

(1997) 07 MAD CK 0114

In the Madras High Court

Case No : Tax Case No. 985 of 1984 Reference No. 881 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Polly Container Industries

RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1998) 233 ITR 526

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

Judgement

K.A. Thanikkachalam, J.—In compliance with the order of this court dated November 1, 1982, the Tribunal referred the following two questions for the opinion of this court u/s 256(2) of the income tax Act, 1961:

(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 88,127 being the rent payable to the Tamil Nadu Small Industries Development Corporation Limited in respect of the earlier years is an admissible deduction in computing the income of the assessee for the assessment year 1976-77?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal's finding that the rent of Rs. 88,127 was ascertained and became payable only during the year ended September 30; 1975, is sustainable in law especially when the demand was raised on January 20, 1976, consequent to the Government order dated August 26, 1975?

The assessee is a registered firm doing business in manufacture of containers. It was a sub-allottee of a shed in Guindy Industrial Estate in 1966. The assessee thought that no rent is payable to the Government by the sub-allottee in view of the fact that full rent was already paid by the main allottee. However, the assessee was made liable to pay the amount of Rs. 88,127 which included the

arrears of rent for the earlier years by Government order dated August 26, 1975. In the accounts of the assessee for the year ended September 30, 1975, the assessee claimed a deduction of the said amount of Rs. 88,127. The case of the Revenue was that either the claim should be allowed in an earlier assessment year when the rent accrued or in the latest assessment year in which the demand for payment of the amount by the Government was received by the assessee. Significantly, the admissibility of the claim for deduction was itself not in dispute. The Appellate Tribunal found that the liability came to be ascertained and became payable only when the Government passed the order dated August 26, 1975, and, therefore, in accordance with the mercantile system of accounting followed by the assessee, the liability was taken in the previous year ended on September 30, 1975, and was an admissible deduction in computing the total income of the assessment year 1976-77. Before this court, learned junior standing counsel appearing for the Department submitted that the demand was made for the payment of arrears of rent of the earlier years on January 20, 1976, which falls outside the relevant assessment year under consideration. Therefore, the arrears of rent paid by the assessee in view of the Government order dated August 26, 1975, cannot be allowed as a deduction in the assessment year 1976-77. According to learned standing counsel for the Department, the amount is payable at the end of every month. If the accumulated rent is paid on a subsequent date, it cannot be allowed as a deduction in that year. However, the case of the assessee is, the assessee was under the impression that he need not pay the rent since the assessee was permitted to occupy the portion by the regular tenants. But later on, the Government by an order dated August 26, 1975, directed the Director of Industries to collect 100 percent rent from both the chief tenant and the sub-tenant. Hence, in view of the abovesaid order, the arrears of rent are payable in accordance with the Government order dated August 26, 1975. The assessee followed the mercantile system of accounting for the assessment year 1976-77. Therefore, the arrears of rent claimed by the Government are allowed in the assessment was 1976-77 as a deduction.

2. We have heard learned standing counsel appearing for the Department and perused the records carefully. The assessee occupied the back shed of shed A-11, Industrial Estate, Guindy in 1966 after obtaining the permission of the Director of Industries and Commerce, Government of Tamil Nadu, Madras. The shed A-11, Industrial Estate, Guindy, was allotted to Polyene General Industries who gave permission to the assessee to occupy the back shed of their shed free of rent. The shed A-11, Industrial Estate, Guindy, was subject to occupation by two units, i.e., the assessee and Polyene General Industries though the latter was the regular tenant and was paying the full rent to the Department of Industries. The Tamil Nadu Government by its G.O. No. 3756/MIA 3 of 1975-2, dated August 26, 1975, directed that the Government approves the proposal of the Director of Industries to collect 100 percent. rent from the joint occupants of a single shed separately irrespective of the size or area of occupation of the shed

and that the 100 percent. rent must be insisted upon from the date of occupation. On the basis of the above Government order, the assessee was asked to pay the Tamil Nadu Industries Development Corporation Limited by their letter dated January 17, 1976, the sum of Rs. 1,03,743 consisting of 100 percent. rent of shed A-11, Industrial Estate, from February 1, 1966, to January 31, 1976. On the basis of the above demand, which was received in January, 1976, the assessee provided in the accounts of the firm made up to September 30, 1975, the sum of Rs. 99,839 being the rent payable to the Tamil Nadu Small Industries Development Corporation Ltd., for the period February 1, 1966 to September 30, 1975.

3. According to the assessee, inasmuch as the provision was made for payment of arrears of rent as per the Government order dated August 26, 1975, the arrears of rent claimed by the Government is allowable as a deduction in the assessment year 1976-77.

4. In National Newsprint and Paper Mills Ltd. Vs. Commissioner of Income Tax, it was held that liability to pay interest for the period 1949 to 1957, Rs. 75,80,183, arose only on May 14, 1957, i.e., on receipt by that company of the letter from the State Government informing it of the rates of interest which the State Government had decided to charge.

5. In Commissioner of Income Tax Vs. Padmavati Raje Cotton Mills Ltd., the Calcutta High Court held that liability of the assessee-company became enforceable in the assessment year 1983-84 because the demand was made during the accounting period by the Collector on March 4, 1983, and, therefore, the said amount was deductible in the assessment year 1983-84.

6. A similar question came up for consideration before the Bench of this court in Commissioner of Income Tax Vs. East India Corporation Limited, , wherein this court held that the order of the Commercial Tax Officer having been made on August 31, 1972, in pursuance of the order passed by the Supreme Court, the liability arose for the first time only on that date and hence the claim of the assessee for deducting the sales tax liability in the accounting year relevant to the assessment year 1973-74 was justified.

7. According to the facts arising in the present case, there was no lease agreement between the assessee either with the Government or with the chief tenant for payment of rent. According to the assessee, the assessee was permitted to occupy a portion without payment of rent by the chief tenant. Under such circumstances, it cannot be said that in the present case the liability to pay the rent arose every month or every year. Since the assessee was a sub-lessee, the Government thought it fit to regularise the lease and collect full rent for the shed both from the chief tenant and the sub-tenant by an order dated August 26, 1975. The assessee was compelled to make a provision in the account for payment of the said amount since the assessee was following the mercantile system of accounting. It is no doubt true that the demand for payment of arrears

of rent was issued on January 20, 1976, which falls outside the year of account but the Government order dated August 26, 1975, falls within the accounting year relevant to the assessment year under consideration. On the basis of this Government order, the assessee made the provision. In view of the earlier decisions cited *supra*, the assessee can claim deduction either in the year in which the demand was raised or on the basis of the earlier order in accordance with which either provision was made or payment of tax (sic) was made. Therefore, we do not consider that there is any infirmity in the order passed by the Tribunal in allowing the provision made by the assessee for arrears of rent in accordance with the Government order dated August 26, 1975, and claiming deduction of the same in the assessment year 1976-77. In that view of the matter, we answer the questions referred to us in the affirmative and against the Department. No costs.