pay interest u/s 8(1A) is automatic and arises by operation of law. It was further held that it is not necessary for the Sales Tax Officer to specify the amount of interest in the recovery certificate. The pertinent observations which have a bearing on the case on hand are these (p. 499) :

" The object apparently was that the amount of interest should be recovered in the same manner as the amount of sales tax. The amount of sales tax and other dues under Sub-section (8) of Section 8 can be recovered as arrears of land

revenue. It was with a view to put the matter beyond any pale of controversy and to obviate any objection that the interest on sales tax cannot be recovered as land revenue that Sub-section (1A) provided that the interest shall be added to the amount of tax and be deemed for all purposes to be a part of the tax. "

12. Thus, it is clear from the tests laid down by the Supreme Court that a particular amount is an allowable deduction if it is spent wholly and exclusively for the purpose of business. The liability of interest on delayed payment of sales tax is a statutory obligation of the dealer and is automatic and no specific order is required. Thus, it is a part of sales tax and as the sales tax is paid by a dealer for the purpose of carrying on business, the amount of interest will, for all purposes, be considered to be an amount spent wholly and exclusively for the purpose of business. It may be stated that it is well settled that neither necessity nor motive nor reasonableness is the test for allowing deduction of expenditure spent wholly and exclusively for the purpose of business u/s 37 of the Act. It follows, therefore, that the amount of interest paid by the assessee on the sales tax is an allowable deduction u/s 37 of the Act. In view of this conclusion, we do not consider it necessary to examine the other authorities cited by Rajendra Mehta, learned counsel for the assessee.

13. Now, we advert to the authorities relied on by the learned counsel for the Revenue. Learned counsel for the Revenue has referred to *Aruna Mills Ltd. v. CIT* : [1957]31ITR153(Bom) , *Commissioner of Income Tax Vs. Oriental Carpet Manufacturers (India) P. Ltd.*, *National Engineering Industries Ltd. Vs. Commissioner of Income Tax (Central)*, and *East India Pharmaceutical Works Ltd. Vs. Commissioner of Income Tax*, . We have considered them. It is not necessary to examine them because the principles laid down by the Supreme Court in the cases referred to hereinabove fully govern the case on hand. The aforesaid authorities cited by Mr. B. R. Arora, learned counsel for the Revenue, are distinguishable inasmuch as in none of them the question arose whether the amount of interest paid on account of delay caused in payment of sales tax within the statutory time, was an allowable deduction u/s 37 of the Act.

14. For the aforesaid reasons, the Tribunal was right in holding that the interest paid to the Sales Tax Department on the arrears of sales tax u/s 11B of the Act of 1954 was an allowable deduction u/s 37 of the Act. We, therefore, answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.

15. In the circumstances of the case, we leave the parties to bear their own costs of this reference.

16. Let the answer be returned to the Tribunal as required by Section 260(1) of the Act.