
(2002) 05 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Income Tax Appeal No. 153 of 1999

Commissioner of Income Tax	Vs	APPELLANT
Leader Engineering Works		RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Income Tax Act, 1961 — Section 145, 147, 148, 260A

Citation : (2004) 269 ITR 432

Hon'ble Judges : G.S. Singhvi, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : R.P. Sawhney and Salil Bali, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi J.—In this appeal filed u/s 260A of the Income Tax Act, 1961 (for short "the Act"), the appellant has sought determination of the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in law in dismissing the appeal of the Revenue whereby sustaining the findings of the learned Commissioner of Income Tax (Appeals) to the effect of the Central sales tax payable amounting to Rs. 1,59,807 as on December 31, 1977, though being a revenue receipt was also simultaneously allowable as a deduction for the assessment year 1978-79 itself because of the mercantile system of accountancy being followed by the assessee ?

2. Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in holding that the term "actually pays" as used by their Lordships of the hon'ble Supreme Court in the case of Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, meant as "payable" in the case of the assessee following the mercantile system of accountancy ?"

2. For the purpose of deciding whether the questions of which determination has

been sought by the appellant are substantial questions of law, it will be useful to notice the relevant facts.

3. The respondent-assessee is a partnership concern comprising S/Shri D. D. Sehgal, K. K. Sehgal and J. K. Beri as partners having 12/32, 7/32 and 13/32 shares, respectively. For the assessment year 1978-79, the respondent filed a return declaring total income as Rs. 16,01,330. Vide order dated March 19, 1981, the Assessing Officer--income tax Officer, Special Circle, Jalandhar, made assessment u/s 143(3) of the Act on a total income of Rs. 16,29,870. The order of the Assessing Officer was modified by the Commissioner of Income Tax (Appeals), Jalandhar (for short, "the CIT (Appeals)"), who passed order dated September 16, 1982, and determined the income of the respondent at Rs. 15,14,551. That order was upheld by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal"). Subsequently, the Assessing Officer issued a notice u/s 147(a) read with Section 148 of the Act and called upon the respondent to show cause against the proposed addition of Rs. 1,59,807 collected in the form of Central sales tax. After hearing the representative of the respondent, the Assessing Officer passed order dated September 26, 1990, vide which he made addition of Rs. 1,59,807. On appeal, the Commissioner of Income Tax (Appeals) passed order dated October 15, 1992 for deleting the said addition by recording the following observations :

"I have given careful consideration to the entire matter and I have also gone through the combined order for all these years passed by the Income Tax Appellate Tribunal, Delhi Bench B. The additions made on account of sales tax have been deleted for all these years and the main discussion had been recorded in para. 9 and para. 13. The relevant extract is reproduced below :

"Any amount collected by an assessee towards sales tax does not belong to it. It belongs to the Government and has to be paid under the relevant sales tax legislation. Therefore, as soon as a trader collects sales tax from a customer, a corresponding liability arises for paying that amount to the Government. It was for this reason that in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, the hon''ble Supreme Court held that although the assessee was denying its liability to pay the amount of sales tax to the Government and had made no entries in the books, yet the assessee was entitled to a deduction in respect of the sales tax paid. The authorities below have observed that this judgment of the hon''ble Supreme Court cannot be applied because in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal*, the hon''ble Supreme Court has held that sales tax collected from buyers is a trading receipt. They have pointed out that this is a judgment by three judges of the hon''ble Supreme Court while the judgment in the case of *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, was rendered by two judges. The way in which the authorities below have looked at these rulings was patently mistaken. The two rulings deal with different aspects of the same transaction. According to

Chowringhee Sales Bureau, an amount collected by a trader on account of sales tax is a trading receipt. Therefore, the authorities were right only to the extent that the collections made by the assessee have to be included in the trading receipts. Kedarnath Jute, on the other hand, says that the amount of sales tax payable by the assessee is allowable as a liability. Therefore, it is wrong to say that Chowringhee Sales Bureau affects the validity of Kedarnath Jute in any manner whatsoever. In these years, the Assessing Officer has brought to tax the difference between the collection and payment of tax. For the reasons discussed above, this was, in our view, not permissible and we, therefore, delete the additions made by the Assessing Officer in the reassessments on account of the sales tax. . . ."

Respectfully following the view taken by the hon"ble Income Tax Appellate Tribunal, it is held that there was no justification for making disallowance of sales tax to the tune of Rs. 1,59,807. The reliance placed by the Assessing Officer on the decision of the Punjab and Haryana High Court in the case of Sirsa Industries Vs. Commissioner of Income Tax and Another, (single judge) has since been reversed by the hon"ble Punjab and Haryana High Court while reconsidering the matter in the case of Sirsa Industries Vs. Commissioner of Income Tax and Another, In view of the foregoing discussion, the addition made to the tune of Rs. 1,59,807 is deleted."

4. The Tribunal dismissed the appeal of the department and upheld the order of the Commissioner of Income Tax (Appeals).

5. Shri R. P. Sawhney argued that the view taken by the Division Bench of this court in Sirsa Industries Vs. Commissioner of Income Tax and Another, is based on a misreading of the decision of the Supreme Court in Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, and, therefore, the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal may be set aside.

6. In our opinion, there is no merit in the argument of Shri Sawhney and the questions sought to be raised by the appellant cannot be treated as substantial questions of law requiring de termination by this court because the same stand answered by the Division Bench in the case of Sirsa Industries Vs. Commissioner of Income Tax and Another, . In that case, the Division Bench considered the correctness of the view taken by the learned single judge in the context of the apparent conflict between the decisions of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, and Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, . The Division Bench reversed the view taken by the learned single judge and held as under (page 441) :

"We have closely read both the decisions of the Supreme Court and are of the opinion that while in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, the manner of keeping mercantile system of

accounting and claim of deduction of sales tax from the profits without making actual payments, was allowed, such a point did not directly arise in Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, . In Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, the sole point for consideration was whether an auctioneer would be a dealer within the meaning of the Bengal Finance (Sales Tax) Act, 1941. In the Sale of Goods Act, 1930, an auctioneer is neither the seller nor the buyer and is merely a commission agent. In an earlier decision COMMISSIONER OF Income Tax WEST BENGAL Vs. CHOWRINGHEE SALES BUREAU P. LTD., the Calcutta High Court had declared the provision whereby an auctioneer was made liable to sales tax as ultra vires, and, therefore, the precise question before the Supreme Court was whether the decision of the Calcutta High Court declaring the provision to be ultra vires was right or wrong and it did not agree with the Calcutta High Court and held that it was within the competence of the State Legislature to include within the definition of the word "dealer" an auctioneer who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to the principal and, therefore, concluded that in law he was liable to pay sales tax and the sales tax received by him formed part of the trading or business receipts. The point whether the assessee was right in claiming deduction in the year in which liability to pay tax accrued or whether he was entitled to claim deduction in the year in which the amount was actually paid on the basis of its manner of maintaining accounts, did not directly arise. In spite of the point not having directly arisen, the following sentence was added.

"The party would, of course, be entitled to claim deduction of the amount as and when it passes it on to the State Government".

The aforesaid sentence was considered by the hon"ble single judge as if a Bench of three judges had taken a view contrary to the decision of the two judges in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . The author who prepared the headnote of the Income Tax Reports has treated the aforesaid sentence as per curiam. We are of the view that the aforesaid sentence is a surplusage. In a later decision in Chowringhee Sales Bureau P. Ltd. Vs. Commissioner of Income Tax, , by the Calcutta High Court, the precise question, which is before us, arose relating to the same assessee, namely, Chowringhee Sales Bureau P. Ltd., who was also before the Supreme Court in Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, . In Chowringhee Sales Bureau P. Ltd. Vs. Commissioner of Income Tax, for two later assessment years, Chowringhee Sales Bureau (P.) Ltd. collected certain amounts as sales tax and deduction was claimed on the basis of accrual of liability for maintaining the mercantile system of accounting although the amount had not been paid to the sales tax authorities. Up to the Tribunal, the assessee failed but succeeded before the Calcutta High Court. The relevant headnote of the Income Tax Reports is as follows :

"That the amounts collected by the assessee as sales tax formed part of its trading receipts. However, the liability to pay sales tax arises the moment a sale or purchase is effected and an assessee who maintains accounts on the mercantile system is entitled to deduction of his estimated liability to sales tax, even though they had not been paid to the sales tax authorities."

In this judgment, the earlier decisions of the Supreme Court relating to the same assessee in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal*, and in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, were noticed and in view of the fact that the assessee was maintaining the mercantile system of accounting, deduction was allowed on the basis of accrual of liability. This decision further explains that the point in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal*, was different from the point which was decided in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, , the cases referred to above relating to other High Courts and this court and the case before us.

In view of the aforesaid discussion, although it is held that *Chowringhee Sales Bureau (P.) Ltd.* was maintaining the mercantile system of accounting, yet there is no conflict between *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, and *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal*, , as in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal*, the precise point was not under consideration. Accordingly, following *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, the two decisions of this court and of other High Courts referred to above, it is held that the Income Tax Officer had rightly allowed the deduction in the original assessment framed by him. Once the assessment orders were rightly framed, no case for rectification or for reopening u/s 147/148 and 154/155 of the Act arises and the notices are clearly illegal and without jurisdiction."

7. In our opinion, the aforesaid decision cannot be ignored by accepting the specious argument of Shri Sawhney that the Division Bench had misread the judgment of the Supreme Court in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal*, and the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal cannot be treated as vitiated by an error because for the purpose of deleting the addition made by the Assessing Officer by invoking Section 147(a) read with Section 148 of the Act, they relied on the decision of *Sirsa Industries Vs. Commissioner of Income Tax and Another*, .

8. In the premise aforesaid, we hold that no substantial question of law arises in this appeal and the same is liable to be dismissed. Ordered accordingly.