

## **Commissioner Of Income Tax vs P.V.S. Beedies Pvt. Ltd. on 1 October, 1997**

**Equivalent citations: [1999]237ITR13(SC), JT1998(9)SC118, (1998)9SCC272, AIRONLINE 1997 SC 392**

**Bench: S.C. Sen, S. Saghir Ahmad**

### **ORDER**

1. These cases relate to Assessment Years 1974-75 and 1975-76. The relevant accounting years ended on 31-3-1974 and 31-3-1975 respectively. Originally the assessment was completed on 21-6-1977. There were various other proceedings which ended in the Tribunal. The Tribunal after considering all aspects of the cases remanded the cases back to the Income Tax Officer for passing a fresh order in accordance with law. One of the points raised before the Income Tax Officer was that of justification for reopening of the assessment. It was pointed out that reopening has been done on the basis of the report made by the Audit Department. The contention which found favour with the Tribunal was that reopening under Section 147(b) is not permissible on the basis of a report given by the Audit Department. This view was also taken by the High Court.

2. We have considered the matter. It appears that the reopening was done because in the original assessment donations made to a body known as P.V.S. Memorial Charitable Trust was held by the Income Tax Officer to be eligible for deduction under Section 80G. But subsequently it was pointed out by the internal audit party that the recognition which had been granted to the P.V.S. Memorial Charitable Trust had expired on 22-9-1972. That means it had expired before 1-4-1973. Therefore, in the relevant years of account this Trust was not a recognised charitable trust. In that view of the matter the donation to P.V.S. Memorial Charitable Trust did not qualify for deduction under Section 80G as a donation made to a recognised charity.

3. We are of the view that both the Tribunal and the High Court were in error in holding that the information given by internal audit party could not be treated as information within the meaning of Section 147(b) of the Income Tax Act. The audit party has merely pointed out a fact which has been overlooked by the Income Tax Officer in the assessment. The fact that the recognition granted to this charitable trust had expired on 22-9-1992 was not noticed by the Income Tax Officer. This is not a case of information on a question of law. The dispute as to whether reopening is permissible after audit party expresses an opinion on a question of law is now being considered by a larger Bench of this Court. There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law. In view of that we hold that reopening of the case under Section 147(b) in the facts of this case was on the basis of factual information given by the internal audit party and was valid in law. The judgment under appeal is set aside to this extent.

4. The appeals are allowed. There will be no order as to costs.