
(1989) 11 KAR CK 0023

In the Karnataka High Court

Case No : Income-tax Referred Case No. 241 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Mysore Sugar Co. Ltd.

RESPONDENT

Date of Decision : 28-11-1989

Acts Referred:

Income Tax Act, 1961 — Section 256 (1), 263

Citation : (1990) 82 CTR 255 : (1990) 183 ITR 113 : (1990) 51 TAXMAN 208

Hon'ble Judges : S. Rajendra Babu, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : H. Raghavendra Rao, for the Appellant; G. Sarangan, for the Respondent

Judgement

S. Rajendra Babu, J.—This is reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The question of law referred for our opinion is as follows:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right law in cancelling the order of the Commissioner of Income Tax u/s 263 and holding that the excess amount of Rs. 43,10,110 collected over and above the price of sugar fixed by the Government does not form part of the turnover and is not liable to tax under the Income Tax Act, 1961?"

2. The facts leading up to the reference, in brief, are as follows: The assessee is a public limited company engaged in the business of manufacture of sugar. The Government of India, in exercise of its powers under the Essential Commodities Act, fixed the price of levy sugar produced for the season 1971-72 at Rs. 124.55 and Rs. 125.10 per quintal for the two varieties. The assessee challenged the legality of the said order in this court in Writ Petition No. 1634 of 1972 on the ground that the prices fixed by the Government were unremunerative. On July 24, 1972, this court passed an interim order in the following terms:

"Pending disposal of the aforesaid writ petition, it is ordered by this court on July 24, 1972, that the operation of Notification No. 1-16/72 SPY dated June 17, 1972, issued by the 1st respondent in so far as the petitioner-society is concerned, is hereby suspended and the factory is permitted to sell 60% of sugar produced by it at Rs. 150 per quintal during the pendency of this writ petition, subject to the condition that the petitioner maintains accounts and refunds the amount received in excess of the price fixed in the event this writ petition is dismissed. "

3. The assessee thus credited a sum of Rs. 43,10,110 received in this behalf under the head "Current liabilities" and the claim was accepted by the assessing officer at the time of completion of the assessment. Subsequently, the writ petition was withdrawn as, in some of the matters, this court had directed reconsideration of the fixation of the zone into which the assessee would fall. However, the Government reiterated its earlier view by a later notification which stood challenged by a separate writ petition in the Supreme Court.

4. The Commissioner of Income Tax invoked his powers u/s 263 of the Act as, in his view, the sum of Rs. 43,10,110 being excess realisation ought to have been disclosed as income in the return filed by the assessee and inasmuch as the writ petition had been withdrawn and not dismissed on merits, the assessee was free to make use of funds as it thought fit. He took the view that the amount, in the assessment year 1974-75 for the accounting year ending on June 30, 1973, was liable to be fixed in that assessment year and given a set off in the assessment year 1977-78 when the Government had to refund the excess amount to the Equalization fund by June 30, 1976, along with interest at 12 1/2 per annum. Thus, he held that the order of the Income Tax Officer was erroneous and prejudicial to the interests of the Revenue and, therefore, he set aside the same. Against that order, an appeal was filed before the Tribunal. The Tribunal found that though there is force in the Revenue's contention that the excess amount was actually received by the assessee from its customers in the accounting year in question, the fact remained that the same was saddled with the liability both in terms of the order of this court and the ultimate notification of the Central Government and the assessee having incurred an enforceable legal liability, it could be duly claimed in computing the total income. The Tribunal, in arriving at that conclusion, relied upon the various decisions of the Supreme Court and of other High Courts. In that view of the matter, the Tribunal set aside the order made by the Commissioner and restored that of the Income Tax Officer. Aggrieved by the order made by the Tribunal, the Revenue has sought for a reference to this court on the question set forth earlier.

5. Learned counsel for the Revenue urged that the amount realised by the assessee formed part of its trading receipt having been received in the accounting year in question and did not incur any liability in that year but only subsequently. According to him, when the assessee did not refund the amount either to its customers or to the State exchequer under the head "Equalization

fund", it was not open to it to contend that the same did not form part of its income and in this context relied upon the following decisions:

- (1) The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta,
- (2) Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, and
- (3) Sinclair Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta,

6. Per contra, learned counsel for the assessee, relying upon a decision of the Supreme Court in Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., as also the decisions in Commissioner of Income Tax, Andhra Pradesh Vs. Chodavaram Co-operative Sugars Ltd., and K.V. Moosa Koya and Co. Vs. Income Tax Officer and Another, submitted that a distinction should be noticed between cases such as the one on hand where the right to receive payment is in dispute which is not merely a question of quantifying the amount to be received and the cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be decided in accordance with settled or accepted principles and on that basis sought to distinguish the cases relied upon by learned counsel for the Revenue.

7. In the decisions relied upon by the Revenue, it was held that the amount realised as sales tax by the assessee formed part of the trading receipts and the fact that the assessee had to deposit that amount in the State exchequer did not prevent the applicability of that principle. The basis on which these decisions proceeded is that the sales tax received from customers was included in the sale price and hence to arrive at the real gross profit, the sales tax amount had to be deducted and only the balance was the gross profit. In The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, the Supreme Court summed up the position thus (see page 366):

".... the moment a dealer makes either purchases or sales which are subject to taxation, the obligation to pay the tax arises and taxability is attracted. Although that liability cannot be enforced till the quantification is effected by the assessment proceedings, the liability for payment of tax is independent of the assessment... An assessee who follows the mercantile system of accounting is entitled to deduct from the profits and gains of the business such liability which had accrued during the period for which the profits and gains were being computed. It cannot again be disputed that the liability to payment of sales tax had accrued during the year of assessment even though it had to be discharged at a future date.... Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive of the matter. The

assessee who maintaining accounts on the mercantile system was fully justified in claiming deduction of the sum of Rs. 1,49,796 being the amount of sales tax which it was liable under the law to pay during the relevant accounting year. It may be added that the liability remained intact even after the assessee had taken appeals to higher authorities or courts which failed... "

8. Thus, it is clear that the Supreme Court in this case was concerned as to when the liability accrued in regard to the sales tax and it was held that inasmuch as all the sales tax enactments provide for liability being fastened the moment the sale took place, What remained was only the quantification of the amount payable and nothing more. Therefore, in all these cases, the right to receive payment is admitted and the quantification of the amount payable alone is left to be determined in accordance with settled or accepted principles. But, in the present case, what has happened is that the assessee was permitted to collect the amount in question only pursuant to the interim order made by the court which was subject to several conditions to make the right absolute and, therefore, the collection made by the assessee at an enhanced rate is an inchoate one as the extra amount did not accrue to the assessee until the finalisation of the dispute pending before one court or the other. It is only on the final determination of the amount that the right to such income in the nature of levy price would arise or accrue and till then there is no liability in praesenti in respect of the additional amount of price claimed by the assessee. Therefore, these cases fall within the scope of first class of cases noticed by the Supreme Court in Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., where it was held that where the right to receive payment is in dispute and it is not merely a question of quantifying the amount to be received, no income would arise or accrue till the levy price is finally fixed. We are, therefore, of the opinion that the Tribunal is right in its view, and, therefore, we have got to answer the question referred to us in the affirmative and against the Revenue.