

**(1980) 11 MP CK 0009**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Case No. 67 of 1979**

COMMISSIONER OF Income Tax

APPELLANT

Vs

M.P. STATE AGRO INDUSTRIES DEVELOPMENT.

RESPONDENT

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**Date of Decision : 18-11-1980**

**Acts Referred:**

Income Tax Act, 1961 — Section 256(1)

**Citation : (1983) 139 ITR 312**

**Hon'ble Judges : Sohani, J**

**Bench : Division Bench**

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## **Judgement**

Sohani J. - By this reference under s. 256(1) of the I.T. Act, 1961, hereinafter called the Act, the I.T. Appellate Tribunal Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law, in upholding the findings of the Appellate Assistant Commissioner that the sum of Rs. 3,00,604 and Rs. 64,757, being the amount transferred to the deposit account by the assessee on the sale of tractors, did not represent its taxable income during the A.Ys. 1972-73 and 1973-74, respectively ?"

The material facts giving rise to this reference. As set out in the statement of the case, briefly are as follows :

The assessee is a government company established for the development of agro-industries and for carrying on allied activities. The assessee derived income in the assessment years 1972-73 and 1973-74 by way of commission on sales of tractors purchased by it from M/s. Hindusthan Machine Tools Ltd., for the purchase of 100 tractors during the assessment year 1973-74. M/s. Hindusthan Machine Tools Ltd., informed the assessee that the probable price for a tractor would be Rs. 21,951,80. The assessee, on the basis of that price and, after adding expenses and a sum of Rs. 500 per tractor as commission charges, fixed

the sale price at Rs. 26,500 per tractor. Later on when the bill was received by the assessee from M/s. Hindusthan Machine Tools Ltd., the price per tractor was stated to be Rs. 18,915, but in the bill it was mentioned that the price charged was only provisionally worked out and that the bill would be amended on the basis of the price fixed by the government. In the books of account of the assessee, as the assessee had shown the sale price at Rs. 21,951.80 but had debited Rs. 18,915 only as cost, the auditors of the company pointed out that the excess price charged by the assessee would have to be refunded either to M/s. Hindusthan Machine Tools Ltd., or to the farmers. Accordingly, the assessee kept the sum of Rs. 3,00,604. being the excess sale price of tractors sold during the assessment year 1972-73 in a deposit account. Similarly, during the assessment year 1973-74, a sum of Rs. 64,757, being the amount of difference between the provisional price charged and the price on the basis of which the selling rate was determined, was placed in the deposit account, the ITO held that the amounts transferred to the deposit account as aforesaid represented the income of the assessee during the relevant assessment years. On appeal, the AAC found that the excess price charged by the assessee was to be refunded as the assessee was entitled to a fixed commission of Rs. 500 per tractor only. The AAC therefore held that the excess price realised by the assessee could not be held to be the income of the assessee. He therefore, deleted the additions of Rs. 3,00,604 and Rs. 64,757 made by the ITO towards the total income of the assessee during the assessment years 1972-73 and 1973-74. Aggrieved by the order passed by the AAC, the Department filed appeals before the Tribunal. The Tribunal found that the amounts transferred by the assessee to the deposit account were never its income and that the said amounts were only kept in deposit for being paid either to the supplier or to the farmers. In this view of the matter, the Tribunal dismissed the appeals preferred by the Department, aggrieved by the order of the Tribunal, the Department submitted an application to the Tribunal for making a reference, and it is at the instance of the Department that the aforesaid question of law has been referred to this court for its opinion.

Shri Bagadiya, learned counsel for the Department, contended that the sums of Rs. 3,00,604 and Rs. 64,757, received by the assessee during the assessment years 1972-73 and 1973-74 from its customers, were trading receipts and that the Tribunal was not justified in holding that those sums were not includible in the taxable income of the assessee during those years. The contention cannot be upheld. It is true that if an amount received by a person partakes more of the nature of trading receipt than of security deposit. Such deposit, if unreturned, would be taxable as income. But it is well settled that moneys which were not, when received, income, could never later become income. As observed by the Supreme Court in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax, West Bengal*, it is the true nature and the quality of the receipt that would prove decisive. Now, in the instant case, the finding of the Tribunal is that the assessee was entitled to receive from its customers an amount of Rs.

500 per tractor by way of commission charges and that the price charged by the assessee to the customers was provisional inasmuch as M/s. Hindusthan Machine Tools Ltd., who had supplied tractors to the assessee, had provisionally charged the price awaiting the final decision of the government, hence, the amounts in question received by the assessee cannot be held to be trading receipts of the assessee. Learned counsel for the Department referred to our decision in Addl. CIT v. Chandrakant D. Patel (MCC No. 311 of 1976 decided on 6-11-1979 - since reported in [1983] 139 ITR 233) But that decision is distinguishable on facts. In that case, the question for consideration was whether a refund of sales tax constituted income of the assessee. In the instant case, the Tribunal, in our opinion, was right in law in holding that the sums of Rs. 3,00,604 and Rs. 64,757, received by the assessee in the assessment years 1972-73 and 1973-74, respectively did not represent its taxable income.

For all these reasons, our answer to the question referred to us is in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.