

(2001) 10 GUJ CK 0065

Gujarat High Court

Case No: Income Tax Reference No. 37 of 1988

Digvijay Tiles and
Potteries Ltd.

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Oct. 23, 2001

Hon'ble Judges: M.S. Shah, J; D.A. Mehta, J

Bench: Division Bench

Advocate: H.M. Talati, for the Appellant; B.B. Naik and Manish R. Bhatt, for the
Respondent

Judgement

M.S. Shah, J.

In this reference at the instance of the assessee, the following question is referred for our opinion in respect of assessment year 1979-80:-

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that disallowance of Rs.11,237/- being interest levied u/s. 201 of the Income Tax Act was correctly disallowed?"

2. The assessee is a limited company and it raised large amounts of borrowing on which interest was credited and claimed by way of expenditure. The assessee was also required to deduct the tax from the interest payable on borrowings. The assessee did not make payment of the tax deducted at source from the interest payable to the depositors and, therefore, under sec. 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') interest was charged by the Department. The claim made by the assessee for deduction of interest of Rs.11,237/- was accordingly disallowed by the Income Tax Officer which disallowance was confirmed by the CIT (Appeals) and also by the Tribunal. Hence, this reference at the instance of the assessee.

3. We have heard Mr. HM Talati learned counsel for the assessee and Mr. BB Naik learned counsel for the revenue.
4. At the hearing, our attention is invited to the decision of the Apex Court in [Bharat Commerce and Industries Ltd. Vs. The Commissioner of Income Tax, Central II](#), and also to the decisions of the Madras High Court in [Commissioner of Income Tax Vs. Chennai Properties and Investment Ltd.](#), and of the Bombay High Court in [Ferro Alloys Corporation Ltd. Vs. Commissioner of Income Tax](#), .
5. In Bharat Commerce & Industries Ltd. vs. CIT (supra), the Apex Court has laid down the principle that under the Income Tax Act, the payment of interest is inextricably connected with the assessee's tax liability. If income tax itself is not a permissible deduction u/s 37, any interest payable for default committed by the assessee in discharging its statutory obligation under the Act cannot be allowed as deduction. That was, of course, a case pertaining to interest levied for failure to pay advance tax u/s 215 of the Act. Following the aforesaid principle, the Madras High Court has held that interest paid u/s 201(1A) for failure to deduct tax at source and remit to the Income Tax Department is not deductible as business expenditure. The same view is taken by the Bombay High Court in Ferro Alloys Corporation Ltd.. vs. CIT (supra) following its own decision in two previous references and also the decision of the Delhi High Court in the case of [Bharat Commerce and Industries Ltd. Vs. The Commissioner of Income Tax](#), which came to be confirmed by the Apex Court in the aforesaid decision in [Bharat Commerce and Industries Ltd. Vs. The Commissioner of Income Tax, Central II](#), .
6. We are in complete agreement with the aforesaid view of the Madras and Bombay High Courts that interest paid u/s 201 for failure to deduct tax at source is not deductible as business expenditure because payment of Income Tax itself is not deductible as business expenditure as held by the Apex Court in the case of Bharat Commerce & Industries Ltd. vs. CIT (supra).
7. In view of the above discussion, our answer to the question referred by the Tribunal is in the affirmative i.e. in favour of the revenue and against the assessee.
8. The Reference accordingly stands disposed of with no order as to costs.