

(14) Further, it is also our view that as the decision of a High Court is binding only upon the authorities and Tribunals, within its jurisdiction, no Tribunal beyond such jurisdiction, can treat or hold as constitutionally invalid any provision of the Income Tax Act, solely for the reason that a High Court of another State, may have declared the said provision to be *ultra vires*. To grant such power to the Tribunal or even to a High Court, in a reference under Section 256 of the Act, would again amount to conferring jurisdiction upon them to pronounce upon the constitutional validity of the provisions of the statute creating them, which would clearly be contrary to the well-settled position in law, in this behalf.

(15) This is not to say that there is no remedy for questioning the *vires* of the provisions of the Income Tax Act, 1961. Such remedy is undoubtedly there under Article 226 of the Constitution of India.

(16) The clear legal position that thus emerges is that unless and until the Supreme Court or the High Court of the State in question, under Article 226 of the Constitution of India, declares a provision of the Act to be *ultra vires*, it must be taken to be constitutionally valid and treated as such.

(17) This being so, there can be no escape from the conclusion that the Tribunal clearly fell in error in holding Section 140-A(3) of the Act to be *ultra vires*. The reference has thus to be answered in the negative in favour of revenue and against the assessee. As a consequence, the Tribunal shall decide the appeal of the assessee afresh on merits. This matter is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, JULLUNDUR.—*Applicant.*

versus

M/S SURI SONS, JULLUNDUR.—*Respondents.*

Income Tax Reference No. 19 of 1981

February 1, 1989.

Income Tax Act (XLIII of 1961)—S. 37—Extension of running business—Creation of new asset—Purchase of plot for constructing

Commissioner of Income Tax, Jullundur v. M/s. Suri Sons,
Jullundur (G. C. Mital, J.)

additional building for business purposes—Municipal taxes and interest on loan incurred thereof—whether permissible deduction under S. 37.

Held, that there is no dispute that if a new business is set up for the first time, the expenditure in doing so would be of capital nature and deduction would not be permissible under S. 37 of the Income Tax Act, 1961, but if by a running concern the property is purchased in the shape of a plot for setting up additional business buildings, even if building is not constructed, the interest paid on the loans to raise the building or municipal taxes would be permissible deductions, as they are incurred on the new asset acquired by a running concern. Moreover, the municipal tax is paid not for acquisition of any business assets but for retention of the same and, therefore, would be allowable as a business deduction under S. 37 of the Act (Para 2).

Reference under Section 256(1) of the Income-tax Act, 1961, arising out of Tribunal's order in I.T.A. No. 14 (ASR)/1979, to refer to this Hon'ble Court, following question of law, for its opinion:—

“Whether, on the facts and in the circumstances of the case, the ITAT has erred in law in holding that Municipal taxes of Rs. 1,890 paid in respect of Dev Nagar Plot are business expenditure?”

L. K. Sood, Advocate, for the appellant.

N. K. Sood, Advocate of Jullundur, with S. C. Nagpal, Advocate, for the respondents.

ORDER

Gokal Chand Mital, J.—

(1) The assessee was doing business and was a running concern. In the accounting year relevant to the assessment year 1977-78, it purchased a plot of land to raise the building for business purposes. In the previous year it had to pay Rs. 1,890 as municipal taxes on the purchased plot and claimed deduction under Section 37 of the Income Tax Act, 1961 (for short 'the Act'), during the assessment for the assessment year 1977-78. The Income Tax Officer declined the deduction on the ground that the plot had not been utilised for business purposes, and therefore, the expenses would not be of revenue nature. The order was upheld in appeal but on assessee's further appeal, the Income Tax Appellate Tribunal, Amritsar, allowed the deduction in view of certain decided cases of other High Courts, wherein it was observed that even if new property is purchased and

is not put to business use by a running concern, the municipal tax and the amount of interest paid for raising loan to purchase that property would be permissible deductions. At the instance of the Revenue, the following question has been referred for opinion of this Court:

“Whether, on the facts and in the circumstances of the case, that ITAT has erred in law in holding that Municipal taxes of Rs. 1,890 paid in respect of Dev Nagar plot are business expenditure ?”

(2) There is no dispute that if a new business is set up for the first time, the expenditure in doing so would be of capital nature and deduction would not be permissible under Section 37 of the Act, but if by a running concern the property is purchased in the shape of a plot for setting up additional business building, even if building is not constructed, the interest paid on the loan to raise the building or the municipal taxes would be permissible deductions, as they are incurred on the new asset acquired by a running concern. Moreover, the municipal tax is paid not for acquisition of any business assets but for retention of the same, and, therefore, would be allowable as a business deduction under Section 37 of the Act. This view of ours finds full support from decision of the Calcutta High Court in *C.I.T. v. J. K. Industries*, (1), Karnataka High Court in *Addl. C.I.T. Karnataka vs. Southern Founders*, (2) and of the same High Court in *C. T. Desai v. C.I.T.* (3). Accordingly, we answer the question in favour of the assessee, that is, in the negative, that the Tribunal did not err in allowing deduction, of municipal taxes on the purchased plot before it was put to use for business purposes. No costs.

R.N.R.

(1) 125 I.T.R. 218.

(2) 120 I.T.R. 37.

(3) 120 I.T.R. 240.