(1983) 10 AHC CK 0002

In the Allahabad High Court

Case No : Income-tax Reference No. 526 of 1977

Triveni Engineering Works Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-10-1983

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (1984) 38 CTR 107 : (1983) 144 ITR 732 : (1983) 15 TAXMAN 452

Hon'ble Judges : Satish Chandra, C.J;R.M. Sahai, J;K.C. Agrawal, J;H.N. Seth, J;A. Banerji, J

Bench : Full Bench

Judgement

Satish Chandra, C.J.

26.8.1981

1. One of the questions of law on which the Tribunal has solicited the opinion of this court is :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that interest paid on sugarcane purchase tax arrears under the provisions of U.P. Sugarcane (Purchase Tax) Act, 1961, was an allowable deduction under the Income Tax Act, 1961, and in deleting thereby the disallowance of interest of Rs. 3,08,800 ?"

2. The Tribunal held that payment of interest was an allowable deduction on the basis of the decision of this court in Kamlapat Motilal Vs. Commissioner of Income Tax, . Learned counsel for the Department invited our attention to a subsequent Full Bench decision of this court in Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, . The Full Bench overruled the Division Bench decision and held that the payment of interest was not an allowable deduction. Learned counsel for the assessee, however, invited our attention to a subsequent Supreme Court decision in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, . In that case, the Supreme Court was

concerned with the payment of interest on arrears of cess u/s 3(3) of the U. P. Sugarcane Cess Act, 1956. The Full Bench decision of this court in Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, was cited in the Supreme Court but they distinguished it holding (p. 434 of 123 ITR) :

"Our attention has also been invited to Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, . where a Full Bench of the Allahabad High Court has held that the payment of interest u/s 3(3) of the U.P. Sugarcane Purchase Tax Act, 1961, is a penal liability which accrues on an infraction of the law. Section 3(3) of the U. P. Sugarcane Purchase. Tax Act, 1961, does seem to be in pari materia with Section 3(3) of the Cess Act. But we think we should resist the blandishment to sit in judgment over that decision when it is not in appeal before us. We are concerned solely with the nature of the liability to pay interest u/s 3(3) of the Cess Act. A court should be slow to succumb to the temptation of deciding questions on the construction of a statute not directly before it."

3. It is thus apparent that the Supreme Court chose to distinguish the Full Bench decision of our court. Subsequently, the Calcutta High Court in Balrampur Sugar Co. Ltd. Vs. Commissioner of Income Tax, , has held that the aforesaid Supreme Court decision has overruled the Full Bench decision of this court in Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, .

4. We, sitting as a Division Bench, are bound by the decision of a Full Bench of this court. Since we find that the Supreme Court has declined to deal with the Full Bench decision of our court but, at the same time, has expressed an opinion on the provisions of the U. P. Sugar Cess Act which are in pari materia, we think it will be feasible if this question engages the attention of a larger Full Bench.

5. We, therefore, refer the question" whether the aforesaid F.B, lays down correct law", to a Full Bench of five judges. Let the papers be laid before the Hon''ble the Chief Justice for appropriate orders.

JUDGMENT OF FULL BENCH

Satish Chandra, C.J.

6. One of the questions referred by the Income Tax Appellate Tribunal for the assessment year 1971-72, at the instance of the Revenue was whether interest paid on the delay in paying the sugarcane purchase tax under the U.P. Sugarcane Purchase Tax Act, 1961, was an allowable deduction under the I.T. Act, 1961.

7. At the hearing of this reference, the Revenue placed reliance upon a Full Bench decision of this court in Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, .

8. On behalf of the assessee it was submitted that the decision of the Full Bench in Saraya Sugar Mills case is no longer good law, because the Supreme Court in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, , had

virtually overruled it. In support, reliance was placed upon a decision of the Calcutta High Court in Balrampur Sugar Co. Ltd. v. CIT [1982] 132 ITR 227.

9. The Division Bench, hearing the reference, referred the following question for decision by a Full Bench of five judges :

"Whether the Full Bench decision in Saraya Sugar Mills case [1979] 116 ITR 389, lays down the correct law ?"

10. In Saraya Sugar Mills case, a three-judge Full Bench of this court considered a Division Bench decision of this court in Kamlapat Motilal Vs. Commissioner of Income Tax, , and overruled it. In Kamlapat Motilal, two propositions were laid down (pp. 388-89 of 116 ITR):

"1. The U.P. Sugarcane Purchase Tax Act did not call interest as penalty. It made provision for interest as well as penalty separately, and it also made independent provisions for their recovery. Interest was not penalty. In carrying on a business an assessee may not be able to discharge his financial commitments in time, and as a result may become liable to pay damages or interest. Such a situation is a normal incident of business, and any loss incurred by an assessee under such circumstances is deductible u/s 37(1).

(2) Payment of purchase tax was a statutory exaction and so was interest payable thereon. If the principal (i.e., purchase tax) is a permissible deduction, the interest payable thereon would also be equally permissible, because principal and interest together constitute the assessee''s liability, and so interest, like the principal, represented a loss incidental to the carrying on of business and deductible while computing the assessable profits u/s 28(1)."

11. For the reasons mentioned, the Full Bench did not approve of these two propositions.

12. In Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, , the Supreme Court considered the provisions of the U.P. Sugarcane Cess Act. After analysing its various provisions, the court held (p. 433):

"It is apparent that Section 3(2) requires the payment of cess on the date prescribed under the rules. Rule 4 of the U.P. Sugarcane Cess Rules, 1956, provides that the cess due on the sugarcane entering into the premises during the first fortnight of each calendar year must be deposited in the Government treasury by the twenty-second day of that month and the cess due for the remainder of the month must be deposited before the seventh day of the next following month. If the cess is not paid by the specified date, then by virtue of Section 3(3) the arrear of cess will carry interest at the rate of six per cent. per annum from the specified date to the date of payment. Section 3(5) is a very different provision. It does not deal with the interest paid on the arrear of cess but provides for an additional sum recoverable by way of penalty from a person who defaults in making payment of cess. It is a thing apart from an arrear of cess and the interest due thereon".

13. The court then held (p. 433):

"Now the interest payable on an 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 a criminal liability and a criminal prosecution."

14. The court then went on to consider Section 3(6), which provides that the officer is empowered to forward to the Collector a certificate specifying the amount of arrears including interest, and held that this shows that interest was part of the arrears of cess.

15. The Supreme Court held that Section 3(3) of the U.P. Sugarcane Purchase Tax Act does seem to be in pari materia with Section 3(3) of the Cess Act, but the court observed (p. 435) ;

"But we think we should resist the blandishment to sit in judgment over that decision when it is not in appeal before us."

16. The matter came up before the Calcutta High Court in the Balrampur Sugar Co. Ltd. Vs. Commissioner of Income Tax, . It was held that the provisions of the U.P. Sugarcane Purchase Tax Act and those of the U. P. Sugarcane Cess Act being in pari materia, the decision of the Supreme Court in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, , on the nature of interest payable on arrears of sugarcane cess are applicable to interest payable on arrears of sugarcane purchase tax. It held that the decision of the Supreme Court in Mahalakshmi Sugar Mills overrules the decision of this court in Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, . This decision gives in detail the various provisions of the two Acts and comes to the conclusion that they are in pari materia.

17. We are of opinion that the provisions of the U.P. Sugarcane Cess Act, 1956, are in substance in pari materia with the U.P. Sugarcane Purchase Tax Act, 1961, at least in so far as the accrual of liability and payment of interest is concerned. The view taken by the Supreme Court in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, , is applicable to the provisions of the U.P. Sugarcane Purchase Tax Act on the question of accrual of liability to interest on arrears of sugarcane purchase tax. It is thus apparent that interest payable on arrears of sugarcane purchase tax is in reality part and parcel of the liability of purchase tax. It is not penalty paid for an infraction of the law. In this view it is evident that it will be deductible in the same way as the purchase tax itself. That is to say, it will be a revenue expenditure and the payment of interest would, in

the circumstances, represent expenditure laid out wholly or exclusively for the purpose of the business.

18. Learned counsel for the Revenue emphasized that in Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi, , the Supreme Court at one place had observed (p. 434):

"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. It is not by way of penalty."

19. He urged that this was not an expenditure laid out wholly or exclusively for the purpose of the business.

20. The argument has to be stated to be rejected. Once it is held that interest was part and parcel of the liability to pay the purchase tax, no distinction can be made between the two from the point of view of either that it is revenue expenditure or that it is an expenditure laid out wholly or exclusively for the purpose of the business. Learned counsel for the Revenue did not even suggest that payment of the purchase tax was not a revenue expenditure or that it was not an expenditure laid out wholly or exclusively for the purpose of the business. The payment of interest will hence be of the same nature.

21. It is thus clear that the decision of the Full Bench of this court in Saraya Sugar Mills (P.) Ltd., Gorakhpur Vs. The Commissioner of Income Tax, , does not lay down the correct law. The correct law was laid down in the Division Bench decision of this court in Kamlapat Motilal Vs. Commissioner of Income Tax, .

22. Let the papers be laid before the concerned Bench with this opinion and answer.

