(1999) 03 AHC CK 0118

Allahabad High Court

Case No: Income-tax Reference No. 20 of 1992

Commissioner of Income Tax		APPELLANT
	Vs	
Laxmi Devi Sugar Mills Pvt. Ltd.		RESPONDENT

Date of Decision: March 11, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 37

Citation: (2000) 241 ITR 131 : (2001) 117 TAXMAN 702

Hon'ble Judges: R.K. Agrawal, J; M.C. Agrawal, J

Bench: Division Bench

Advocate: A.N. Mahajan, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

1. The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following question of law for opinion of this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, was the Tribunal legally correct in holding that the interest paid u/s 17(3) of the Sugarcane (Regulation of Supply and Purchase) Act, 1958, was not penal in nature for infringement of law and, therefore, it was allowable as deduction under the Income Tax Act, 1961 ?"

2. The said question is stated to arise from the Tribunal''s order dated January 9, 1981, in I. T. A. No. 866 (All) of 1980 for the assessment year 1978-79.

3. The list has been revised. None appears for the assessee-respondent.

4. We have heard Shri A.N. Mahajan, learned standing counsel for the Commissioner of Income Tax, and perused the Tribunal''s order and annexures thereof.

5. The assessee-respondent runs a sugar factory. For manufacture of sugar, it purchases sugarcane from the growers. The purchase of sugarcane is regulated by the Sugarcane (Regulation of Supply and Purchase) Act, 1958. Section 17 of the said Act regulates the payment of the price of sugarcane purchased by the owner of a sugar factory, and it stands as under :

"17. Payment of cane price.--(1) The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed.

(2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith.

(3) Where the person liable under Sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering he shall also pay interest at a rate of 7 1/2 per cent, per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix :

Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure "7 1/2" the figure "12" shall be deemed substituted."

6. As provided in Sub-section (3), the petitioner paid interest on the price due for the purchase of sugarcane and claimed it as an expenditure in computing its income for the purpose of Income Tax. The claim was disallowed by the Assessing Officer as well as by the Commissioner of Income Tax (Appeals) in whose view the interest paid was in the nature of penalty.

7. The Tribunal, however, took a different view and held that the interest was not penal in nature and was allowable as an expenditure. It is this view of the Tribunal that is under examination before us in this reference that has been made at the instance of the Commissioner of Income Tax.

8. We have reproduced the provisions of Sub-section (3) of Section 17 under which the disputed amount of interest has been paid. The provisions of Section 17 show that the cane that has been purchased by the occupier of a factory on credit should be paid speedily and in case of delay the interest has to be paid. There is nothing penal in the interest payable under this Section and it is like interest paid by a businessman on any purchase on credit. A Full Bench of five judges of this court in Triveni Engineering Works Ltd. Vs. Commissioner of Income Tax, while dealing with the interest payable u/s 3(3) of the U. P. Sugarcane Purchase Tax Act, 1961, held that the interest payable on arrears of sugarcane purchase tax is a part of the liability of purchase tax and is not a penalty for an infraction of the law. In the case before us, the interest is not paid on the amount of any tax but is paid for delay in the payment

of purchase price of raw material, i.e., sugarcane and is clearly an expenditure allowable u/s 37 of the Income Tax Act, 1961. We, therefore, answer the aforesaid question in the affirmative, i.e., against the Commissioner of Income Tax and in favour of the assessee-respondent.