
(1978) 01 AHC CK 0066

In the Allahabad High Court

Case No : Income-tax Reference No. 657 of 1973

Upper Doab Sugar Mills Ltd.

APPELLANT

Vs

Commissioner of Income Tax (Central)

RESPONDENT

Date of Decision : 04-01-1978

Acts Referred:

Citation : (1979) 116 ITR 928

Hon'ble Judges : Satish Chandra, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Tribunal has referred the following two questions for the opinion of this court:

"1. Whether the Tribunal was justified in holding that Rs. 2,95,394 and Rs. 1,38,098 being penalty on cess and purchase-tax were not allowable expenditure in the facts and circumstances of the case for the assessment years 1963-64 and 1964-65, respectively?

2. Whether the Tribunal was justified in holding that the sum of Rs. 75,963 incurred in connection with the issue of additional equity shares was not an allowable expenditure in the facts and circumstances of the case for the assessment years 1963-64 and 1964-65, respectively ?"

2. The amounts covered by the first question were paid as penalty for the delay made by the assessee in the payment of sugarcane cess and purchase-tax. In MAHABIR SUGAR MILLS (P.) LTD. Vs. COMMISSIONER OF Income Tax, U.P., a Division Bench of this court dealt precisely with the same question. It held that penalty payable u/s 3(5) of the Sugarcane Cess Act was a penalty for making default in the payment of arrears of sugarcane cess levied under the said Act. It was a criminal liability. After considering several decisions of various courts, it

came to the conclusion that it was not a permissible deduction u/s 10(2)(xv) of the Indian I.T. Act, 1922. The Bench took the view (p. 91):

"But the fact remains that penalty has been imposed under Sub-section (5) of Section 3 of the Cess Act. Sub-section (2) of Section 3 of the Cess Act required the company to pay the cess within the prescribed time. Penalty was imposed for its failure to pay cess within the prescribed time. The default also rendered the company liable to prosecution u/s 4 of the Cess Act.

As explained by the Supreme Court in the case of Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, , no expense which is paid by way of penalty for a breach of the law can be said to be an amount wholly and exclusively laid for the purpose of the business."

3. This case is applicable to the present one on all fours. We have heard learned counsel and we are not inclined to hold that this decision requires reconsideration. Learned counsel for the assessee invited our attention to the decision of the Supreme Court in Prafulla Kumar Malik Vs. Commissioner of Income Tax, Bihar and Orissa, in support of the conclusion that levy of penalty was not in every case disentitled to deduction. In that case, the facts were that the appellant, who was a paddy procuring agent under the Government of Orissa, was required under an agreement to supply paddy and rice of certain standard known as "fair average quality". Under one of the clauses of the agreement, the Collector had power, subject to the approval of the Government, to levy such penalty as he may deem fit for supply of foodgrains not conforming to the fair average quality and such penalty could be deducted from the amount or amounts due to the agent on pending or future bills. In exercise of that power, penalties amounting to a sum of Rs. 25,700 were imposed on the appellant and they were realized by deduction from the bills. The question was whether this penalty was entitled to be taken into consideration while computing the business income in view of Section 10(1) of the Indian I.T. Act, 1922. The Supreme Court held that it was not a case of allowable deduction u/s 10(2)(xv) of the Act. It was a case of computation of business income of the appellant on the ground that the amount had been deducted by the Government from the bills legitimately due to the appellant. The question was of computing the business income u/s 10(1) of the Act and not of allowable deduction u/s 10(2)(xv). The amount of penalty having been deducted from the bills, it did not come into his hands as income. This case is clearly distinguishable. In the present case, the assessee paid the penalty out of the business income of the company. He claims that it was an allowable deduction. The first question is liable to be answered in favour of the department.

4. The second question presents no difficulty. The expenditure of Rs. 75,863 was admittedly incurred by the assessee in connection with the issue of additional equity shares. The additional equity shares issued constituted the capital of the company. It was an integral part of the permanent structure of the company. It was not, in any manner, connected with the working capital of the company

which is utilised to carry on the day-to-day operations of the business. We are in agreement with the Tribunal that this expenditure was rightly disallowed as expenditure on capital account.

5. In the result, both the questions are answered in the affirmative, in favour of the department and against the assessee. The Commissioner will be entitled to costs which are assessed at Rs. 200.