
(2002) 12 KL CK 0002
In the High Court Of Kerala
Case No : T.R.C. No. 370 of 2000

Bhavani Tea and Produce Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 39

Citation : (2003) 132 STC 563

Hon'ble Judges : P.R. Raman, J;G. Sivarajan, J

Bench : Division Bench

Advocate : John Ramesh, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The assessee is the revision-petitioner. The assessment year concerned is 1981-1982. For the said assessment year the assessee had paid tax on 63,486 kgms of tea valued at Rs. 6,90,695 which was sold in auction. The assessee had also filed return under the Kerala General Sales Tax Act, 1963 including the said turnover of Rs. 6,90,695.56. The assessment was completed, inter alia, assessing the said turnover to tax. The assessee being aggrieved by certain other matters, which were decided against him, filed appeal before the Additional Appellate Assistant Commissioner, Kollam, which was dismissed. However, in the second appeal filed before the Tribunal, the assessee had raised a ground to the effect that the turnover of Rs. 6,90,695 returned by the assessee as taxable turnover is not exigible to tax. The Tribunal rejected the said contention stating that such a contention was not there at the time of assessment and that the assessee itself has recorded the said turnover for assessment.

2. Sri John Ramesh, learned counsel appearing for the petitioner, submits that the assessee had raised the said contention based on the decision of this Court in State of Kerala v. Cardamom Planters Association [1987] 67 STC 294. The

counsel also relied on the decision of the Supreme Court in National Thermal Power Co. Ltd. v. Commissioner of Income Tax (printed at page 566 infra) in support of his contention that the Tribunal has got the power to entertain an additional ground, even though the same was "not raised" before the appellate authority. We also heard the learned Government Pleader appearing for the respondent. He sought to Sustain the order of the Tribunal by contending that the assessee had not raised this contention either before the assessing authority or before the first appellate authority.

3. We have perused the judgment of the Supreme Court in National Thermal Power Co. Ltd. case (printed at page 566 infra) mentioned above. We find that the facts of the said case are similar to the one on hand. In that case the assessee had offered a sum of Rs. 22,84,994 representing interest received on short-term deposits with banks for assessment under the Income Tax Act. The assessment was completed on that basis. The assessee filed appeal before the Commissioner of Income Tax, Appeals, on various grounds. However, the inclusion of the sum of Rs. 22,84,994 was not under challenge. The assessee filed a second appeal before the Tribunal. In the grounds of appeal filed before the Tribunal also the assessee did not object to the inclusion of Rs. 22,84,994 in the assessment. However, by a forwarding letter dated July 16, 1983, the assessee raised additional grounds as follows :

"1. The sum of Rs. 22,84,994 deducted from "Statement of expenditure during construction" cannot be included in the total income.

2. It is also contended that on admission (erroneous), no income (the sum of Rs. 22,84,994) can be included in the total income.

3. The authorities below have erred and failed in their duty in not adjudicating the facts and evidence on record and mechanically including Rs. 22,84,994 in the total income."

It was contended before the Tribunal that interest earned in this manner before the setting up of business is not taxable as income and it goes to reduce the capital cost of the plant. It was also contended that on learning about this legal position the assessee sought to include the above three grounds in its grounds of appeal. The Tribunal declined to entertain this additional ground. On a reference made by the Tribunal the Supreme Court after referring to various decisions held as follows :

"Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

4. The Supreme Court accordingly remanded the matter to the Tribunal for

consideration of the new grounds raised by the assessee on merits. According to us this decision of the Supreme Court is on all force of the present case. In the above circumstances we set aside the order of the Tribunal in so far as this additional ground dealt with in paragraph 4 of the order is concerned and direct the Tribunal to consider the additional ground No. 3 raised by the assessee on merits. The tax revision case is allowed as above.

5. We have already noted that the assessee had paid the tax on the turnover of Rs. 6,90,695. However, as a matter of fact the assessee had collected the tax from the customers and if it has not been made over to the customers, certainly the respondents are entitled to proceed against the assessee u/s 46A of the Kerala General Sales Tax Act, if ultimately the Tribunal decides the matter in favour of the assessee.