
(1973) 09 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 102 of 1968 (Reference No. 33 of 1968)

Commissioner of Income Tax

APPELLANT

Vs

E.A.E.T. Sundararaj

RESPONDENT

Date of Decision : 27-09-1973

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 10(1), 10(2)

Citation : (1975) 99 ITR 226 : (1974) 34 STC 90

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K.R. Ramamani and S.V. Subramaniam for Subbarayar Iyer, Sethuraman and Padmanabhan, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case carried on business in the manufacture and sale of fireworks. He maintained a separate account for collections and payments made towards Central sales tax. Similarly, a separate account was maintained for the sales tax collections and payments under the Madras General Sales Tax Act. These two accounts showed that in the previous year ending January 16, 1962, relevant to the assessment year 1962-63, the assessee had collected Rs. 10,539 by way of Central sales tax from his customers and paid a sum of Rs. 4,520 to the sales tax department leaving an excess collection of Rs. 6,019. Similarly, there was an excess collection in respect of the Madras general sales tax amounting to Rs. 324.

2. The Income Tax Officer proposed to treat the excess collections in the two accounts as the assessee's income. The assessee objected to the same on the ground that the sales tax collected did not form part of the sale price for which the goods had been sold, that he has collected the sales tax only as an agent of the Government, and that in any case the excess had to be paid over to the Government. The Income Tax Officer, however, took the view that the sales tax collected formed part of the turnover and, therefore, the excess collections

should be taken to be trading receipts and that it is not open to the assessee to segregate the sales tax collections from his turnover. In that view he assessed the above two sums as part of the assessee's income.

3. On appeal by the assessee, the Appellate Assistant Commissioner agreed with the Income Tax Officer to the limited extent of holding that sales tax collections formed part of the turnover of the assessee. He, however, held that though the excess collections could be treated as part of the assessee's turnover the assessee's liability to pay sales tax in respect of the sales effected by him during the year should be taken into account in calculating the excess, and that even if the assessee's sales tax liability for the relevant period has not been quantified by the authorities under the relevant Sales Tax Acts, the Income Tax Officer has to make a proper estimate of such accrued liability for purpose of calculating the excess collection.

4. The department appealed to the Appellate Tribunal contending that the sales tax collected by the assessee was part of his turnover, that the liability to sales tax was primarily the assessee's, that it might be open to him to collect it or not from the customers, that unless the assessee has provided for the accrued liability towards sales tax in his account, the actual payment towards that liability alone should be taken into consideration in determining the excess collections. It was also contended that in any event the assessee cannot segregate the sales tax collections and treat them separately from the turnover. The Tribunal, however, held that in view of the decision in *Sundaram Motors (P.) Ltd. v. First Commercial Tax Officer*, [1965] 16 STC 644 the sales tax collected by the assessee could not be included in his taxable turnover, that even otherwise, the sales tax collections made by the assessee was a sort of trust fund to be handed over to the Government and that it is not open to him to appropriate it as his own money. The Tribunal also stated that in the circumstances the only proper method of accounting is the one adopted by the assessee and that such a method had been adopted in the earlier period and accepted by the department. At the instance of the revenue the following question has been referred to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the two sums of Rs. 6,019 and Rs. 324 were not includible as the assessee's income for the assessment year 1962-63 ?"

5. Before us the learned counsel for the revenue contends that the view taken by the Tribunal that the entire sales tax collections is a trust fund to be paid over to the Government and that the assessee has no right to appropriate it as his own money cannot at all be sustained. The learned counsel for the assessee, does not, in fact, support the said view taken by the Tribunal. Even otherwise we are of the view that the sales tax collections cannot be taken to be a trust fund in which the assessee has no interest. As a matter of fact the primary liability to pay sales tax on sales effected by the assessee is independent of the fact whether he collects sales tax from his buyers or not. The statute enables the

dealers to collect sales tax with a view to pass on their liability to their buyers. Therefore, if the sales tax collected by the assessee from his buyers during the year of account is in excess of his actual liability towards sales tax for that period such excess would go only for his benefit. We cannot, therefore, agree with the Tribunal that the excess collections are not trading receipts of the assessee.

6. But the question arises as to whether the excess as found in the accounts of the assessee could be taken as his trading receipts or whether the total sales tax collections minus the actual accrued liability should be taken to be the actual trading receipts. On behalf of the revenue it is contended that the assessee having maintained a separate account in relation to sales tax collections and payments during the years, the collections during the year minus the disbursements will have to be taken as trading receipts and that that is the way in which the assessee himself has kept his accounts. Reliance is placed on the decision of the Supreme Court in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax, West Bengal*. We are of the view that the above decision fully supports the stand taken by the revenue that the sales tax collections should be taken to be trading receipts and as and when the amounts are paid to discharge the sales tax liability, such amounts will have to be deducted.

7. The learned counsel for the assessee would, however, contend that even if the sales tax collections are to be taken as trading receipts, they cannot be divorced from the assessee's sales tax liability and, therefore, the sales tax collections made during the year minus the sales tax liability incurred should alone be taken as the income of the assessee. The learned counsel points out that at the time when the Income Tax assessment in this case came to be made the sales tax assessments for the years 1961-62 and 1962-63 have been completed and the actual sales tax liability has been quantified and that the Income Tax Officer should have, therefore, given credit to that liability. The learned counsel also points out that the assessee has incurred the liability towards sales tax as and when he has effected the sales and the accrual of his liability is not postponed until after the close of the assessment year and, therefore, the assessee's accrued liability towards sales tax cannot be ignored and the entire excess collections in this case treated as the assessee's income. He refers to the decision in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, in support of his contention.

8. In that case the assessee, following the mercantile system of accounting, incurred a liability of Rs. 1,49,776 on account of sales tax determined to be payable by the sales tax authorities on the sales effected by it during the calendar year 1954, relevant to the assessment year 1955-56. The sales tax demand was raised pending the Income Tax assessment for that year. The Income Tax Officer rejected the assessee's claim for deduction on the ground : (1) that the assessee had contested the sales tax liability in appeals, and (2) that it had made no provision in its books with regard to the payment of that amount.

The appeals to the higher authorities or courts taken by the assessee contesting its liability to pay the sales tax ultimately failed. On the question as to whether the assessee is entitled to claim deduction in relation to that liability during the assessment year 1955-56, the Supreme Court held that the moment a dealer made either purchases or sales which were subject to sales tax, the obligation to pay the tax arose, that although that liability could not be enforced till quantification was effected by assessment proceedings, the liability for payment of tax was independent of the assessment, that the assessee having followed the mercantile system of accounting it was entitled to deduct from the profits and gains of its business the liability to sales tax which arose admittedly during the relevant previous year, and that the fact that the assessee has failed to debit the liability in his books of account did not debar him from claiming the same as a deduction either u/s 10(1) or u/s 10(2)(xv). The court also held in that case that whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights ; nor can the existence or absence of entries in his books of account be decisive or conclusive in the matter. Relying on the said decision, the learned counsel points out that the mere fact that in the separate accounts kept for sales tax collections the liability incurred has not been entered will not debar the assessee from claiming the benefit or deduction from the actual receipts. Commissioner of Income Tax Vs. Hira Lal Mittal and Sons, is also relied on in support of that proposition. In that case it was held that where a liability arises by operation of law, its deduction cannot be denied merely because it has not been entered in the accounts of the assessee. The question, therefore, turns on the method of accounting adopted by the assessee.

9. In this case so far as the separate accounts maintained by the assessee are concerned, they have been kept only on cash basis, that is, the sales tax collections made had been credited and the actual sales tax payments have been debited on the respective dates of collection and payment. Neither the sales tax collections nor the payments made by the assessee which have been recorded in the separate accounts have gone into the general accounts maintained by the assessee for his business, as the assessee has always been contending that he had been making collections as an agent of the Government and even the excess collections will have ultimately to be paid to the Government. In these separate accounts as and when the amounts have been paid to the sales tax authorities, they had been debited. An assessee may employ one method of accounting for one part of his business or one class of customers, and a different method for another part of his business or another class of customers. He may also keep accounts in respect of different parts of the same business on different basis. If such different methods are employed regularly and consistently the profits have to be computed in accordance with the respective methods, provided it results in a proper determination of the true profits. The assessee should, therefore, be taken to have adopted the cash basis so far as the sales tax collections are concerned and, therefore, the principle of the decision in Chowringhee Sales

Bureau P. Ltd. v. Commissioner of Income Tax will stand attracted. We have to, therefore, hold that in this case the assessee has maintained his accounts in relation to the sales tax collections only on cash basis and, therefore, only when he pays out the amount for discharging his sales tax liability he can claim deduction. We, therefore, answer the question against the assessee. The revenue will have its costs. Counsel's fee, Rs. 250.