(1994) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Case Referred No. 12 of 1987

Commissioner of Income Tax	APPELLANT
Vs	
K.C.P. Ltd.	RESPONDENT

Date of Decision : 29-12-1994

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

Citation : (1996) 86 TAXMAN 569

Hon'ble Judges : Syed Shah Mohammed Quadri, J;Avinash Somakant Bhate, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; C. Kodandaram, for the Respondent

Judgement

Avinash Somakant Bhate, J.—This reference u/s 256(1) of the income tax Act, 1961 (''the Act''), is made by the Tribunal on the motion of the revenue. The question of law on which answer is sought is as follows: Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in upholding the order of the Commissioner deleting Rs. 14,96,130 being the excess realisation over and above the authorised price on sale of sugar?

The assessee-company manufactures items like sugar and so on. In the assessment year 1972-73, the company collected an amount of Rs. 14,96,130 as the price of sugar which was in excess of the levy sugar price fixed by the Government for that year. The levy price fixed by the Government was challenged by the company and the said litigation was pending in the Supreme Court. The amount of Rs. 14,96,13 0 represents the amount in dispute, being the price over and above the price fixed by the Government. The company was allowed to recover the excess amount subject to supply of bank guarantee as per the order of the Court. The ITO treated the said amount as part of the trading receipt of the company for that year. The Commissioner, however, held in the appeal that the sum of Rs. 14,96,130, could not be brought to tax. The appeal to that extent succeeded. The departmental appeal before the Tribunal met with the same treatment and the appeal railed. That is how the reference was sought by the department and is made by the Tribunal. 2. The learned counsel for the revenue has urged that the amount recovered by the company is a trading receipt and is taxable during the assessment year in which it is so collected. The argument of the learned counsel for the company, on the other hand, is that the said collection cannot be a trading receipt and is not liable to tax as there is a matching liability to deposit the said recovered amount as and when so ordered. On a careful consideration, we are of the opinion, that the contention pressed by the learned counsel for the revenue must prevail. The authorities relied upon by the respective counsel will be considered at the appropriate place.

The main reason given by the Tribunal for not bringing to tax the disputed amount is that the said amount is an unauthorised collection and hence cannot become part of the assessee''s income. We are not impressed at all by this line of reasoning. In Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, the assessee collected sales tax from the purchasers. The assessee neither paid the said collected amount to the Government nor refunded it to the purchasers. The amount was collected by him under the head ''Sales tax collection account'' and accordingly credited in his account books. He contended that the statutory provision casting the liability to collect the said tax was not at all valid. The Supreme Court held that the sum realised as sales tax by the assessee formed part of its trading receipt. It was further observed that the appellant would, of course, be entitled to claim deductions of the said amount as and when it would pay the said amount to the State Government.

3. Similar was the ratio in Sinclaire Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta, where the assessee having its head office at Calcutta sold jute in Orissa to certain mills for being used in A.P. and charged sales tax under a separate head in the bill. The tax was not paid to the State Government on the ground that it was an inter-State sale. The Tribunal refused to treat it as trading receipt as the assessee did not acquire any beneficial interest therein. On a reference, the High Court held that the sales tax so collected was part of the trading receipt and can be brought to tax. The Supreme Court, confirming the decision of the High Court observed that the fact that the dealer was compelled to deposit the amount in the State exchequer did not prevent the amount becoming a business receipt when it was received by the assessee. It was pointed out further that if and when the assessee paid the said tax to the Government or refunded it to the purchaser, the assessee would be entitled to claim deduction.

4. In the present case, the assessee''s collection will have to be brought to tax as trading receipt in the relevant year and if and when he pays the excess amount collected to the fund known as ''Levy Sugar Price Equalisation Fund of 1976'' he would be entitled to claim appropriate deductions for the assessment year during which the amount ought to have been paid to the said fund.

5. The learned counsel for the assessee-company has referred to certain cases for supporting his argument that the collection made by the assessee is not a

trading receipt and that as there is a matching liability, the amount cannot be brought to tax. The said authorities may, therefore, be considered carefully now. We think, on a careful consideration, that these authorities do not apply to the facts and circumstances of this case. We propose to elaborate the reasons for this opinion of ours.

6. The first case, which has been relied on is Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., (SC). The amount in dispute in this case was not permitted to be withdrawn by the assessee. The amount was lying in a separate account and there was no absolute right to withdraw the said amount which was lying in deposit. The amount in dispute was the subject-matter in a litigation before the Supreme Court. Thus, the disputed receipt was not in the hands of the assessee at all. On the other hand, under the orders of the Court, it was lying in deposit and was to be paid to the assessee only upon certain conditions, imposed by the Court, having been fulfilled. There was no question that such amount lying in deposit, could be treated as a trading receipt. The amount in deposit was payable to the assessee only on certain conditions. It was neither paid to him, nor collected by him.

7. The next case referred to is Commissioner of Income Tax, Andhra Pradesh Vs. Chodavaram Co-operative Sugars Ltd.,). The assessee in this case was a sugar mill and it had questioned before the Supreme Court the validity of the Levy Sugar Supply (Control) Order, 1972. The company contended that the Government could not fix the price of levy sugar and that it should be allowed to sell the sugar at a price which was above the price fixed by the Government. The Court passed a conditional order and allowed sale of sugar at a higher price but directed the assessee to deposit such excess amount collected, in a separate account. The assessee was also directed to furnish a bank guarantee for an equal amount. The assessee complied with the said order. Ultimately, the petition was dismissed on the merits. The assessee was required to refund the excess recovered amount, to those from whom it was so recovered. It was in this background that the Court held that the excess collection by the assessee could not be treated as a trading receipt and the money repaid to the original claimants could be claimed as deduction as per the mercantile system. It will thus be seen that the assessee was not in actual and real or full control of the amount which was collected in excess of the price fixed by the Government. The assessee was fettered by the Court order which directed him to keep the amount in a separate account. Manifestly, it could not be a receipt in the hands of the assessee.

8. In Dhampur Sugar Mills Ltd. Vs. Commissioner of Income Tax, , the Allahabad High Court directed that the excess of price of sugar collected by the assessee, on the strength of the interim order of the Court, was to be kept in an account to be opened in the name of the District Magistrate and the assessee-company was not to operate the said account. This amount, the Court held, could not be

brought to tax. The facts are speaking enough. The amount was not in the hands of the assessee but was in the account in the name of the District Magistrate and, therefore, could not be a trading receipt of the assessee. The Court, however, made it clear that if the assessee received the amount on refund in any subsequent year then it would be added as his income.

9. The last case relied upon was Jonnella Narashimharao and Co. etc. Vs. Commissioner of Income Tax,). This case instead of supporting the contention of the assessee that the amount collected cannot be treated as trading receipt holds just the other way. It has been observed by the Supreme Court that disputed sales tax collected by the assessee and though named by the assessee as ''rusum'' constituted business receipt in spite of the fact that in the subsequent year the said collected amount (which was collected by the assessee) was paid to the Government. It was pointed out that the amount was deductible as business expenditure for the relevant year even though they were deposited actually in the subsequent year. Thus, the deduction was allowed by the Court not because of mere future liability or matching liability, as the learned counsel has urged before us, but because, in fact, such payment was made by the assessee in that case though the payment was made in the following year.

10. In other words, without making actual payment, the debit was not permitted. In the present case, the assessee-company wants to keep the amount but wants to treat it as otherwise than a trading receipt on the basis that it would be liable in the future to make payment of the said amount. The Supreme Court has not permitted this method. It will thus be seen that the legal position as well as authority are totally against the assessee in the facts and circumstances of the case. The view of the Tribunal was thus erroneous. We, therefore, answer the reference in the negative, i.e., in favour of the revenue and against the assessee. In the circumstances, however, no order as to costs.

