

(1996) 03 MP CK 0068

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 423 of 1990

Pooranchand Patel

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Citation : (1997) 140 CTR 197 : (1997) 225 ITR 176

Hon'ble Judges : A.K. Mathur, C.J;Shahi Kant Kulshreshtha, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; A. Sapre, for the Respondent

Judgement

1. This is a reference u/s 256(2) of the Income Tax Act, 1961, made at the instance of the assessee: for calling for a reference from the Tribunal and in pursuance of the directions of this court, the following question of law has been referred by the Tribunal for answer of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the claim made by the assessee of loss of stock-in-trade ? "

2. The assessee is a registered firm. The year of assessment involved is 1975-76, previous year ending on March 31, 1975. The assessee-firm filed a return of income on July 16, 1975, showing a total income of Rs. 1,54,543. Nearly three years later, a revised return was filed on June 27, 1978, showing total income at Rs. 73,543 and thereby reducing Rs. 81,000 on account of value of stock of sal seeds. The assessee was in possession of stock of sal seeds said to have been collected on the strength of a contract with the forest department, which expired on June 23, 1973. On June 23, 1973, the managing director of the M. P. State Tribal Co-operative Development Federation made a complaint to the forest department that sal seeds were collected by some persons from the area leased out to the said federation. Consequently, the police seized the stock of sal seeds of the assessee on suspicion of its being stolen property. The assessee was unsuccessful before the High Court in the writ petition for the release of the sal

seeds seized by the police. The High Court directed that since the sal seeds were a perishable commodity, it should be sold by auction and the sale proceeds should be deposited with the court until the decision of the criminal case against the assessee. The said stock was sold for a sum of Rs. 1,24,600 and the amount was deposited in the court. According to the assessee, there was total loss of stock-in-trade, and its purchase price was Rs. 81,000. Therefore, the assessee claimed deduction in a sum of Rs. 81,000 from the income of the, other business. The Income Tax Officer did not accept the plea of the assessee and, on the other hand, held that till the decision of the criminal case, the amount was to be deposited in the court on behalf of the assessee. The Income Tax Officer took the value of the closing stock at Rs. 1,24,600 and added a sum of Rs. 12,500 towards the income of the assessee.

3. Aggrieved against the order of the Income Tax Officer, the assessee approached the Commissioner of Income Tax (Appeals) by filing an appeal and the Commissioner of Income Tax (Appeals) has held that the loss of income of the assessee cannot be treated to be a loss till the criminal court decided the matter against the assessee. Therefore, it was not treated to be a loss of the income of the assessee and the deductions were declined. Aggrieved against this order, an appeal was preferred before the Tribunal and the Tribunal affirmed the order of the Commissioner of Income Tax (Appeals). Hence, at the instance of the assessee, the aforesaid question of law has been called by this court for answer.

4. We have gone through the records and heard learned counsel for the parties. In fact, whether it was a loss of stock-in-trade or it was an income of the assessee depends upon the decision of the criminal case: It is a fact that the goods were seized from the possession of the assessee and the same were sold under the orders of the court and the sale proceeds were deposited in the court. Therefore, at present, it cannot be said that the assessee has lost stock-in-trade, because the same is lying on behalf of the assessee till the matter is decided by the criminal court. In case the criminal court decides against the assessee and holds that the stock which was seized stands confiscated to the State, then in that case it will be treated to be a loss of the assessee's income and the deduction towards that amount can be given in the year in which the case is decided. In case the criminal court finds in favour of the assessee and the money is to be returned back to the assessee (sic) the, for that the assessee has already paid the tax. But today, the question before us is regarding the deduction for a loss of the aforesaid stock-in-trade. Till the criminal court decides the matter, it cannot be treated by any stretch of imagination to be loss of stock-in-trade. Hence, it depends upon the decision of the criminal case and till the criminal case is decided, it cannot be treated to be a loss for all purposes, so as to permit deduction of the aforesaid amount to the assessee from his income. Therefore, we are of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the assessee and in favour of the Revenue.