

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

SWADESHI COTTON MILLS CO. LTD. vs. COMMISSIONER OF INCOME TAX

SUPREME COURT OF INDIA

S.C. Agarwal D.P. Wadhwa, JJ.

Civil Appeal No. 1804 of 1982

1st May, 1997

(1997) 65 CCH 0408 ISCC

(1998) 150 CTR 0616 : (1998) 233 ITR 0199

Legislation Referred to

S 28, 37(1), 246

Case pertains to

Asst. Year 1963-64

Decision in favour of:

Revenue

Business income—Chargeability—Sum received from Textile Commissioner—In lieu of surrender of import entitlements—Is revenue receipt.—[CIT vs. Swadeshi Cotton Mills Co. Ltd.](#) (1980) 15 CTR (All) 81 : (1980) 121 ITR 747 (All) : TC 13R.1330 **affirmed**

(Para 2)

Conclusion :

Sum received from Textile Commissioner; in lieu of surrender of import entitlements ,is revenue receipt.

Appeal (AAC)—Maintainability—Appeal against levy of interest under s. 215—Not competent.—[CIT vs. Swadeshi Cotton Mills Co. Ltd.](#) (1980) 15 CTR (All) 81 : (1980) 121 ITR 747 (All) : TC 6R.663 **affirmed**

(Para 2)

Conclusion :

Appeal against levy of interest under s. 215 is not competent.

Business expenditure—Penalty, fine, etc.—Damages under s. 14B of Employees' Provident Fund Act, 1952—No finding that what portion of damages were penal in nature and what proportion was compensatory in nature—Matter remanded to High Court for disposal in accordance with the principles laid down in [Prakash Cotton Mills \(P\) Ltd. vs. CIT](#) (1993) 111 CTR (SC) 389 : 1993(3) SCC 452 : TC 17R.746—[CIT vs. Swadeshi Cotton Mills Co.](#)

Ltd. (1980) 15 CTR (All) 81 : (1980) 121 ITR 747 (All) : TC 17R.1534 set aside

(Para 4)

Conclusion :

Matter remanded to High Court for disposal of question relating to deduction of damages incurred by assessee under s. 14B of Employees' Provident Fund Act, 1952, in accordance with the principles laid down in [Prakash Cotton Mills \(P\) Ltd. vs. CIT](#) (1993) 111 CTR (SC) 389 : 1993(3) SCC 452 : TC 17R.746.

Business expenditure—Penalty, fine, etc.—Penalty under Central Sales-tax Act—Penalty imposed was not on account of any delayed payment of central sales-tax but was for contravention of the provisions of that Act—Nothing on record to show that penalty had a compensatory element—Not allowable as deduction under s. 37(1)—[CIT vs. Swadeshi Cotton Mills Co. Ltd.](#) (1980) 15 CTR (All) 81 : (1980) 121 ITR 747 (All) : TC 17R.1534 affirmed

(Para 5)

Conclusion :

Penalty paid under Central ST Act for contravention of provision of that Act was not allowable as deduction under s. 37(1) as there was no compensatory element in it.

Cases referred:

CIT vs. Hyderabad Allwyn Metal Works Ltd. (1988) 72 CTR (AP) 2 : (1988) 172 ITR 113 (AP) : TC 17R.752

CIT vs. Gita Ram Kali Ram (1980) 15 CTR (All)(FB) 67 : (1980) 121 ITR 708 (All)(FB)

Saraya Sugar Mills (P) Ltd. vs. CIT 1978 CTR (All) 329 (FB) : (1978) 116 ITR 387 (All) (FB) : TC 17R.797

BY THE COURT

****From the judgment and order dt. 14th Sept., 1979 of the Allahabad High Court in IT Ref. No. 543 of 1977, reported as CIT vs. Swadeshi Cotton Mills Co. Ltd. (1980) 15 CTR (All) 81 : (1980) 121 ITR 747 (All) : TC 13R.1330/17R.1534.***

Order

This appeal arises out of the IT Ref. No. 543/77 [reported as CIT vs. Swadeshi Cotton Mills Co. Ltd. (1980) 15 CTR (All) 81 : (1980) 121 ITR 747 (All) : TC 17R.1534] where the four questions that were referred to the Allahabad High Court by the Tribunal (hereinafter referred to as 'the Tribunal') have been answered by the High Court against the assessee and in favour of the Revenue. Insofar as question Nos. 1, 3 and 4 are concerned, the High Court has mentioned that the learned counsel for the assessee had conceded, that question Nos. 1 and 3 were covered by the decision of the Full Bench of the said High Court in Saraya Sugar Mills (P) Ltd. vs. CIT 1978 CTR (All) 329 (FB) : (1978) 116 ITR 387 (All)(FB) : TC 13R.1330 and that question No. 4 was covered by the decision of the Full Bench in the CIT vs. Gita Ram Kali Ram, IT Ref. No. 41 1976, decided on 23rd Aug., 1979 [reported at (1980) 15 CTR (All)(FB) 67 : (1980) 121 ITR 708 (All)(FB)].

2. We have heard Shri Mahajan, the learned counsel appearing for the appellant/assessee in support of appeal, and Shri G.C. Sharma, the learned senior counsel appearing for the Revenue. Insofar as questions Nos. 2 and 4 are concerned Shri Mahajan has not been able to show any infirmity in the impugned judgment of the High Court. As regards question Nos. 1 and 3 Mahajan placing reliance on the decision of this Court in *Prakash Cotton Mills (P) Ltd. vs. CIT* (1993) 111 CTR (SC) 389 : 1993 (3) SCC 452 : TC 17R.746 has submitted that the said questions may be remitted for consideration to the High Court in view of the said judgment. Question Nos. 1 and 3 were as under:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing deduction of the liability of Rs. 34,131 incurred by the assessee for the payment of damages under s. 14B of the Employees' Provident Fund Act, 1952.

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the penalty of Rs. 7,667 levied on the assessee under the Central ST Act could not be allowed as a deduction while computing the income of the assessee?"

Question No. 1 was referred at the instance of the Revenue while question No. 3 was referred at the instance of the assessee.

3. In *Prakash Cotton Mills (P) Ltd.* (supra) this Court has considered the question whether the interest paid for delayed payment of sales-tax under the Bombay ST Act, 1959, and damages paid or delayed payment of contribution under the Employees' State Insurance Act were permissible deduction under s. 37(1) of the IT Act, 1961 (hereinafter referred to as 'the Act'). This Court has held that whenever any statutory impost paid by an assessee by way of damages or penalty or interest, is claimed as an allowable expenditure under s. 37(1) of the Act, the assessing authority is required to examine the scheme of the provisions of the relevant statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statute, to find whether it is compensatory or penal, in nature. The authority has to allow deduction under s. 37(1) of the Act, whenever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, i.e., partly of compensatory nature and partly of penal nature, the authorities are obligated to bifurcate the two components of the impost and give deduction to that component which is penal in nature. In that case this Court has approved the judgment of the Andhra Pradesh High Court in *CIT vs. Hyderabad Allwyn Metal Works Ltd.* (1988) 72 CTR (AP) 2 : (1988) 172 ITR 113 (AP) : TC 17R.752, where the Court was dealing with the deduction of the amount paid by way of damages under s. 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It was held that the said amount comprises both the element of penal levy as well as compensatory payment and that it will be for the authority under the Act to decide with reference to the provisions of the Employees' Provident Fund Act, 1952, and the reasons given in the order quantifying the damages to determine what proportion should be treated as penal and what proportion as compensatory and that the entire sum can neither be considered as mere penalty nor as mere interest.

4. In view of the said decision *Prakash Cotton Mills (P) Ltd.* (supra) question No. 1 requires to be examined in accordance with the principles laid down by the Andhra Pradesh High Court in *CIT vs. Hyderabad Allwyn Metal Works Ltd.* (supra) which have been approved by this Court. Since the question has not been examined in this light, it becomes necessary to remit the said question to the High Court for consideration.

5. As regards question No. 3 we find from the judgment of the Tribunal that the penalty that was imposed was not on account of any delayed payment of Central sales-tax but was for contravention of the provisions of the Central ST Act. There is nothing on the record to show that the amount of penalty had a compensatory

element in it. In the circumstances, we do not find any infirmity in the answer given by the High Court to question No. 3.

6. The appeal is, therefore, partly allowed to the extent that the matter is remitted to the High Court to consider question No. 1 referred by the Tribunal in accordance with the principles laid down by this Court in Prakash Cotton Mills (P) Ltd. (supra) and if for the purpose of such consideration the High Court considers it necessary, it may ask the Tribunal to submit a supplementary statement of case. The appeal is disposed of accordingly with no costs.

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