

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

STANDARD BATTERIES LTD. vs. COMMISSIONER OF INCOME TAX

SUPREME COURT OF INDIA

R.M. Sahai & S. Mohan, JJ.

Special Leave Petition (C) No. 9555 of 1992

22nd April, 1994

(1994) 62 CCH 0320 ISCC

(1994) 119 CTR 0353 : (1995) 211 ITR 0444 : (1994) 75 TAXMAN 0333

Legislation Referred to

Sections 37(1), 256(2), 257

Case pertains to

Asst. Year -

Decision in favour of:

Assessee

Special leave petition—To appeal directly from Tribunal's order—Point raised is covered by earlier Supreme Court decision—Special leave petition thus cannot be rejected on the ground that it has by-passed the procedure under s. 256(2)

(Para 5)

Conclusion :

Special leave petition to appeal directly from the Tribunal's order was not rejected, the issue being covered by earlier Supreme Court decision.

Business expenditure—Penalty under s. 36(3) of Bombay ST Act—Levy is composite in nature being partly compensatory and partly penal in character—Deduction can be allowed only for compensatory portion of the levy—Tribunal's order is set aside and it is directed to dispose of the matter afresh after determining such apportionment.—[Prakash Cotton Mills \(P\) Ltd. vs. CIT \(1993\) 111 CTR \(SC\) 389 : \(1993\) 201 ITR 684 \(SC\)](#) followed

(Paras 4 & 5)

Conclusion :

When penalty levied under Sales-tax Act, viz., under s. 36(3) of Bombay ST Act, is composite in nature, deduction can be allowed only for the compensatory portion of the levy and not for the penal portion.

BY THE COURT

The petitioner seeks Special Leave to Appeal directly from the order dt. 1st Jan., 1992, of the Tribunal, Bombay Bench, `A' Bombay, declining to state a case and refer a question of law for the opinion of the High Court. Learned counsel for the Revenue raised an objection as to the maintainability in view of the fact that the petitioner seeks to by-pass the procedure under s. 256(2) of the IT Act, 1961.

2. In the normal course we should have declined to entertain the matter here. Sri Ganesh appearing for the petitioner says that the Reference before the Tribunal sought to invoke s. 257 of the IT Act, 1961. Sri Ganesh says that in view of this no objection that the petitioner did not have recourse to the drill of s. 256(2) could be entertained.

3. Be that as it may, the question included is as to the nature of the levy under s. 36 (3) of the Bombay ST Act, 1959. If the exaction partakes of the character of a penalty, its deductibility as an allowable business or revenue expenditure gets contested. If, on the other hand, it is compensatory in character, the claim admits of being considered as an allowable deduction subject to the other provisions of the Act.

4. The point raised seems to be covered by the pronouncement of this Court in Prakash Cotton Mills (P) Ltd. vs. CIT (1993) 111 CTR (SC) 389 : (1993) 201 ITR 684 (SC). This Court approved the view taken of the matter by the Andhra Pradesh High Court in CIT vs. Hyderabad Allwyn Metal Works Ltd. (1988) 72 CTR (AP) 2 : (1988) 172 ITR 113 (AP) that the levy authorised by s. 36(3) of the Bombay ST Act is composite in nature being partly compensatory and partly penal in character and that the proportion between the two requires to be determined and apportioned. The observations at pages 690-691 of the report (of ITR) in Prakash Cotton Mills case are these :

".....Therefore, 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 IT 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 IT Act, wherever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, that is, 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 compensatory in nature and refuse to give deduction to that component which is penal in nature."

5. In view of this position, we do not propose to dismiss this Special Leave Petition on the ground that it has by-passed the procedure provided under s. 256(2) of the Act.

In the circumstances, the order dt. 1st Jan., 1992 of the Tribunal is set aside and the appeal remitted and the Tribunal is directed to dispose of the appeal afresh after determining such apportionment of the amount claimed as deduction by an allowable expenditure in accordance with law.

6. The Special Leave Petition is disposed of accordingly.
