

(1999) 11 AHC CK 0016

In the Allahabad High Court

Case No : Income Tax References No's. 237 and 73 of 1982 22 November 1999
A.Y. 1971-72 and 1974-75

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

AUTO SALES

RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:

Income Tax Act, 1961 — Section 143, 256

Citation : (2001) 246 ITR 494

Hon'ble Judges : S. Rafat Alam, J; M.C. Agarwal, J

Bench : Full Bench

Advocate : A. N. Mahajan, for the Revenue and P. K. Misra and Bharat Ji Agarwal, for the Assessee, for the Appellant;

Judgement

M. C. Agarwal, J.

These are two references u/s 256 of the Income Tax Act, 1961, in respect of a common assessee and relating to the assessment years 1971-72 and 1974-75.

The reference in ITR No. 237 of 1982 arises out of the order dated 30-11-1980, passed by the Income Tax Appellate Tribunal in ITA No. 1603 (All) of 1979. The following question stated to be of law and to arise out of the said order has been referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the sales tax of Rs. 2,00,971 credited to the special contingency account in the assessment year 1971-72 was not a trading receipt and hence not includible in the computation of the total income of the assessee for the assessment year under reference ?"

Income Tax Reference No. 73 of 1982 arises out of the Tribunal's order dated 12-2-1981, for the assessment year 1974-75 passed in I. T. A. No. 436 (All) of 1980, and the following question stated to be of law and to arise out of the said order has been referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the sales tax of Rs. 1,42,134 credited in the special contingency account in the assessment year 1974-75 was not a trading receipt and hence not includible in the computation of the total income of the assessee for the year under reference ?"

The aforesaid references have been made at the instance of the Commissioner.

2. We have heard Sri A. N. Mahajan, learned standing counsel for the Revenue, and Sri P. K. Misra, advocate, holding brief from Sri Bharat Ji Agarwal, counsel for the assessee-respondent.

The assessee-respondent is a dealer in motor vehicles and sells the same, inter alia, on hire purchase basis in which system there is no immediate sale of the vehicle at the time of the delivery of the same to the prospective buyers but the vehicle is delivered to the prospective buyers under a hire purchase agreement, the ultimate sale being effected after the installments of hire are cleared. While delivering the vehicle to the buyers. The respondent, in order to hedge itself against any liability for sales tax, takes into account and realises from the hirer the amount of sales tax that could be charged if the sale was executed for the full value of the vehicle. Such amounts are credited to an account called "special contingency account". The sale is ultimately made in most of the cases at a nominal amount of Re. 1, etc., as a result of which the actual liability to sales tax is very little. The excess amount collected from the buyers is generally refunded to them and where it remains unrefunded, it is transferred to another account called sundry creditors account and from there, it seems, the amounts remaining unpaid are taken to the profit and loss account.

For the assessment year 1971-72, the assessing officer made an addition of Rs. 2,58,868 to the total income of the assessee which was surplus in the special contingency account. The relevant part of the assessing officer's order as reproduced in the statement of the case is as under :

"In response to a notice u/s 143(3), Shri L. N. Gupta, assisted by Shri Ajit Dhawan, attended and produced account books which have been examined. The assessee after purchasing the trucks from the TELCO gives over these vehicles on hire purchase basis to the customers. When vehicles are financed, the assessee charges sales tax from the customers and credits the amount charged as sales tax under the head "Special contingency account". The amount of sales tax is paid to the Sales Tax Department, when the last installment is realised from the hirer. In other words, the sales tax is realised on the value of the new chassis whereas sales tax is paid only when the legal title is transferred to the customers and the sale bill is issued. The bill is issued some times on a nominal price of Re. 1 and in any case the assessee pays sales tax not on the cost of the new vehicle realised but on its depreciated value. On contingency account generally a sum of Rs. 101 or Rs. 150 is charged from each hirer for expenses, and miscellaneous expenses incurred are debited.

In the assessment year 1970-71, the net credited to the special contingency account was treated as revenue profit by holding that these credits were intimately and inseparably linked with the business of the firm. These additions were also upheld by the Appellate Assistant Commissioner in appeal. For reasons stated in the earlier assessment years, the net credit of Rs. 2,58,868 (special contingency Rs. 2,58,134 and contingency account Rs. 734) is added to the total income of the assessee. The details are as under:

Received

Paid

Rs.

P.

Rs.

P.

Special contingency account

Allahabad

54,064.99

738.89

Varanasi

2, 60,079.17

55,270.78

3,14,144.16

56,009.67

Surplus

2,58,134.49

Contingency account

Allahabad

5,658.85

8.783.54

Varanasi

11,399.75

7,669.03

277.00

150.00

17,335.60

16,602.57

Surplus

733.03

The above addition of Rs. 2,58,868 finds support from the Supreme Court decisions (i) Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla, and (ii) Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, ."

The assessee carried the matter in appeal before the Commissioner (Appeals) who after examining the system of account maintained by the assessee held that only a sum of Rs. 57,897 that was transferred to the sundry creditors account was liable to be included in the total income of the assessee and he, therefore, reduced the addition to that figure thereby giving a relief of Rs. 2,00,971 to the assessee. On appeal by the Commissioner to the Tribunal the order passed by the Commissioner (Appeals) was upheld. In doing so, the Tribunal followed its earlier order in the assessee's own case for the assessment year 1972-73. A copy of the Tribunal's order for the assessment year 1972-73 has been placed in the paper book and the Tribunal has observed as under:

"On these facts the view taken was that the credits appearing in contingency account No. 2 did not represent the trading receipts of the assessee. It may be noted that on behalf of the revenue it was submitted by Sri Sinha, Senior Departmental Representative, and though the facts of the instant case and of the motor and general sales are similar, that decision needs reconsideration because there is no liability, when the sales tax is actually realised at the beginning of the transaction and the receipt, therefore, partakes of the character of income. Reliance was placed on Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, and Sinclair Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta, . These very cases were relied upon by the departmental Representative in the case of Motor and General Sales (P.) Ltd. and they were considered by the Appellate Tribunal and the view taken was that they were not applicable to that case. We need not elaborate this point any further and for reasons given by us in our order made in the case of Motor and General Sales (P) Ltd. hold that the addition of this amount of Rs. 92,970 in respect of special contingency account to the total income was not justified and we delete it."

3. For the assessment year 1974-75, the assessing officer made an addition of Rs. 1,43,161 describing the same to be excess realisation on account of sales tax transferred from the special contingency account to the sundry creditors account. The relevant portion in the assessing officer's order is as under:

"The assessee has claimed deduction of Rs. 1,36,237 on account of excess payments over realisation in contingency account. This has been further raised to Rs. 1,43,161 only in the revised return filed on February 10, 1978. During the course of the hearing, the assessee replied that the party's account is debited and the special contingency account is credited for the sum to be retained by the assessee on account of the party towards sales tax and other contingency. The excess to the credit of the customer (hirer) in the special contingency account after liquidating the sales tax and other contingency is payable by the assessee to the hirer. However, if it finds that the payment of any of the credit in the account of any of the hirers can be avoided it transfers the excess of the credit to the profit and loss account. The rest of the credit balances of the hirers in the special contingency account are transferred back to the sundry creditors account. From this description it is not clear how the assessee can claim deduction of rupees 1,36,237 on account of excess payment over realisation in the contingency account. Rs. 1,36,237 neither represents payment of sales tax on the basis of the return filed by the assessee, nor is it determined payable by the Sales Tax department at the time of assessment of the actual liability of the assessee towards sales tax. Therefore, Rs. 1,36,237 is not in the nature of sales tax liability paid by the assessee on the basis of the return filed or determined on assessment by the sales tax authority. In fact, from the above description it is clear that it is not in the nature of expenditure at all as the special contingency account is credited with the amount of sales tax realised from the customers. The excess in this account after settling the sales tax demand is transferred to the sundry creditors account. Therefore, in this view the claim of the assessee for deduction is not allowable. During the year the assessee has transferred Rs. 1,43,161 to the sundry creditors account from the special contingency. As already stated above the excess to the credit of the customer (hirer) in the special contingency account after liquidating the sales tax and other contingency is payable by the assessee to the hirer. However, if the payment of any of the hirers can be avoided the excess of the credit is transferred to the profit and loss account. The rest of the credit balances of the hirers in the special contingency account are transferred back to the sundry creditors account. The sales tax transferred to the sundry creditors account is contingency account after liquidating the sales tax liability and other contingency. It is in excess of the extent of the liability of the assessee to pay sales tax. In view of the decision of the Allahabad High Court in Commissioner of Income Tax Vs. Sheo Nath Prasad Hari Kishan, this amount is income and hence to be added to the total income of the assessee for the year. The assessee pleaded that he has already added this amount to the credit of his profit and loss account. Sri Ajit Dhawan, counsel for the assessee, was asked to show specifically as to how and where this amount has been credited. He stated that this amount is included in Rs. 1,53,992 only which is added to the credit of the profit and loss account as creditors written off. He was asked to give details of this Rs. 1,53,992 and to show and prove clearly that this includes the amount of Rs. 1,45,161 also. He could not prove the same and hence this amount is added to the income of the assessee for the year under

consideration."

The assessee carried the matter in appeal before the Commissioner (Appeals) who found that the actual credit transferred to the sundry creditors account was only Rs. 1,42,134 and this amount is included in the appellant's profit and the addition could be only of Rs. 1,027. He, therefore, reduced the addition to Rs. 1,027. For this year again, the Tribunal without passing a detailed and independent order upheld the order passed by the Commissioner (Appeals) by following its order for the assessment year 1972-73.

4. Learned standing counsel placed reliance on Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla, . In that case the assessee carried on business as a distiller of country liquor. There was difficulty in finding bottles in which the liquor was to be sold and to relieve the scarcity, the government devised a scheme whereby the distiller was entitled to charge the wholesalers a price for the bottles in which the liquor was supplied, at rates fixed by the government, which he was bound to repay when the bottles were returned. The assessee, however, in addition to the price fixed under the government scheme, took from the wholesalers certain further amounts described as security deposits, without the government's sanction and entirely as a condition imposed by the assessee itself for the sale of its liquor. Such money was described as security deposits and was also returned as and when the bottles were returned. The sums were returned even if only 90 per cent of the bottles were returned. The price received by the assessee was entered by it in its general trading account while the additional sums were entered in the general ledger under the heading "empty bottles return security deposit account". The question was whether the assessee could be assessed to tax on the balance of the amounts of these additional sums left after the refunds made thereout. The Supreme Court held as under (headnote) :

"(i) that in realising the additional amount described as security deposit the assessee was really charging an extra price for the bottles, and the additional amount was actually a part of the consideration for the sale of the liquor and was part of the price of what was sold ; it did not make any difference that the additional amount was entered in a separate ledger termed "empty bottles return deposit account", for what was a consideration for the sale did not cease to be so by being written up in the books in a particular manner ; nor did the fact that the price of the bottles were repaid as and when the bottles were returned whereas the additional sums were repaid in full when 90 per cent of the bottles were returned affect the question;

(ii) that as the wholesalers were clearly under no obligation to return the bottles the additional sums taken were not security deposits and the fact that they were described as such was alone not sufficient to create an obligation to return the bottles; there could be no security given for the return of the bottles unless there was a right to their return;

(iii) that as the additional amounts taken were an integral part of the commercial transaction of the sale of liquor in bottles and when they were paid were the moneys of the assessee and remained thereafter the moneys of the assessee, they were the assessee's trading receipts ; and, therefore, the balance of these additional sums left after the refunds made thereout were assessable to tax."

5. As is evident from the judgment of the Supreme Court what was held to be taxable was the balance of the additional sums left after the refunds made thereout and this is what has been done in this case by the Commissioner (Appeals) and the Tribunal. The assessing officer, on the other hand, had assessed the receipts themselves in the year of receipt and, therefore, this authority did not support the revenue 's case on all fours. Reliance was also placed on Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, and Sinclair Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta, in which the sales tax collected from a purchaser was held to be a trading receipt and includible in income. In the present case, there is no finding that the amount collected was received from the customers as sales tax payable in respect of the transaction. It is admitted that the vehicles were handed over to the prospective buyers on hire under hire purchase agreements in which the customer has the option to purchase the vehicle at a price determined in accordance with the agreement at any subsequent stage. Therefore, it is admitted that at the time of the receipt of the amounts by the assessee, there was no liability towards sales tax. The liability would arise only when the sale was actually made and that event was uncertain. Therefore, it was not established that the amounts were received on account of sales tax or were part of the price for which the goods were supplied. The aforesaid rulings, therefore, did not apply and we are of the view that the Tribunal was right in upholding the decision of the Commissioner (Appeals) who had found that only the excess amount left on the conclusion of the transaction that was transferred to the sundry creditors account was taxable. We, therefore, answer the aforesaid questions in the affirmative, i.e., in favour of the assessee and against the revenue.