

Supreme Court of India

Standard Batteries Ltd. vs Commissioner Of Income-Tax on 22 April, 1994

Equivalent citations: 1995 211 ITR 444 SC

Author: M V I.

Bench: M Venkatachaliah, R Sahai, S Mohan

JUDGMENT M.N. Venkatachaliah, C.J.I.

1. The petitioner seeks special leave to appeal directly from the order dated January 1, 1992, of the Income-tax Appellate 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 bypass the procedure under Section 256(2) of the Income-tax 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 Section 257 of the Income-tax Act, 1961. Sri Ganesh says that in view of this no objection that the petitioner did not have recourse to the drill of Section 256(2) could be entertained.

3. Be that as it may, the question included is as to the nature of the levy under Section 36(3) of the Bombay Sales Tax Act, 1959. If the exaction partakes of the character of a penalty, its deducibility 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. v. CIT*. This Court approved the view taken of the matter by the Andhra Pradesh High Court in *CIT v. Hyderabad Allwyn Metal Works Ltd.*, that the levy authorised by Section 36(3) of the Bombay Sales Tax 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 and 691 of the report 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 Section 37(1) of the Income-tax 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 Section 37(1) of the Income-tax 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 bypassed the procedure provided under Section 256(2) of the Act.

6. In the circumstances, the order dated January 1, 1992, of the Income-tax Appellate 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.

7. The special leave petition is disposed of accordingly.