

## **Prafulla Kumar Malik vs Commissioner Of Income-Tax, Bihar And ... on 15 September, 1966**

**Equivalent citations: [1967]63ITR62(SC)**

**Author: J.C. Shah**

**Bench: J.C. Shah**

### **JUDGMENT**

Bhargava, J.

1. This appeal on certificate granted by the High Court of Orissa under section 66A(2) of the Indian Income tax Act, 1922, arises under the following circumstances :

During the calendar year 1954, which was the previous year relating to the assessment year 1955-56, the appellant worked as a paddy procuring agent under the Government of Orissa on the basis of an agreement entered into by the appellant and the Government of Orissa. Under that agreement, the appellant was required to supply paddy and rice of a certain standard quality" known as "fair average quality". The criterion for the "fair average quality was defined. There was a clause in the agreement that the quality of foodgrains supplied must conform to the "fair average quality" standard and that the Collector may, subject to the approval of the Government, levy such penalty as he may deem fit for supply of foodgrains not conforming to the "fair average quality", and such penalty shall be deducted from the amount or amounts due to the agent on pending or future bills submitted in accordance with another clause of the agreement. In exercise of the power, during the course of the accounting year in question, penal "Whether, on the facts and in the circumstances of the case, the amount of Rs. 25,700 paid by the assessee by way of penalty to the Government of Orissa shall be an admissible deduction under section 10(1) of the Income-tax Act, 1922 ?"

2. The High Court, in dealing with this question, considered the provisions of section 10(2)(xv) of the Act and held that the deduction claimed by the appellant for his dishonest action in supplying sub- standard quality goods, and that such penalty for the purpose of the business. It is quite obvious that the High Court, in answering the question that was referred to it for opinion by the Tribunal. The appellant had at no stage contended that the Tribunal had wrongly held that this sum of Rs. 25,700 was not deductible under section 10(2)(xv) of the Act as expenditure wholly and exclusively laid out for the purpose of the business, nor was this proposition the subject matter of the question which was referred by the Tribunal for opinion to the High Court. In answering the

question of this basis, therefore, the High Court did what it was not at all called upon to do and, thus, committed a clear error.

3. The High Court was actually required to answer the question whether this sum of Rs. 25,700 which was paid by the assessee by way of penalty to the Government of Orissa was an admissible deduction under section 10(1) of the Income-tax Act. The question was, no doubt, framed in rather unfortunate language, because section 10(1) of the Income-tax Act does not refer to any deduction. Section 10(1) lays down that the tax shall be payable by an assessee under the head "profits and gains of any business, profession or vocation" in respect of the profits and gains of any business, profession or vocation carried on by him. In these circumstances, what the appellant had claimed was that, in the computation of profits and gains and gains of business, profession or vocation under section 10(1) of the Act, this amount should be deducted, which was intended to mean that this amount should not be included in the computation of the profits and gains of the business. The word "deduction" appears to have been used by the appellant as well as by the Tribunal only because the dispute related to a sum which had been deducted by the Government of Orissa as a penalty from the amount due to the appellant for the supplies made by him in pursuance of the agreement. The High Court, therefore, in answering the question referred to it, should not have gone in to the question of the applicability of section 10(2)(xv) of the Act at all, and should have confined itself to deciding whether this amount deducted from the claims of the assess by the Government or Orissa was liable to be excluded when computing the income under section 10(1) of the Act. The decision given by the High Court is, therefore, liable to be quashed and a direction is necessary to the High Court to answer the question referred to it.

4. The appeal is consequently allowed with costs and the judgment of the High Court is set aside. The case will now go back to the High Court for answering the question referred to it by the Tribunal in the aspect explained above.

5. Appeal allowed; Case remanded.