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Andhra Pradesh High Court

Case No: R.C. No. 86 of 2001

CIT	APPELLANT
Vs	
The Andhra Sugars Limited	RESPONDENT

Date of Decision: July 2, 2014

Acts Referred:

- Income Tax Act, 1922 - Section 10(2)(xv)
- Income Tax Act, 1961 - Section 256(1), 28, 36, 43B, 43B(d)

Citation: (2014) 367 ITR 195

Hon'ble Judges: M. Satyanarayana Murthy, J; L.N. Reddy, J

Bench: Division Bench

Advocate: Challa Gunuranjan, Advocate for the Appellant; S.R. Ashok, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
The respondent is a Sugar Factory. As part of its activity, it is under obligation to pay tax on the purchase of sugarcane, made by it from time to time. Before Section 43B of the Income Tax Act, 1961 (for short the 1961 Act) was inserted, the law was that the assessee shall be entitled to deduct any amount representing tax, duty or cess, levied upon him or it, whether or not paid actually. Section 43B of the 1961 Act mandates that certain deductions can be effected only on actual payment.

2. For the assessment year 1984-85, the respondent submitted a return claiming deduction of interest payable on the purchase tax, though it was not actually paid. The plea was that the requirement of actual payment to claim benefit u/s 43B of the 1961 Act, is only in respect of tax; and deduction of interest payable thereon, can be claimed even without making payment. The Assessing Officer did not allow the deduction. The

respondent carried the matter in appeal to the Commissioner of Income Tax (Appeals). The appeal was allowed. Thereupon, the Department filed I.T.A. No. 182/Hyd/1990 along with two other appeals for two more assessment years; before the Hyderabad Bench A of the Income Tax Appellate Tribunal (for short the Tribunal).

3. Through its order, dated 11.12.1995, the Tribunal partly allowed the appeals, but remanded the matter to the Commissioner (Appeals), for fresh consideration. Not satisfied with the result, the Department filed R.A. No. 315/Hyd/1996, u/s 256(1) of the 1961 Act, with a prayer to refer the following questions to this Court for answer:

1. In the facts and on the circumstances of the case, whether the I.T.A.T. is justified in holding that the provisions of Section 43B are not applicable to interest payable on Purchase Duty?

2. Whether the I.T.A.T. is justified in ignoring that interest is a part and parcel of tax liability as decided by the Supreme Court in the case of Mahalaxmi Sugar Mills Co. Vs. Commissioner of Income Tax , Delhi,

4. The application was allowed through order, dated 29.11.2002. Hence, this reference.

5. Sri S.R. Ashok, learned Senior Standing Counsel for the Department, submits that the Commissioner as well as the Tribunal erred in treating interest as a separate and independent entity, in the context of the liability to pay tax. He contends that the interest forms part of the actual tax liability, and there does not exist any justification to treat the component of interest separately. Learned counsel further submits that the Tribunal rested its conclusions on the judgment of the Supreme Court in Mahalakshmi Sugar Mills Co. v. Commissioner of income tax, Delhi, which is totally unrelated to the actual controversy. He submits that recently the Rajasthan High Court in Shree Pipes v. Deputy Commissioner of income tax (Assessment) dealt with the issue and held that the interest is part of the tax and it cannot be treated independently.

6. Sri Challa Gunuranjan, learned counsel for the assessee, on the other hand, submits that Section 43B of the 1961 Act, dealt with specific amounts that can be claimed as deductions and since interest is not mentioned in the relevant clause, it cannot be treated as part of the tax, duty or cess. He contends that wherever the Parliament wanted that the deduction of even interest can also be made, only on payment, it was specific, such as in the case of interest payable on loans, u/s 43B(d) of the 1961 Act. He submits that the Tribunal has assigned cogent reasons in support of its conclusions and the questions need to be answered against the Revenue.

7. In the context of processing of the returns filed by an assessee, deductions of various categories are permitted under the relevant provisions of the 1961 Act. Controversy persisted as to whether deduction of any amount can be permitted only when it is paid actually in the form of tax, duty or cess or on just incurring of the liability to pay. Judicial pronouncements are to the effect that irrespective of the actual payment, the deduction

can be made once the liability is incurred in the form of demand or levy. Obviously to put this at rest, the Parliament introduced Section 43B of the 1961 Act. It mandates that deductions of various categories mentioned therein can be claimed only on actual payment of the amount. The provision reads:

43B. Certain deductions to be only on actual payment. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) any sum referred to in clause (ii) of sub-section (1) of section 36, or

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State Financial Corporation or a State Industrial Investment Corporation, in governing such loan or borrowing; or

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee;

8. shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in Section 28 of that previous year in which such sum is actually paid by him:

(remaining portion of the section is omitted, since it is not relevant for the purpose of this case.)

9. The deduction claimed by the respondent is, as regards interest on purchase tax. It is not clear as to whether the respondent paid the purchase tax for the concerned period or whether deduction thereof has been claimed. It is not in dispute that the component of interest on which the deduction was claimed, was not paid. The plea taken by the respondent is that it is only in respect of the property tax that the condition as to prior payment is applicable u/s 43B of the 1961 Act, and not for the interest thereon. The Commissioner as well as the Tribunal accepted their contention by placing reliance upon the judgment of the Supreme Court in Mahalakshmi Sugar Mills Co.s case (1 supra).

10. We have carefully gone through the judgment of the Supreme Court in Mahalakshmi Sugar Mills Co.s case (1 supra). Basically, it was not with reference to Section 43B(d) of the 1961 Act, but it was only in relation to Section 10(2)(xv) of the Income Tax Act, 1922 (for short the 1922 Act). The point for discussion in that case was as to whether the deduction of the amount payable as interest levied u/s 3 of the U.P. Sugarcane Cess Act, 1956, is permissible u/s 10(2)(xv) of the 1922 Act. The distinction between levy of penalty u/s 4, on the one hand, and imposition of interest u/s 3 of the U.P. Act, on the other, was discussed at length. Ultimately, Their Lordships took the view that the interest payable on tax, cannot be treated as part of the tax for the purpose of Section 10(2)(xv) of the 1922 Act. The reason stated is that such amount cannot be treated as penalty for infringement of law. The relevant portion reads:

In our opinion, the interest paid under S. 3(3) of the Cess Act cannot be described as a penalty paid for an infringement of the law. As that is the only ground on which the revenue resist the claim of the assessee to a deduction of the interest under S. 10(2)(xv) of the Indian I.T. Act, 1922, the assessee is entitled to succeed. There is no dispute that the payment of interest represents expenditure laid out wholly or exclusively for the purpose of the business. There is also no dispute that it is in the nature of revenue expenditure.

11. The facts of the present case are totally different. There is no comparison between the provisions that govern both the cases. As a matter of fact, Section 43B of the 1961 Act was not in force when Mahalakshmi Sugar Mills Co.s case (1 supra) was decided. The principle laid down therein does not provide any guidance, for adjudication of this case.

12. The Rajasthan High Court had an occasion to deal with the question as to whether the interest on tax, duty or cess u/s 43B of the 1961 Act partakes the same character as the principal amount; in Shree Pipes case (2 supra). After taking into account, the principles of interpretation and the ratio in certain decided cases, their Lordships took the view that interest that becomes payable on tax, which is otherwise permissible for deduction under the provisions of the Income Tax Act, while computing the total income, is part of tax, within the meaning of Section 43B of the 1961 Act.

13. Learned counsel for the respondent sought to impress us by pleading that the Parliament itself maintained a distinction between the component of the tax, duty or cess, on the one hand, and interest, on the other hand, and wherever it wanted to bring interest within the fold of Section 43B of the 1961 Act, it did so specifically. Reference is made to Clause (b) of Section 43B of the 1961 Act. A perusal of the same discloses that the interest was mentioned separately, where that amount alone, and not the corresponding principal, is permitted as deduction. Under Clause (d), what is permitted to be deducted is not the loan, but the interest thereon.

14. If the contention of the respondent that the component of interest must be permitted to be deducted just by making a provision, and not making actual payment, it will lead to almost a semblance of absurdity. If the actual tax, duty, or cess can be deducted only on payment, it is just un-understandable as to how the interest thereon can be deducted without making payment thereof. Take an instance, where an assessee is placed under obligation to pay the tax, duty or cess of Rs. 5,00,000/- and it remained unpaid for about 5 or 6 years. He cannot make deduction thereof, because it was not paid. If the law, under which the tax, duty or cess is levied, provides for payment of interest, and a substantial amount had accrued on that amount, the assessee may try to get the benefit of deduction of that equivalent amount, without actually paying it by treating as separate and independent of the tax liability. Such a situation may, in fact, lead to absurdity, and Courts would never permit it.

15. We, therefore, answer the questions in favour of the Department and against the assessee.

16. The reference is accordingly answered.