

(2005) 09 GUJ CK 0082
In the Gujarat High Court

Case No : Income-tax Reference No. 47 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Express Hotel P. Ltd.

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 143(3), 256(1), 263, 43B
Income Tax Rules, 1962 — Rule 6D

Citation : (2006) 200 CTR 476 : (2006) 281 ITR 160

Hon'ble Judges : H.N. Devani, J; D.A. Mehta, J

Bench : Division Bench

Advocate : M.M. Bhatt, for M.R. Bhatt, for the Appellant; B. Dave, for the Respondent

Judgement

D.A. Mehta, J.—These are cross references filed by the Revenue for the assessment years 1983-84 and 1984-85, and the assessee for the assessment year 1984-85. The Income Tax Appellate Tribunal, Ahmedabad Bench "C", has referred the following question u/s 256(1) of the Income Tax Act, 1961 ("the Act"), at the instance of the Revenue for the assessment year 1983-84 :

R.A. No. 470/AM/1992

Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to allow deduction of Rs. 7,64,769 as statutory liability of luxury tax collected by the assessee ?

2. The assessee-company runs a hotel. For the assessment year 1983-84, the accounting period is the financial year ended on March 31, 1983. It was originally assessed u/s 143(3) of the Act on a total income of Rs. 17,36,262. The Commissioner of Income Tax initiated action u/s 263 of the Act, as according to him, an amount of Rs. 7,64,769 being the luxury tax recovered by the assessee from its customers had not been included in the total receipts by the assessee. The order of the Commissioner of Income Tax was challenged by way of appeal

before the Tribunal by the assessee. The Tribunal, for the reasons stated in its consolidated order dated March 20, 1992, came to the conclusion that the said amount represented trading receipts of the assessee, and the Commissioner of Income Tax was justified in exercising jurisdiction u/s 263 of the Act. However, simultaneously, the Tribunal also accepted the contention on behalf of the assessee that luxury tax which was imposed by the State Government constituted a statutory liability and was, therefore, allowable as a deduction as the assessee was regularly following the mercantile system of accounting.

3. Mrs. M.M. Bhatt appearing on behalf of Mr. M.R. Bhatt, learned senior standing counsel for the applicant-Revenue, contended that once the Tribunal had come to the conclusion that the amount of luxury tax collected by the assessee was its trading receipt, it could not have granted any deduction thereof as the assessee had not discharged any liability under the statute. That, in fact, the assessee had challenged the constitutional validity of the Luxury Tax Act and the matter was pending before the apex court. That, as the apex court had granted stay against the operation of the statute, subject to certain conditions, the assessee could not claim that any statutory liability had accrued. She, therefore, urged that, in this situation, the assessee could not have been allowed any deduction and the Tribunal had committed an error in law.

4. Mr. R.B. Dave, the learned advocate for the respondent-assessee, supported the order of the Tribunal stating that the liability in question was a statutory liability and whether the same was discharged or not, regardless of the dispute raised by the assessee, the assessee was entitled to deduction in the light of the system of accounting regularly employed by the assessee.

5. The Tribunal has come to the conclusion that, despite the pendency of the litigation challenging the validity of the statute imposing the luxury tax, the amounts collected by the assessee from various customers represented the trading receipts of the assessee and were liable to be brought to tax. Once this is the position, the corresponding liability that the assessee was called upon to discharge by virtue of the statute would accrue on the date of the transaction, namely, when the customer visited the hotel and was billed for various services and the amount recovered, which included the luxury tax. The stay granted by the apex court was conditional. The assessee was called upon to file an undertaking that, in the event of the assessee succeeding before the apex court, the amount recovered by the assessee would be returned to the customers. The Tribunal has found, as a matter of fact, that the bills issued by the assessee contained such an endorsement with a direction to the customer to retain the original bill till disposal of the matter pending before the apex court.

6. In the light of the aforesaid position and the facts found by the Tribunal, it is apparent that the stay granted by the apex court was conditional to the detriment of the assessee concerned to the extent that it could not retain the amount collected from the customers on disposal of the matter. In case the assessee failed in its challenge before the apex court, it was required to make

the payment to the State Government in accordance with the statute. On the other hand, if the assessee succeeded, as per the undertaking filed before the apex court, it was required to return the amount to the customers. Therefore, in any event, there was an accrued liability in so far as the assessee was concerned. The Tribunal has rightly invoked and applied the ratio of the apex court decision in the case of *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, to hold that the liability being statutory in nature, was deductible on the basis of the system of accounting regularly employed by the assessee.

7. Therefore, the question referred for the assessment year 1983-84 at the instance of the Revenue is answered in the affirmative. The Tribunal was right in law in directing the Assessing Officer to allow deduction of Rs. 7,64,769 as statutory liability of luxury tax collected by the assessee. The question is accordingly answered in favour of the assessee and against the Revenue.

8. For the assessment year 1984-85, the following two questions have been referred at the instance of the Revenue.

R.A. No. 471/Ahd of 1992 :

(1) Whether the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability and municipal tax pertaining to the last quarter is paid within the time stipulated for filing of return u/s 139(1), the provisions of Section 43B cannot be made applicable ?

(2) Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 7,406 made by the Income Tax Officer under the provisions of Rule 6D observing that the assessee was right in contending that the limit prescribed in Rule 6D should be applied to each tour individually but to all tours made during the relevant year consolidated together ?

9. Mrs. M.M. Bhatt has very fairly invited attention of the court to the decision of the apex court in the case of *Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi*, to submit that question No. 1 is required to be answered in favour of the assessee and against the Revenue.

10. Accordingly, question No. 1 for the assessment year 1984-85 is answered in the affirmative, i.e, in favour of the assessee and against the Revenue. The Tribunal was justified in law in holding that, if unpaid sales tax liability and municipal tax pertaining to the last quarter of the accounting period is paid within the time stipulated for filing the return of income u/s 139(1) of the Act, Section 43B cannot be invoked for disallowing the same.

11. In so far as the second question is concerned, the issue is no longer res integra. In a decision rendered by this Court in the case of *Commissioner of Income Tax Vs. Nutan Mills Ltd.*, in Income Tax Reference No. 54 of 1988, dated February 6, 2001, it has been laid down that, while applying the provisions of Rule 6D of the Income Tax Rules, 1962, actual expenditure incurred on each trip

has to be ascertained and it is not permissible to apply the provision with reference to totality of the trips made by an individual employee. Applying the ratio to the facts found by the Tribunal, it is apparent that the Tribunal committed an error in holding that the limit prescribed in Rule 6D of the Rules should not be applied to each tour individually, but to all tours made during the relevant year consolidated together.

12. Accordingly, question No. 2 for the assessment year 1984-85 is answered in the negative, i.e., in favour of the Revenue and against the assessee.

13. For the assessment year 1984-85, the assessee also preferred reference application and the following question has been referred by the Tribunal :

R.A. No. 506/Ahd of 1992 :

Whether, on the facts and circumstances of the case, the Tribunal was right in denying the deduction of subsisting liability by invoking provisions of Section 43B, although the section was neither invoked by the lower authorities nor was the ground urged in appeal petition of the Revenue ?

14. Mr. R.B. Dave, the learned advocate appearing on behalf of the assessee, submitted that the provisions of Section 43B of the Act had never been pressed into service by either of the authorities and the Tribunal had, for the first time, on its own, invoked the same, while holding that the assessee's liability to pay luxury tax could not be allowed as a deduction on the basis of system of accounting, but had to be allowed only on actual payment in the light of the provision of Section 43B of the Act.

15. It is not disputed that the provision is applicable for the assessment year in question, i.e., the assessment year 1984-85. Once that is the position, while determining the tax liability of the assessee under the Act, all the relevant provisions of the Act have to be applied by the authority concerned for the purposes of bringing receipts to tax or granting any deduction or allowance. An appeal being a continuation of the original proceedings and the Tribunal being the last fact finding authority, required to determine the liability under the Act, it was justified in applying the relevant provision, namely, Section 43B of the Act, to the facts found.

16. In the result, the question referred at the instance of the assessee for the assessment year 1984-85 is answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

17. The reference stands disposed of accordingly. There shall be no order as to costs.