(1996) 03 MAD CK 0099

In the Madras High Court

Case No : TC No. 985 of 1984

Commissioner of Income Tax APPELLANT

Vs

Polly Container Industries RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:
Income Tax Act, 1961 — Section 37(1)

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

Thanikkachalam, J.—In compliance with the order of this Court dt. 1st November, 1982, the Tribunal referred the following two questions

for the opinion of this Court under s. 256(2) of the IT Act, 1961 :

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 88,127 being the rent payable

to Tamil Nadu Small Industries Development Corporation. Ltd. in respect of the earlier years is an admissible deduction in computing the income

of the assessee for the asst. yr. 1976-77 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal''s finding that the rent of Rs. 88,127 was ascertained and became

payable only during the year ended 30th September, 1975 is sustainable in law especially when the demand was raised on 20th January, 1976

consequent to the Government''s order dt. 26th August, 1975 ?

2. 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 dt. 26th August, 1975. In the accounts of the assessee for the year ended 30th September, 1975, the assessee claimed

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 Tribunal found that the liability came to be

ascertained and became payable only when the Government passed the order dt. 26th August, 1975, and therefore, in accordance with the

mercantile system of accounting followed by the assessee, the liability was taken in the previous year ended 30th September, 1975 and was an

admissible deduction in computing the total income of the asst. yr. 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 20th January, 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 dt. 26th

August, 1975 cannot be allowed as deduction in the asst. yr. 1976-77. According to the 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 dt. 26th August, 1975 directed the Director of Industries to

collect 100 per cent rent from both the chief tenant and the sub-tenant. Hence, in view of the above said order, the arrears of rent is payable in

accordance with the Government Order dt. 26th August, 1975. The assessee followed the mercantile system of accounting for the asst. yr. 1976-

77 for payment of arrears of rent. Therefore, the arrears of rent claimed by the Government is allowed in the asst. yr. 1976-77 as deduction.

3. We have heard the learned standing counsel appearing for the Department and perused the records carefully. The assessee occupied the back

shed (portion) of Shed All (sic) Industrial Estate, Guindy in 1966 after obtaining the permission of the Director of Industries and Commerce,

Government of Tamil Nadu, Madras. The Shed All (sic) Industrial Estate, Guindy was allotted to Polyene General Industries who gave permission

to the assessee to occupy the back shed (portion) of their shed free of rent. The Shed All 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. 37567/MIA3/75-2 dt. 26th August, 1975 directed that the Government approves the

proposal of the Director of Industries to collect 100 per cent 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 per cent rent must be insisted upon from the date of occupation. On the basis of the above

Government order the assessee was asked to pay by the Tamil Nadu Small Industries Development Corpn. Ltd. by their letter dt. 17th January,

1976 the sum of Rs. 1,03,743 consisting of 100 per cent rent of shed All Industrial Estate from 1st February, 1966 to 31st January, 1976. On the

basis of the above demand, which was received in January, 1976, the assessee provided in the accounts of the firm made upto 30th September,

1975 the sum of Rs. 99,839 being the rent payable to the Tamil Nadu Small Industries Development Corpn. Ltd. for the period 1st February,

1966 to 30th September, 1975.

4. According to the assessee, inasmuch as the provision was made for payment of arrears of rent as per the Government Order dt. 26th August,

1975, the arrears of rent claimed by the Government is allowable as deduction in the asst. yr. 1976-77.

5. 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 14th May, 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.

6. In Commissioner of Income Tax Vs. Padmavati Raje Cotton Mills Ltd., the

Calcutta High Court held that the liability of the assessee-company

became enforceable in the asst. yr. 1983-84 because the demand was made during the accounting period by the Collector on 4th March, 1983,

and therefore, the said amount was deductible in the asst. yr. 1983-84.

7. 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 the order of the Commercial Tax Officer having been made on 31st August, 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 asst. yr. 1973-74 was justified.

8. 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 being a sub-lessee, the Government thought it fit to regularise the lease and collect full rent of the shed both from the chief tenant and the

sub-tenant by an order dt. 26th August, 1975. The assessee was compelled to make a provision in the accounts for payment of the said amount;

since the assessee was following mercantile system of accounting. It is no doubt true that the demand for payment of arrears of rent was issued on

20th January, 1976 which falls outside the year of account but the Government Order dt. 26th August, 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 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 dt. 26th

August, 1975 and claiming deduction of the same in the asst. yr. 1976-77.

9. In that view of the matter, we answer the questions referred to us in the

affirmative and against the Department. No costs.

