(2001) 01 DEL CK 0072

In the Delhi High Court

Case No : Income-tax Reference No. 115 of 1982

Commissioner of Income Tax APPELLANT

Vs

Jamnadass Ram Krishan RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 37

Citation : (2001) 168 CTR 519 : (2001) 250 ITR 155 : (2002) 120 TAXMAN 240

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : R.D. Jolly and Ajay Jha, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C.J.—On being moved for reference u/s 256(1) of the Income Tax Act, 1961 (in short "the Act"), the Income Tax Appellate Tribunal, Delhi Bench-B ("the Tribunal", in short), has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the learned Tribunal is correct in law in holding that the sum of Rs. 45,547 is allowable as sales tax liability in the assessment year 1978-79 ?"

2. The dispute relates to the assessment year 1978-79.

3. The factual position as set out in the statement of case is as follows :

4. The assessed is a registered firm dealing in cotton yarn, cotton thread and jute products. The sales tax authorities demanded sales tax on the sale of yarn. The assessed and other dealers dealing in the article questioned the levy. The Financial Commissioner considered the case of the assessed and other dealers and allowed their claim. Accordingly, the assessed did not make any provision for sales tax during the assessment years 1973-74 and 1974-75. The matter was taken up by the sales tax authorities before this court which reversed the decision of the Financial Commissioner. On that basis, the Sales Tax Officer

completed the assessment for the assessment years 1972-73 and 1973-74 and raised a demand of Rs. 45,547 which was provided for and debited in the profit and loss account for the assessment year in question. The Income Tax Officer disallowed the claim. In appeal before the Commissioner of Income Tax (Appeals), ("the CIT(A)", in short) the order of the Assessing Officer was reversed. The Revenue carried the matter in further appeal before the Tribunal. The stand before the Tribunal was that the High Court had passed the order some time in October, 1974, and, Therefore, the liability could not said to have been accrued for the present assessment year. However, on behalf of the assessed it was submitted that the demand was raised by the sales tax authorities during the assessment year in question and, Therefore, the liability accrued during the assessment year.

5. On being moved for a reference, the question, as set out above, has been referred for the opinion of this court.

6. We have heard learned counsel for the Revenue, There is no appearance on behalf of the assessed in spite of the service of notice.

7. According to learned counsel for the Revenue, the assessed was following the mercantile system of accounting and the order of the High Court was passed in October, 1974, Therefore, the liability cannot said to have been accrued during the assessment year in question.

8. We find that though the High Court passed the order in October, 1974, the Sales Tax Officer completed the assessment during the assessment year in question. Liability on the basis of the assessment order was duly reflected in the accounts and claimed as deduction in the profit and loss account in the year in question. The Tribunal has taken note of this factual aspect. In view of the decision of the apex court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , the view taken by the Tribunal is irreversible. Accordingly, we answer the question referred in the affirmative, in favor of the assessed and against the Revenue. The reference stands disposed of accordingly.