

(1988) 04 DEL CK 0014

In the Delhi High Court

Case No : Income-tax Cases No's. 214, 215 and 216 of 1986 and 1 and 2 of 1987

Commissioner of Income Tax

APPELLANT

Vs

Mohan Meakin Breweries Ltd.

RESPONDENT

Date of Decision : 18-04-1988

Acts Referred:

Citation : (1988) 70 CTR 66 : (1987) 63 CTR 380 : (1989) 175 ITR 78 : (1988) 39 TAXMAN 220

Hon'ble Judges : Leila Seth, J;A.B. Saharya, J

Bench : Division Bench

Judgement

Arun B. Saharya, J.—These are five applications u/s 256(2) of the Income Tax Act, 1961 (hereinafter called "the Act"), by the Commissioner of Income Tax praying that we direct the Income Tax Appellate Tribunal (Delhi Bench) to draw up a statement of the case and refer it for our opinion on the following questions raised in each of the five applications, in respect of the assessment years 1976-77, 1977-78 and 1978-79 :

"income tax Case No. 214 of 1986 :

(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding Rs. 1,60,000 as allowable expenditure for the maintenance of guest house ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the liability on account of additional excise duty to the extent of Rs. 5,51,388 in the assessment year 1976-77 keeping in view the ratio of the decision of the Hon"ble High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?"

2. Income Tax Case No. 215 of 1986 :

(i) Whether, on the facts and in the circumstance of the case, the Income Tax

Appellate Tribunal was correct in law in admitting the additional ground of appeal for additional claim of Rs. 1,77,167 keeping in view the decision of the Supreme Court in The Additional Commissioner of Income Tax, Gujarat Vs. Gurjargravures Private Ltd., ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that Rs. 1,60,000 were allowable expenses incurred wholly and exclusively for the purpose of the assessed's business ?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the liability on account of additional excise duty to the extent of Rs. 8,33,926 in view of the ratio of the decision of the Madras High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?"

3. Income Tax Case No. 216 of 1986 :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing deduction of Rs. 1,60,000 holding that these expenses were incurred wholly and exclusively for purposes of business ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the liability on account of additional excise duty to the extent of Rs. 27,86,288 as an allowable expenditure keeping in view the decision of the Madras High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing additional sales tax liability pertaining to the assessment years 1970-71, 1972-73 and 1973-74 in the assessment year 1977-78 keeping in view the decision of the Madras High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?"

4. Income Tax Case No. 1 of 1987 :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the liability towards additional excise duty to the extent of Rs. 2,65,378 as liability payable during the year in view of the decision of the Madras High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?"

5. Income Tax Case No. 2 of 1987 :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the expenditure of Rs. 2,04,546 on the maintenance of guest house as incurred wholly and exclusively for the purposes of the assessed's business ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the liability of Rs. 93,080 as an allowable expenditure keeping in view the decision of the Madras High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the liability towards additional excise duty on account of excess wastage on spirit in transit to the extent of Rs. 2,14,851 in spite of the fact that it pertains to the earlier years and keeping in view the decision of the Madras High Court in Commissioner of Gift-tax Vs. K.V.K. Veerappa Chettiar, ?"

6. The various questions can be categorised as (i) additional claim in respect of food, refreshment, etc., (ii) guest house, and (iii) additional excise duty and sales tax.

7. Additional claim in respect of food/refreshment, etc., is involved only in the assessment year 1976-77 in Income Tax Case No. 215 of 1986. A similar question in respect of the assessed for the assessment year 1977-78 was directed to be referred to this court by an order made on April 8, 1987 in Income Tax Case No. 122 of 1986 (Commissioner of Income Tax Vs. Mohan Meakin Breweries Ltd.,). Consequently, we direct the Tribunal to state a case and refer the following question for the decision of this court in respect of the assessment year 1976-77 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in admitting the fresh ground of appeal purporting to be an additional ground filed by the assessed claiming deduction of Rs. 1,77,167 in respect of expenses on food, refreshment, etc., ?"

8. The question regarding the guest house raised in the applications (except Income Tax Case No. 1 of 1987) in respect of the three assessment years, relating to the same assessed, was also the subject-matter of Income Tax Cases Nos. 123, 124 and 125 of 1986 which were disposed of by a common order dated April 8, 1987. By that order, the Tribunal was directed to state a case in respect of the following question for the three assessment years 1976-77, 1977-78 and 1978-79 and to consolidate it with the statement of case for the assessment year 1975-76 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the expenditure claimed by the assessed under the "Maintenance of guest house ?"

9. It was clarified in the order dated April 8, 1987, that the Tribunal was not being directed to refer the question regarding guest house in Income Tax Case No. 214 of 1986, since that question in respect of the assessment year 1976-77 was being referred by the order made in Income Tax Cases Nos. 123, 124 and 125 of 1986. It appears that it was not pointed out to the court that the same

question was raised in Income Tax Case No. 215 of 1986 also for the assessment year 1976-77 as well as in Income Tax Case No. 216 of 1986 and Income Tax Case No. 2 of 1987 in respect of the assessment years 1977-78 and 1978-79, respectively. Since the question and the relevant assessment years are the same, it is hereby clarified that no separate reference is being directed in Income Tax Cases Nos. 215 and 216 of 1986 and 2 of 1987, and that the question raised in each of these three applications, regarding the guest house, is covered by the order dated April 8, 1987, made earlier by the court in Income Tax Cases Nos. 123, 124 and 125 of 1986.

10. The question regarding additional excise duty has been raised in each of the five applications in hand while the question of additional sales tax arises only in respect of assessment year 1977-78 in Income Tax Case No. 216 of 1986. In Income Tax Case No. 214 of 1986, however, question No. (ii) regarding additional excise duty to the extent of Rs. 5,71,328 (wrongly stated as Rs. 5,51,388 in the question) does not survive in view of the fact recorded in the assessment order for the assessment year 1976-77 that the said deduction is "pertaining to this year". The prayer for reference of that question is, Therefore, rejected. Consequently, hereinafter, we are dealing with applications other than Income Tax Case No. 214 of 1986 on this aspect.

11. The Income Tax Officer disallowed the deduction claimed by the assessed in respect of the additional excise duty and additional sales tax. The Commissioner of Income Tax (Appeals) allowed deduction in respect of the payment to the extent of amounts in the year relevant to each of the assessment years as he was of the view that the said amount was not in the nature of a penalty but that it was only an additional excise duty levied by the U. P. State excise authorities. The deduction claimed by the assessed on payment of additional sales tax in respect of the assessment year 1977-78 was also allowed by the Commissioner of Income Tax (Appeals) as he found that the additional demand was raised in the relevant year. The Tribunal disposed of the appeals by the assessed and also by the Department, pertaining to the three assessment years in question, by a common order. It found that the assessed was maintaining accounts on the mercantile basis and that the additional demand for the amounts in question was received in the previous year relevant to each of the assessment years under consideration, and upheld the order of the Commissioner (Appeals). On separate applications u/s 256(1) of the Act by the assessed as also by the Commissioner, the Tribunal was of the opinion that a question of law does arise out of its order on this point "but the same stands concluded by the decision of the Supreme Court in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . So, no useful purpose would be served by referring these questions for the opinion of the Hon"ble High Court". Not satisfied with the correctness of the decision of the Appellate Tribunal, the Commissioner has prayed, by these present applications, that the Tribunal be directed to state the case and refer it for the opinion of this court.

12. Learned counsel for the Commissioner placed before us a decision of the Madras High Court in Commissioner of Income Tax Vs. V. Krishnan, , as also the decision of this court in the case of Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, , and contended that despite these two High Courts relying upon the decision of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , there is a conflict in the decisions of the two High Courts in respects of the particular question of law involved in the present case. Learned counsel contended that the Tribunal was not correct in refusing to refer the case to the High Court despite the finding that a question of law does arise out of its order on this point.

13. Learned counsel for the assessed conceded that there is a conflict in the decisions of the Delhi and Madras High Courts, but he opposed the applications on the basis of the decisions of the Punjab and Haryana High Court in Commissioner of Income Tax (Central) Vs. Shiv Parshad, and Telu Ram Raunqi Ram Vs. Commissioner of Income Tax, , on the plea that no useful purpose would be served by issuing a writ of mandamus under article 226(2) of the Constitution, because it has not been shown to the court that the opinion already expressed by this court in Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, , was erroneous, that it would be a futile exercise to require the Tribunal to state its case for the opinion of this court because the answer would be a foregone conclusion in view of the earlier decision in the said case of Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, , and that a direction to the Tribunal to state the case and refer it to the High Court will tantamount to questioning the correctness of the earlier decision of this court by the Tribunal.

14. While it is true that this court has already expressed an opinion in the case of Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, , touching on the question raised in the present applications, yet, it is significant to point out that the earlier decision of the Madras High Court in Commissioner of Income Tax Vs. V. Krishnan, , was not considered in it. Further, the question in Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, , arose in somewhat unusual circumstances. There, the assessed, an individual, was a partner of a firm which was dissolved and the assessed took over its assets and liabilities. The firm, during its existence, incurred sales tax liability. Demand notice was issued much after the dissolution of the firm. After receipt of the demand notice, the assessed made entries in the accounts and claimed deductions in that year. It was found that the assessed was following the mercantile system of accounting. The court was of the view that it was open to the assessed to make the entry on the basis of accrual of liability or on the basis of demand raised by the sales tax authorities, and that the decision of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , is limited to those case in which the demand is raised by the sales tax department before the assessment has actually been completed as no revised return can be filed after the assessment is over. In

Commissioner of Income Tax Vs. V. Krishnan, , the Madras High Court noticed that entitlement of the assessed to a particular deduction will depend on the provision of law relating thereto and not on the view which the assessed might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter, as pointed out by the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , and that the Supreme Court had not to go into the question of deductibility in the year of payment. The Madras High Court pointed out the circumstances in which an assessed's claim for deduction would arise for consideration either in the year in which the assessed accepts the liability or in the year in which the amount is paid. It said (p. 862) :

"There may be cases where the assessed is not in a position even to estimate his liability because whether the transaction is liable to sales tax at all or not may itself be in dispute. In certain other cases, the question in dispute may relate to the point as to whether the tax liability arose on a single point or multi-point. There may even be cases where the sales tax department would raise estimated assessments and the assessed is obliged to pay sales tax in which case the assessed may not know about the existence or quantum of liability. In all these cases, it may not be possible even for a person maintaining his accounts on the mercantile basis to provide for the liability in the year to which it could be related taking into account the transactions of sale. In such cases, the assessed's claim for deduction would arise for consideration either in the year in which the assessed accepts the liability or in the year in which the amount is paid."

15. The two decisions of the Delhi and the Madras High Courts were not brought to the notice of the Appellate Tribunal. Further, the question in the present case is about deduction of additional excise duty liability demanded in the previous year relevant to each of the three assessment years and additional sales tax also in respect of the assessment year 1977-78. The very nature of additional excise duty is in question. The answer to this question will depend on the provisions of law relating thereto as pointed out by the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . The provisions of the Excise Act and the Rules framed there under were not considered by the Delhi High Court in Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, or by the Madras High Court in Commissioner of Income Tax Vs. V. Krishnan, . The circumstances of the present case are, Therefore, different from the subject-matter of the earlier decisions of the two High Courts. The Tribunal dealt with the question of additional sales tax in respect of the assessment year 1977-78 on the same basis as additional excise duty. Whether the Tribunal was correct in doing so or not, is also clearly a question of law.

16. We are of the opinion that the questions of law regarding additional excise duty and additional sales tax which admittedly arise in respect of the relevant assessment years are not covered by the earlier decision of this court in

Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, or even by the case of Commissioner of Income Tax Vs. V. Krishnan, , decided by the Madras High Court, although those two decisions, as also the decision of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , may be relevant and may have to be considered to decide these questions. The decisions of the Punjab and Haryana High Court in Commissioner of Income Tax (Central) Vs. Shiv Parshad, and in Telu Ram Raunqi Ram [1984] ITR 401, cited by learned counsel for the assessed are inapplicable to the facts and circumstances of the present case.

17. An interesting question, viz., whether the High Court can require the Appellate Tribunal to state the case and to refer it directly to the Supreme Court in case of a conflict in the decisions of the High Courts in respect of any particular question of law was raised in view of section 257 of the Act. We are expressing no opinion on it, as it is unnecessary to do so in the present case, there being no conflict in the decisions of the High Courts on the particulars question of law which has arisen in this case and it has to be answered on a proper interpretation of the provisions of the Excise Act and the Rules framed there under regarding accrual of liability to pay additional excise duty.

18. For the aforesaid reasons, we are not satisfied with the correctness of the decision of the Appellate Tribunal refusing to refer to this court the questions of law arising out of the substantive order of the Appellate Tribunal. We are of the opinion that the following question of law, regarding additional excise duty in respect of the assessment years 1976-77, 1977-78 and 1977-78, arises out of the order of the Appellate Tribunal and we direct the Appellate Tribunal to draw up a composite statement of case for the three years in question and to refer it to the High Court for its opinion :

"Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the deduction of liability on account of additional excise duty in respect of the assessment years 1976-77, 1977-78 and 1978-79 and on account of additional sales tax in respect of assessment year 1977-78 ?"

19. Accordingly, I.T.C. No. 214 of 1986 is rejected and the other applications are allowed. Parties are left to bear their respective costs.