
(1972) 05 GAU CK 0006

In the Gauhati High Court

Case No : Income-tax Reference No. 7 of 1968

Commissioner of Income Tax

APPELLANT

Vs

Nathmal Tolaram

RESPONDENT

Date of Decision : 31-05-1972

Acts Referred:

Income Tax Act, 1922 — Section 10(2), 4

Citation : (1973) 88 ITR 34

Hon'ble Judges : P.K. Goswami, C.J.;Baharul Islam, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, for the Appellant; S.M. Lahiri and B.K. Das, for the Respondent

Judgement

Goswami, C.J.—The following question of law is referred to us u/s 66(1) of the Indian Income Tax Act, 1922, at the instance of the Commissioner of Income Tax :

" Whether, on the facts and in the circumstances of the case, the sum of Rs. 43,377, representing the final demand of sales tax which the assessee was called upon to pay during the previous year to the assessment year 1958-59 could properly be allowed as deduction in the assessment of that year ? "

2. The statement of case relates to the assessment year 1958-59, the relevant accounting year being 2014 R.N. It is admitted that the assessee maintains the mercantile system of accounting.

3. The facts appearing in the statement of case are briefly as follows : The assessee is an unregistered firm doing business in jute and other commodities at Dhubri. The Superintendent of Sales Tax assessed the firm to sales tax amounting to Rs. 47,625, in respect of business in jute during the periods ending on March 31, 1949, September 30, 1949, and March 31, 1950. The assessee filed appeals before the Appellate Assistant Commissioner of Taxes against the demand and later to the Commissioner of Taxes in revision unsuccessfully. The

Commissioner rejected the revision petitions filed by the assessee on October 23, 1956. The assessee then moved this court against the order of the Commissioner. This time also the assessee was unsuccessful, and the High Court granted conditional leave to appeal to the Supreme Court on the assessee undertaking to deposit the amount of claim with its banker. Although the deposit was made some time in 1959, the assessee claimed to have made a provision for the sum of Rs. 43,377.28 on account of sales tax demand in its accounts for the year 2014 R.N. which is the previous year to the assessment year 1958-59. It appears the assessee went up to the Supreme Court, but there too it was unsuccessful. In the course of the Income Tax assessment for the assessment year 1958-59, the assessee claimed the sum of Rs. 47,625 as a permissible expenditure against its business income. Both the Income Tax Officer and the Appellate Assistant Commissioner in appeal refused to allow the deduction claimed. The Appellate Assistant Commissioner rejected the claim on the ground that the liability to sales tax " was completely disputed and every effort was made to deny the legality of the payment and to resist payment ". The assessee took the matter to the Tribunal. The Tribunal allowed the claim of the assessee basing on the fact that the Superintendent of Taxes made the final demand for full payment of Rs. 43,377, during the year 1957-58, for the period in question after the Commissioner of Taxes, Assam, had rejected the revision filed by the assessee. The Tribunal also found that after the Commissioner of Taxes rejected the assessee's petition in revision, the liability in respect of sales tax payable to the Government was debited in its books and, under the mercantile system of accounting, the liability has got to be allowed as a deduction as soon as it has been finally determined.

4. The short point that arises for consideration is whether the expenditure claimed by the assessee u/s 10(2)(xv) is a permissible deduction in law ?

5. It is not disputed that the expenditure, being the sales tax demand, is wholly and exclusively for the purpose of the assessee's business. It is clear that the assessee maintains the mercantile system of accounting. It is also clear that the sales tax demand is for the periods ending on March 31, 1949, September 30, 1949 and March 31, 1950. For some reason or other, the assessee did not make any provision for payment of this tax during the relevant years pertaining to the aforesaid periods in question. It is to be observed that the department also for one reason or another did not make any demand for the tax due earlier than the year 1957-58. It is clear that once an enforceable demand has been made by the department and the assessee debited his account with the particular liability notified by the department, it becomes an expenditure under the mercantile system of accounting and the assessee can rightly claim the sum for deduction u/s 10(2)(xv).

6. It is submitted by Mr. J. P. Bhattacharjee, on behalf of the Commissioner, that that liability for the sales tax accrued when the sales were made during the periods mentioned above in 1949-50, That being the position, it is not

permissible in law to allow deduction which is claimed in 1957-58 even under the mercantile system. He draws our attention to a decision of the Supreme Court in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, and relied upon the following passage :

" Now under all sales tax laws including the statute with which we are concerned, 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 assessment proceedings, the liability for payment of tax is independent of the assessment. It is significant that in the present case, the liability had even been quantified and a demand had been created in the sum of Rs. 1,49,776 by means of the notice dated 21st November, 1957, during the pendency of the assessment proceedings before the Income Tax Officer and before the finalisation of the assessment. It is not possible to comprehend how the liability would cease to be one because the assessee had taken proceedings before higher authorities for getting it reduced or wiped out so long as the contention of the assessee did not prevail with regard to the quantum of liability, etc. 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 can again not 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. In *Pope The King Match Factory Vs. Commissioner of Income Tax, Madras*, demand for excise duty was served on the assessee and though he was objecting to it and seeking to get the order of the Collector of Excise reversed, he debited that amount in his accounts on the last day of his accounting year and claimed that amount as a deductible allowance on the ground that he was keeping his accounts on the mercantile basis. The Madras High Court had no difficulty in holding that the assessee had incurred an enforceable legal liability on and from the date on which he received the Collector's demand for payment and that his endeavour to get out of that liability by preferring appeals could not in any way detract from or retard the efficacy of the liability which had been imposed upon him by the competent excise authority. In our judgment, the above decision lays down the law correctly."

7. Mr. Bhattacharjee submits that in this decision, which is also relied upon by Mr. B.K. Das for the assessee, it is apparent that the demand was made on November 21, 1957, when the assessment proceeding for the assessment year 1955-56, of which the previous year ended on December 31, 1954, was pending and the assessee filed a revised return on November 9, 1959, claiming the aforesaid deduction. The Income Tax Officer completed the assessment in that case on March 11, 1960, before any final decision was given in the proceedings relating to the assessment of sales tax. It is also clear from the report that the expenditure on account of sales tax demand was of the accounting year in question ending on 31st December, 1954. On account of the above features, Mr.

Bhattacharjee submits that the aforesaid decision of the Supreme Court is of no assistance to the assessee. It is true that the features pointed out by Mr. Bhattacharjee are there in the particular facts of that case. But, there is no authority to which our attention has been drawn for disallowing an expenditure relating to an enforceable claim of the department which has been made in the year in which the accounts of the assessee had been debited with the demand and a claim accordingly has been made. We do not read the aforesaid decision of the Supreme Court as laying down a law for such a situation as obtains in the present case before us. The fact that in the mercantile system of accounting, an assessee had not earlier debited his account with the expenditure which accrued in law in an earlier year would not, in the absence of a barring provision under the law, disentitle the assessee to debit his account later when an enforceable demand is made by the appropriate authority.

8. Mr. Bhattacharjee strenuously contended that since the income during the previous year has to be assessed and not of any period outside the previous year, it necessarily follows that the expenditure also must be of that particular accounting year. He drew our attention to a decision of the Supreme Court in *The Commissioner of Income Tax, Madras Vs. A. Gajapathy Naidu*,

" When an Income Tax Officer proceeds to include a particular income in the assessment, he should ask himself, inter alia, two questions namely : (i) what is the system of accountancy adopted by the assessee ? and (ii) if it is the mercantile system of accountancy, subject to the deemed provisions, when has the right to receive that amount accrued ? If he comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he shall include the said income in the assessment of the succeeding assessment year. No power is conferred on the Income Tax Officer under the Act to relate back an income that accrued or arose in a subsequent year to another earlier year on the ground that the said income arose out of an earlier transaction."

9. We are unable to hold that this decision is at all of assistance to the learned counsel in this case. This was a case where an income was going to be related back to an earlier year. This power is not given to the Income Tax Officer under any provisions of the Act. u/s 4 of the Income Tax Act, the income that accrues or arises during any previous year alone is to be taken note of. There is, therefore, a bar to include any income that accrues or arises outside the previous year subject to the deeming provisions in the Act. There is, however, no express bar in law, nor one by necessary implication, restricting the power of the Income Tax Officer to exclude the expenditure laid out or expended u/s 10(2)(xv) of the Act. We are, therefore, unable to accede to the submission of the learned counsel for the department.

10. Section 10(2)(xv), shorn of other details for our purpose, provides for making allowances of any expenditure " laid out " or " expended ". The words " laid out " are with reference to the mercantile system while the word " expended " is with regard to the cash system. Once there was the sales tax demand in this

case, which was an enforceable liability and as such a real expenditure, for which the assessee laid out the amount by debiting his account in the accounting year which was also the year of demand of the department, deduction can be legitimately claimed u/s 10(2)(xv). Here is a case, where there is no doubt about the genuineness of the expenditure. There is also the compulsiveness in the sales tax demand which can be ignored only at peril of the assessor. This expenditure had never been taken note of in the earlier years for one reason or the other. In the absence of any legal bar in the way of the assessee claiming this expenditure in the year of demand for which provision has already been made in his accounting year, deduction u/s 10(2)(xv) is permissible in law and has been rightly allowed by the Tribunal.

11. It follows, therefore, that the answer to the question is in the affirmative and in favour of the assessee. We are clearly of the opinion that on the facts and in the circumstances of the case the sum of Rs. 43,377 representing the final demand of sales tax which the assessee was called upon to pay during the previous year to the assessment year 1958-59 could properly be allowed as deduction in the assessment of that year. We will, however, make no order as to costs.

Baharul Islam, J.

12. I agree.