

Janta Metal Supply

Vs

Commissioner of Income-Tax, U.P.

Civil Appeal No. 1905(T) of 1976

(Y. V. Chandrachud, P. S. Kailasam JJ)

27.07.1977

JUDGMENT

CHANDRACHUD J. -

The assessee-firm, which is the appellant before us, does business in brass and copper scrap on a wholesale basis. It purchased metal scrap during the assessment year 1970-71, for which it paid a sum of Rs. 2,46,625 consisting of various items, each one of which exceeded Rs. 2,500. It claimed these amounts as allowable deductions, whereupon a question arose whether payments made in cash in excess of Rs. 2,500 at a time could be claimed as deductions in view of the provisions contained in section 40A(3) of the Income-tax Act, 1961.

The revenue authorities and the Appellate Tribunal rejected the assessee's claim, holding that the case fell squarely within the terms of section 40A(3) and that none of the exceptions contained in rule 6DD was attracted.

The assessee asked the Appellate Tribunal to make reference to the High Court which the Tribunal declined to do on the ground that its judgment did not give rise to any question of law. The assessee then approached the High Court of Allahabad asking that the Tribunal be directed to make a reference to it on the questions raised by the assessee. The order of the High Court dismissing the application for reference is challenged by the assessee in this appeal by special leave.

Mr. Singhanian, who appears on behalf of the assessee, contends that the Tribunal's judgment raises an important question of law, viz., whether payments made by the assessee in purchasing scrap metal for resale is "expenditure" within the meaning of section 40A(3). The Tribunal not having discussed this question in its judgment, the High Court is apparently justified in its view that the question did not arise out of the Tribunal's judgment. Our attention has, however, been drawn by the assessee's counsel to an affidavit filed in the High Court by one Balkishan, who is the son of one of the partners of the assessee-firm, in which he says that he was present at the hearing before the Tribunal and that the question on which a reference was sought was argued before the Tribunal. Not only was Balkishan's affidavit not rebutted by a counter-affidavit or otherwise, but the Commissioner of Income-tax, by his reply to the application filed by the assessee in the Tribunal asking for a reference to the High Court, conceded that a question of law arose out of the Tribunal's judgment which should be referred for the opinion of the High Court.

A judgment dated November 29, 1973, rendered by the Delhi Bench of the Income-tax Appellate Tribunal in I.T.A. No. 5456 of 1972-73 shows that various Benches of the Tribunal have consistently taken the view that payments made for the purchase of stock-in-trade or raw material is

not "expenditure" within the meaning of section 40A(3). On the other hand, learned counsel for the revenue has drawn our attention to the judgment of the Orissa High Court in Sajowanlal Jaiswal v. Commissioner of Income-tax [1976] 103 ITR 706 (Orissa) and of the Allahabad High Court in U.P. Hardware Store v. Commissioner of Income- tax [1976] 104 ITR 664 (All) which, on a careful consideration of the matter, have taken a contrary view.

Since the question raised on behalf of the assessee is of general importance and since it appears that the question was raised before the Tribunal itself, we set aside the judgment of the High Court and direct that the High Court shall call for a statement of case from the Tribunal on the following question :

"Whether, the amount spent by the assessee in purchasing goods for the purpose of resale is expenditure within the meaning of section 40A(3) of the Income-tax Act, 1961 ?"

On receiving the statement of case, the High Court shall hear the parties and dispose of the reference in accordance with law. There will be no order as to costs. accordance with law. There will be no order as to costs.

at by the Gujarat High Court. We allow this appeal and hold that the Income-tax Officer in the circumstances is entitled to reopen the assessment under section 147 (b) of the Income-tax Act. The appeal is allowed with costs.

Appeal allowed.

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