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Court : Guwahati

Decided On : Apr-28-2003

Appeal No. : IT Appeal No. 22 of 2001 28 April 2003

Appellant : Parshuram Agarwalla

Respondent : Cit

Prior history : R.P. Naolekar, C.J. The appeal was admitted on the following question of law : 'Whether interest paid as income-tax and wealth-tax is not deductible in computing the income of an assessee in view of the provisions in section 40(a)(ii)(ia) read with section 2(43) of the Income Tax Act, 1961 ?' 2. The above question of law arises in the following facts and Circumstances-that the assessee appellant has filed his return of income on 9-12-1991 and the assessing officer assessed the income of the a

Judgement :

R.P. Naolekar, C.J.

The appeal was admitted on the following question of law :

'Whether interest paid as income-tax and wealth-tax is not deductible in computing the income of an assessee in view of the provisions in section 40(a)(ii)(ia) read with section 2(43) of the Income Tax Act, 1961 ?'

2. The above question of law arises in the following facts and Circumstances-that the assessee appellant has filed his return of income on 9-12-1991 and the assessing officer assessed the income of the assessee appellant under section 143 of the Income Tax Act, 1961. As the assessee could not deposit the amount of income tax within the time fixed, he was charged with the interest of Rs. 18,984 over the non-payment of the income-tax. The assessee claimed exemption of Rs. 18,984 for the assessment year 1991-92 of the interest paid because of the non-payment of income tax in due time as business expenditure. The assessing authority refused exemption to the appellant assessee. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner (Appeals), Dibrugarh. The appellate authority allowed the appeal of the assessee holding that the interest paid on non-payment of the tax in due time is business expenditure of the assessee and thus for the said amount the assessee is entitled to deduction. The order of the Commissioner (Appeals) gave rise for filing an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal has allowed the appeal filed by the revenue holding that the interest paid on non-payment of the income-tax within time would not be a business expenditure and for this the assessee is not entitled to deduction. Aggrieved by the said order the assessee has filed the present appeal, which has been admitted on the aforesaid question of law.

3. The real question requires determination by us is, whether the interest paid on the income tax can be said to be a part and parcel of the income-tax itself and thus deduction is not allowable under section 40(a)(ii) of the Income Tax Act.

4. Learned counsel for the appellant has placed reliance on two decisions in Mahalakshmi Sugar Mills Co. v. CIT : [1980]123ITR429(SC) and CIT v. Veneer Mills (P) Ltd. for his contention that the assessee is entitled to deduction of the interest as business expenditure. The case in Mahalakshmi Sugar Mills Co. (supra) is based on its own fact where the Apex Court has found that the assessee was carrying on business of manufacturing and sale of sugar and during the course of business it was required to purchase sugarcane. Under section 3(3) of the U.P. Sugar Act, 1956 there was a provision for payment of interest on the arrears of cess payable on the entry of sugar cane into the factory for use,

consumption or sale therein. Under these circumstances when the cess is not paid it was made liable to pay interest thereon. It was held by the Apex Court that the interest paid over non-payment of the cess amount is business expenditure, thus the assessee is entitled to deduction. The judgment runs on the premises that the interest was required to be paid by the assessee on non-payment of cess, which was required to be paid by the assessee on entry of sugar cane into the factory for use, consumption or sale during the course of his business. As he has not paid the cess within time, he was required to pay interest till the non-payment of cess was made. Interest paid by the assessee has direct relation with the business carried by him and thus held that the assessee is entitled to deduction as business expenditure.

5. In the matter of Veneer Mills (P) Ltd., (supra) it has been held by this court that the interest payable on the non-payment of Sales Tax under the Assam Finance (Sales Tax) Act, 1956 is a part and parcel of the liability to pay sales tax and as accretion thereto. This court also held that it cannot be said to be a penalty. In our view, this decision does not help the assessee it rather advances the point of view placed for consideration of the court by the revenue. On the facts found, this court has held that the interest paid on the Sales Tax is a part and parcel of the Sales Tax being accretion thereto and thus, the interest paid on the sales-tax is sales-tax itself. On the same analogy the interest paid on the income-tax by the assessee is an accretion in the income-tax and would be part of the income tax.

6. On account of section 156 of the Income Tax Act, 1961 when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, the assessing officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable in consequence of the order passed under the Income Tax Act, 1961. The assessing officer is called upon to serve the assessee a notice of demand to pay the amount specified in the notice. Section 220 of the Act requires that any amount so specified, except the advance tax, shall be paid within 30 days of the service of the notice at the place and to the person mentioned in the notice. If the amount specified in the notice of demand is not paid within 30 days then that will carry the interest over it. Section 40 of the Act provides that notwithstanding anything to the contrary (sections 30 to

38), the following amounts shall not be deducted in computing the income chargeable under the head 'Profit and gains of business or profession'. Sub-clause (ii) of clause (a) of section 40 of the Act reads as under :

'(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains;'

By virtue of section 40 of the Act any sum paid on account of tax levied on profits or gains of any business or profession or assessed at a proportion of or otherwise on the basis of any such profits or gains shall not be deductible while computing the income chargeable under the head 'Profits and gains of business or profession'. If the interest paid is part and parcel of the income tax being accretion to the tax then the assessee would not be entitled for any deduction of the interest paid over the nonpayment of the tax in due time. In the case of *Orissa Cement Ltd. v. CIT* : [1993]200ITR636(Delhi) (Del), it is held by the Delhi High Court that the interest payable under section 220(2) of the Income Tax Act, 1961 for delayed payment of a demand of income tax is not allowable as business expenditure under sections 28 and 37. In the case of *CIT v. Ghatkopar Estate & Finance Corpn. (P) Ltd.* : [1989]177ITR222(Bom) , it is held by the Bombay High Court that the interest paid by the assessee on delayed payment of income tax is personal and the interest cannot be allowed as deduction under the provisions of section 28 or 37 of the Act. In the case of *Assam Forest Products (P) Ltd v. CIT* , it is held by the High Court that the interest paid for delay in filing the returns, shortfall in payment of advance tax and failure to make estimate of advance tax under the Income Tax Act are not deductible as an expenditure under section 37 of the Act. In our view also the interest which was required to be paid by the assessee on account of delayed payment on the demand of income tax, partakes the character of the income tax itself, it being the accretion to the income-tax on account of default made by the assessee in payment of the tax demanded and the interest being payable under section 220 of the Income Tax Act. It being the part and parcel of the income-tax, deduction is not permissible under the provisions of section 40(a)(ii) read with section 2(43) of the Income Tax Act, 1961.

7. For the aforesaid reasons, the question is answered in the affirmative in favour of the revenue and we hold that the interest paid on delayed amount of the demanded income tax is not allowable deduction as business expenditure or otherwise under the Income Tax Act, 1961.

8. The appeal stands dismissed. However, in the circumstances of the case there shall be no order as to costs.

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