

(2005) 02 AHC CK 0239

Allahabad High Court

Case No: IT Reference No. 276 of 1991 3 February 2005

Commissioner of Income Tax

APPELLANT

Vs

Swadeshi Mining and Mfg. Co.
(P) Ltd.

RESPONDENT

Date of Decision: Feb. 3, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 256

Citation: (2005) 148 TAXMAN 601

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Full Bench

Advocate: A.N. Mahajan, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

By the Court

1. The Income Tax Appellate Tribunal, Allahabad has referred the following three questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion to this Court:

"1. Whether on facts and in law the ITAT is justified in confirming the order of the Commissioner (Appeal) in allowing the assessee's claim of Rs. 5,11,002 and Rs. 1,86,215 in respect of interest on excess realisation of levy sugar price by holding that it was an admissible deduction?

2. Whether on the facts and in law the ITAT is justified in confirming the order of the Commissioner (Appeal) allowing the assessee's claim of Rs. 1,01,275 on account of interest on arrears of cane price and commission by holding that it was an admissible deduction?

3. Whether on facts and in law the ITAT is justified in confirming the order of the Commissioner (Appeal) in allowing the assessee's claim of Rs. 1,56,100 on account of interest on arrears of sugar cane price and commission?"

2. The reference relates to the assessment year 1982-83.

3. Briefly stated the facts giving rise to the present case are as under :

The respondent assessee-company is engaged in manufacture and sale of sugar manufactured in its two units namely Ganesh Sugar Mills and Sri Anand Sugar Mills. In the course of assessment proceeding of the assessee-company it was noted that in the computation of the total income the assessee had claimed interest on excess realization of levy sugar price as under :

Crushing	Ganesh Mills	Shri Anand Sugar Mills	Total
1973-74	1,76,670.37	38,096.70	2,14,694.07
1978-79	3,34,332.43	1,48,118.58	4,88,457.01
	5,11,002.80	1,86,215.28	7,03,145.08

4. It may be pointed out that in consequence of the directions of this Court the price realized in excess of the levy sugar was credited to the profit and loss account and further it had made provision for interest on the excess realization in the event of excess realization being refunded in consequence of an adverse decision of this Court. It had made excess realization of sugar price over and above the price fixed by the Central Government. In the interim order passed by this Court the respondent was permitted to charge excess price of the sugar provided that the company furnishes Bank guarantee in respect of difference between the price fixed by the Central Government and the price charged by the company in favour of the Registrar of this Court.

5. The respondent had also made provision of interest of cane price and commission aggregating to Rs. 1,01,225 relating to two units which related to the crushing season 1978-79. It had further made provision of interest on arrears of cane price and commission amounting to Rs. 1,56, 100 which related to the crushing season 1981-82 (period 29-11-1981 to 31-3-1982). The assessing authority had disallowed all the claims. Feeling aggrieved the respondent preferred appeal before the Commissioner (Appeal), who has allowed the claim of interest on excess realization of levy sugar price, interest on arrears of cane price and also provision of interest on cane price and commission, i.e., he had accepted all the aforesaid claims.

6. The revenue feeling aggrieved preferred an appeal before the Tribunal and the Tribunal has upheld the order passed by the Commissioner (Appeal).

7. Heard Sri A.N. Mahajan learned Standing Counsel for the revenue. No body appears on behalf of the respondent assessee.

8. We find that this Court in ITR No. 68 of 1991 which is inter-parties decided on 19-1-2005 has held that only interest on excess collection of levy sugar price which related to the previous year relating to the assessment year in question alone is allowable as deduction as the respondent is following merchandise system of accounting. From the fact it appears that the claim of interest on excess realization of levy sugar price of Rs. 5,11,002.80 and Rs. 1,86,215.28 relates to the crushing seasons 1973-74 and 1978-79 and thus it was not admissible. So far as the claim of interest of Rs. 1,01,275 on account of interest of arrears of cane price and commission is concerned we find that it related to the crushing season 1978-79. So far as interest amounting to Rs. 1,56,000 we find that it related to the year 1981-82, i.e., previous year relating to the assessment year in question and, therefore, it is allowable.

9. In view of the foregoing discussion we answer the first two questions of law referred to us in negative, i.e., in favour of the revenue and against the assessee. The third question is answered in favour of the assessee and against the revenue. However, in view of the divided success the parties are directed to bear their own costs.