Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh Vs. Saraswati Industrial Syndicate.

LegalCrystal Citation : legalcrystal.com/617980

Court : Punjab and Haryana

Decided On : Dec-16-1970

Reported in : [1972]83ITR352(P& H)

Appeal No. : Income-tax Reference No. 54 of 1965

Appellant : Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh

Respondent : Saraswati Industrial Syndicate.

Judgement :

PREM CHAND PANDIT J. - The following question of law has been referred to us for opinion :

'Whether, on the facts and in the circumstances of the case, the amount of Rs. 250 paid on account of professional tax was allowable as a deduction in the assessees assessment ?'

The Saraswathi Industrial Syndicate, Yamunanagar, District Ambala, the assessee, is a public limited company. The assessment year is 1959-60, the relevant accounting period being the year ending 31st August, 1958. The assessee claimed a deduction of Rs. 250 which was paid by it on account of professional tax, Both the Income-tax Officer and the Appellate Assistant Commissioner disallowed this amount in view of the provisions of section 10(4) of the Indian Income-tax Act, 1922 (hereinafter called 'the Act'). The appellate Tribunal, however, held it to be an allowable deduction, because the assessee had to pay this tax in order to carry on its business. This finding was given relying on the decision of the Allahabad High Court in Simbholi Sugar Mills Ltd. v. Commissioner of Income-tax. The Commissioner of Income-tax then made an application requiring the Tribunal to refer certain questions of law to this court for opinion. The Tribunal, however, referred only the abovementioned question.

The assessee paid this tax under the Punjab Professions, Trades, Callings and Employments Act, 1956, and it claimed this deduction under section 10(2) (xv) of the Act. The relevant part of section 10 reads :

'10. Business. - (1) The tax shall be payable by an assessee under the head Profits and gains of business, profession or vocation in respect of the profits and gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :-.....

(xv) any expenditure (not being an allowance of the nature described in any of the clauses (i) to) (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation.'

The case of the assessee was that this expenditure was neither an allowance of the nature described in any of the clauses (i) to (xiv) of section 10(2) nor was it in the nature of capital expenditure or personal expenses of the assessee, but the same was laid out or expended wholly and exclusively for the purpose of his business. The assessee had to pay the professional tax in order to carry on its business. This tax was, therefore, fully covered by the provisions of section 10(2) (xv) and was allowable as a deduction in the relevant assessment.

The position taken by the revenue, on the other hand, was that the assessee could not claim this deduction in view of the provisions of sections 10(4) of the Act, the relevant part of which is :

'Nothing in clause (ix) or clause (xv) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains.....'

Their case was that since this tax was levied on the profits or gains of the assessees business or in any case assessed at a proportion of or other wise on the basis of any such profits or gains, therefore, this sum could not be allowed as a deduction in view of the provisions of section 10(4) of the Act.

The first question to be determined is whether the case set up by the assessee itself would come under section 10(2) (xv) of the At. It can claim the exemption of this tax only if it can show, as is alleged by it, that this tax was an expenditure laid out or expended wholly and exclusively for the purpose of its business. In other words, can it be said that this was an expenditure which had been incurred by the assessee exclusively for the purpose of its business. It is quite different to say that the assessee was taxed, because it carried on its business. Only that expenditure will be covered by this clause which the assessee has spent or laid out exclusively for the running or betterment of it business. If a tax has been imposed simply because a person was carrying on a particular business, that, in my view, will not be covered by this clause, because the tax is the result of that persons doing the business. If he had not done that business, the tax would not have been levied on him. The tax, in the instant case, was the outcome of the assessees carrying on the business. That, however, does not mean that the said tax was in expenditure which had been incurred by the assessee for the purpose of its business.

The view that I have taken above is supported by a Full Bench decision of the Madras High Court in Commissioner of Income-tax v. King and Partridge. There the question for consideration was whether the profession tax paid under section 111 of the Madras City Municipal Act should be allowed as a proper deduction from the taxable income as an expenditure incurred solely for the purpose of the profession of the assessee within the meaning of section 11 of the Act. The Commissioner of Income-tax was of the opinion that the deduction claimed was not an allowable item. While giving their opinion on this question, the learned Judges observed :

'The answer to the question put to us depends in our opinion upon the nature of the profession tax levied by the municipality. If the profession tax is a contribution from the income of the assessee to the municipality it will stand on the same footing as income-tax itself which is such a payment to the government. It is clear, in assessing the income of a person the income-tax he pays could not be deducted, for what is paid is a part of the income itself and not an expenditure for earning that income or profit. It was so ruled in Ashton Gas Co. v. Attorney-General, and the proposition is conceded before us. What then is the profession tax Is it a payment made out of the income of the taxpayer or is it an expenditure which he has to incur to enable him to earn his income We are of opinion that it is the former and not the latter....

Now the nature of the tax cannot vary with the individual taxed. In the case of persons holding appointments under the government it seems to us impossible to predicate that they pay profession tax to enable them to earn their salary..... the proper basis of the tax is the income earned. In this view the payment of the profession tax cannot be held to be an expenditure for the purpose of such profession though it is incurred in connection with it. The words for the purpose of were construed by Lord Davey in the case of Strong and Co. v. Woodifield, where the expression was for purposes of the trade. His Lordship observed :

These words appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade, etc. I think the disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits.

Following that view, we consider that the payment of profession tax does not fall within section 11.'

In this view of the matter, it is needless to decide the other question whether the profession tax is levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of such profits or gains as contended by the revenue; or it is charged on the total receipts during an assessment year of an assessee irrespective of the fact whether it made any profits or not, as argued by the learned counsel for the assessee.

I would, accordingly, answer the question referred to us in the negative. there will be no order as to costs.

SANDAWALIA J. - I agree.