

Commissioner of Income Tax Vs Anand and Co.

Court: Calcutta High Court

Date of Decision: March 24, 1998

Acts Referred: Income Tax Act, 1961 " Section 28

Citation: (1999) 151 CTR 699 : (1998) 233 ITR 18

Hon'ble Judges: Yad Ram Meena, J; Bijitendra Mohan Mitra, J

Bench: Division Bench

Advocate: Mitra, for the Appellant; Pal, for the Respondent

Judgement

Y.R. Meena, J.

In this reference application, the following question has been referred for our opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the subsidy of Rs. 2,85,923 received from the

Indian Cotton Mills Federation was in the nature of voluntary and gratuitous payment and not liable to tax ?

The assessee is a registered firm carrying on the business of manufacture and export of hosiery goods and also commission business in several

commodities. The assessee-company received Rs. 2,85,923 from the Indian Cotton Textile Mills Federation, Bombay, and claimed that it is not

taxable as it was a casual receipt in the form of reward. The Income Tax Officer has rejected the assessee's contention on the ground that it arose

out of their export business, and that it is not a case of casual receipt since the subsidy or cash incentive is allowed by the Government of India to

all similar business concerns whoever is carrying on business of export in India. It cannot be said to be non-recurring in nature since the assessee's

letter dated December 15, 1976, itself described that subsidy is declared by the Federation from time to time.

2. The Appellate Assistant Commissioner has taken the view that the payment of Rs. 2,85,923 to the assessee is purely a voluntary act by the

Federation for no services rendered by the assessee to the Federation. Subsidy is nothing but donations or gifts and the same cannot be said to be

income taxable u/s 28 of the Act. Therefore, the addition made by the Income Tax Officer was deleted.

3. In appeal before the Tribunal, the Tribunal also found the fact that the amount of Rs. 2,85,923 was received by the assessee from the Indian

Cotton Mills Federation, Bombay, without rendering any service to the Federation. The aforesaid Federation is also not a body corporate

established by any law for the time being in force and it is purely a private organisation. There is no material on record to show that there was any

nexus or connection or relationship which would give rise to a right, claim or expectation of cash assistance from the said Federation to the

assessee. The cash assistance from the Federation purely depends on the discretion of the cash assistance panel and that would depend on the

particular item and destination selected by the panel. Therefore, such voluntary assistance of gift payment by the Federation cannot be regarded as

income liable to tax under the Act.

4. Counsel for the Revenue, Mr. Mitra, submits that the amount received by the assessee from the Federation is a subsidy which is taxable under

the Act. He further submits that the amount distributed by the Federation is money received from the Government of India. Learned counsel for the

assessee, Dr. Pal, submits that after the insertion of Clause (iiib) in Section 28 of the Act, the controversy has been put an end. Any subsidy or any

cash assistance received or receivable by any person against exports under any scheme of the Government is taxable. After this insertion of Clause

(iiib) it is made clear that the cash assistance or subsidy is taxable only in cases, where the cash assistance has been given by the Government

under the scheme and not otherwise. If any cash assistance by whatever name it may be called is given by the Federation which is a private body

to its members, the same cannot come within the purview of Clause (iiib) of Section 28 of the Act.

5. A specific query was put to learned counsel for the Revenue to show us under which section or provision of the Act or rules the money/cash

assistance received by the assessee from a private body, where no service was rendered by the assessee, can be taxed as income, and he failed to

show us any provision in the Act nor has he been able to show any authority where any such type of receipt has been shown liable to tax as

income.

6. Considering the submissions of learned counsel for the parties, the undisputed facts remain that the amount of Rs. 2,95,923 was received by the

assessee from the Federation as cash assistance, which is a private body not established under any law nor any fact found by the Tribunal showing

that the cash amount paid to the assessee is Government money. It comes out from the Federation fund. Dr. Pal submits that this has been

contributed by members of the Federation and this cash assistance has nothing to do with any service rendered by the assessee to the Federation.

Therefore, in our view, this cash assistance is not liable to be taxed under the provisions of the Income Tax Act.

7. In the result, we answer the question in the affirmative, that is, in favour of the assessee and against the Revenue.

8. The application is thus disposed of.

Bijitendra Mohan Mitra, J.

9. I agree.