
(2006) 01 MAD CK 0010

In the Madras High Court

Case No : Tax Case (Appeal) No. 1428 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Ignifluid Boilers (I) Ltd.

RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:

Citation : (2006) 203 CTR 458

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This appeal has been filed by formulating the following substantial question of law for our consideration :

Whether, on the facts and circumstances of the case, the Tribunal was right in holding that moneys retained by the contractors, as a percentage of

the bills raised to be paid after the contract is completed is to be treated as income only when the moneys are actually received, even though the

appellant is following a mercantile system of accounting ?

2. The appellant is the industrial company carrying on the business of erection and sales of boilers. In the returns, the assessee worked out the

profit before taxation at Rs. 82,43,982. As per the contract, the assessee entered into a contract with M/s. Sirpur Paper Mills for erection of

boilers wherein there is a specific clause that 10 per cent. of the contract price would be retained by the principal contractor and it would be paid

after one month subject to the satisfactory performance of the boilers. The Assessing Officer brought into account 10 per cent. of the contract

amount, which has been retained by the principal contractor and levied tax on the ground that the assessee was maintaining mercantile system of

accounting and in respect of 10 per cent. retention, the bill has been raised on completion of work and brought the same into account on accrual

basis. On appeal by the assessee, the Commissioner of Income Tax (Appeals), deleted that portion of inclusion of amount, which was further

confirmed on appeal by the Tribunal at the instance of the Revenue. That order is canvassed before this Court.

3. The facts are not disputed. 10 per cent. of the retention money has not been received in respect of the relevant assessment year though the work

has been completed. The assessee is entitled to receive the amount only after successful completion of work. In such circumstances, it cannot be

said that 10 per cent. retention money retained by the principal contractor accrued to the assessee during the relevant assessment year for

consideration.

4. Under the Income Tax Act, the income accrued or received by the assessee alone is taxable. This position is fortified by the decision of the

Supreme Court in the case of Commissioner of Income Tax, Bombay City I Vs. Shoorji Vallabhdas and Co., wherein it has been held as follows

(page 148) :

Income Tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz.,

the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even

though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received

and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable.

Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry

to that effect might, in certain circumstances, have been made in the books of account.

6. This is what exactly happened in this case. In view of the categorical pronouncement of the Supreme Court and the facts and circumstances of

the case, we are of the view that the appellate authority as well as the Tribunal

are correct in their view. The order of the Tribunal requires no interference.

7. Accordingly, the tax case (appeal) is dismissed.