

(1989) 05 KL CK 0013

High Court Of Kerala

Case No: Income-tax Reference No. 49 of 1984

Tara Agencies

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: May 24, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 35B(1), 37

Citation: (1989) 79 CTR 1 : (1989) 180 ITR 102 : (1989) 45 TAXMAN 258

Hon'ble Judges: K.S. Paripoornan, J; K.A. Nayar, J

Bench: Division Bench

Advocate: V.V. Asokan, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

Paripoornan, J.

The Income Tax Appellate Tribunal, Cochin Bench, has referred the following two questions of law at the instance of the applicant--an assessee to income tax--for the decision of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in disallowing a part of the interest as pertaining to the period ensuing subsequent to the end of the previous year and in holding that the assessee was not entitled to the deduction of the same in computing the total income for the assessment year 1978-79 ?

2, Whether, on the facts and in the circumstances of the case, the Tribunal was right, under the law in holding that certifying charges and inspection fees will not qualify for appropriate weighted deduction under Clause (v) of Section 35B(1)(b) ?"

2. The respondent is the Revenue. We are concerned with the assessment year 1978-79. The assessee is a firm. It is engaged in export of tea. For the accounting period ended on March 31, 1978, the assessee claimed an amount of Rs. 9,36,198 by way of deduction. According to the assessee, this sum represented interest that has

accrued to be paid to the bank. The assessee made exports to Sudan. It was so made on the basis of rates fixed in the agreement entered into between the Indian Government and the Sudan Government. There was paucity of foreign exchange with the Sudan Government. So, the documents of sale were discounted by the assessee through the local banks. They were not cleared immediately. They were cleared under an arrangement described as "foreign documentary bills purchased". As per the arrangement, normal rates of interest are levied up to 60 days from the date of presentation, and for delay beyond 60 days, penal rates of interest were collected by the clearing bank in India. The interest was actually determined at the time the bills are realised and adjusted against the bill amounts. The assessee had invariably to pay the extra interest on the bills, since there was a substantial time lag before the actual clearance or realisation of the bills. This resulted in payment of extra interest on those bills by the assessee. The said sum was quantified at Rs. 9,36,198. The assessee filed a detailed list of the pending bills, showing the date on which each bill was discounted, the bill amount, the date on which the bill was realised by the bank, the interest charged by the bank and other details, before the Tribunal. The Income Tax Officer held that the liability to pay interest did not arise or accrue for the assessment year 1978-79, during the relevant previous year. He allowed only a sum of Rs. 4,480 by way of deduction. The Commissioner of Income Tax (Appeals) held that the assessee would be entitled to the interest that had accrued up to the last day of the previous year only. In further appeal, the Appellate Tribunal affirmed the orders passed by the authorities below. The Appellate Tribunal found that the liability of the assessee to pay interest depended upon the time taken for the bills to be cleared, that the exact delay for each bill could not be anticipated, that the quantum of interest depended upon the period of delay and in the absence of any definiteness regarding the period of delay, there was no certain liability to pay interest or any definite amount quantified by way of interest and in this view, the liability to pay interest cannot be said to have arisen or accrued due on any day prior to the happening of the event, namely, the realisation of the amounts due under the bill, and so the liability of the assessee to pay interest could arise only then and in this view of the matter, the assessee was entitled to the amount that accrued on the last day of the previous year. The assessee had also claimed weighted deduction u/s 35B of the Act. A sum of Rs. 19,233.28 was claimed u/s 35B of the Act towards certifying charges and inspection fees. The assessee put forward a plea that it is entitled to deduction of the said amount u/s 35B(1)(b)(v) of the Act. The Income Tax Officer as well as the Commissioner of Income Tax (Appeals) negatived the said plea. The Income Tax Appellate Tribunal held that the expenditure was incurred only for the supply of goods outside India and not for the purpose of preparation of the tenders. The assessee was held disentitled to the weighted deduction u/s 35B of the Act. Thereafter, on a motion by the assessee u/s 256(1) of the Income Tax Act, the above two questions have been referred to this court by the Appellate Tribunal for decision.

3. We heard counsel for the applicant-assessee as also counsel for the Revenue. It was argued that even at the time when the bills were discounted by the assessee, there was a risk of payment of interest for 60 days and penal interest for the delay beyond that period and so the sum of Rs. 9,36,198 paid by way of interest should be allowed by way of deduction. The plea was that the liability to pay such interest arose or accrued even at the time when the bills were discounted. There is no force in this plea. It is common ground that the documents of sale were discounted by the assessee through the local banks. The assessee discounted the documents of sale under an arrangement known as "foreign documentary bills purchased". Under the said arrangement, normal rates are levied up to 60 days from the date of presentation. It is for the delay beyond 60 days, that penal rates of interest were levied and collected by the clearing bank in India. The interest payable for each bill could be ascertained and fixed or determined only at the time the bills were finally realised and adjusted against the bill amounts and not on any day prior thereto. So, it is anybody's guess on the date of discounting of the bills by the assessee as to what will be the interest that will be payable as against each bill, the amounts due whereof were collected long thereafter. By no stretch of imagination, could the amount of interest that will fasten a liability on the assessee be predicated on the day when the bills were presented. That could be ascertained with certainty only when the bills were realised and adjusted against the bill amounts. In this perspective, the Income Tax Officer, the Commissioner of Income Tax (Appeals) as well as the Appellate Tribunal were justified in holding that the assessee is entitled to the interest that had accrued up to the last day of the previous year. Portions of the interest which accrued subsequent to the last day of the accounting period did not arise or accrue as a liability to the assessee during the relevant accounting period. In this view of the matter, we answer question No. 1, referred to us, in the affirmative, against the assessee and in favour of the Revenue.

4. The only other question is regarding the entitlement to the weighted deduction u/s 35B of the Income Tax Act. Section 35B(1)(b)(v) of the Act is as follows :

"35B(1)(b). The expenditure referred to in Clause (a) is that incurred wholly and exclusively on--...

(v) preparation and submission of tenders for the supply or provision outside India of such goods, services or facilities, and activities incidental thereto :..."

5. The expenditure should have been incurred wholly and exclusively by the assessee for preparation and submission of tenders and activities incidental thereto. The preparation or submission of tenders should be for the supply or provision outside India of such goods, services or facilities which was dealt with by the assessee or provided by him in the course of his business. The Commissioner of Income Tax (Appeals) found that a sum of Rs. 19,233 was paid for obtaining a certificate of fitness and the assessee was not able to substantiate that the said claim will come within Section 35B(1)(b) of the Act. The Income Tax Appellate

Tribunal held that the expenditure was incurred for the supply of goods outside India and not for the purpose of preparation of the contracts. Before us, it is common ground that the amount of Rs. 19,233 was paid for obtaining a certificate of fitness. By no stretch of imagination can it be said that the expenditure incurred for obtaining certificate of fitness is an expenditure for the preparation and submission of tenders or activities incidental thereto. The necessity to obtain the certificate of fitness will arise only after the contract is concluded and supply is made. The expenditure contemplated u/s 35B(1)(b)(v) of the Act relates to a stage anterior to the conclusion of the contract. In this view of the matter, we are of the view that the Appellate Tribunal was justified in negating the relief u/s 35B(1)(b)(v) of the Act as well. We answer question No. 2 in the affirmative, against the assessee and in favour of the Revenue. However, we are of the view that the Appellate Tribunal was not correct in its view in negating the relief on the ground that the expenditure was incurred in India. Whether the expenditure was incurred in India or outside is irrelevant. The only relevant aspect is whether the expenditure was incurred wholly and exclusively for the preparation and submission of tenders and activities incidental thereto. We make this position clear.

6. The Income Tax referred case is disposed of as above.

7. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.