(1970) 12 CAL CK 0022

In the Calcutta High Court

Case No : Income-tax Reference No. 36 of 1967

Commissioner of Income Tax APPELLANT

Vs

R. Shantilal and Co. RESPONDENT

Date of Decision : 10-12-1970

Acts Referred:
Income Tax Act, 1922 — Section 66(1)

Citation : (1971) 82 ITR 214

Hon'ble Judges : Sankar Prasad Mitra, J;K.L. Roy, J

Bench : Division Bench

Advocate : Chandan Banerji and A.K. Basu, for the Appellant;P.K. Pal and A.K. Roy Chowdhury, for the Respondent

Judgement

K.L. Roy, J.—This is a reference u/s 66(1) of the Income Tax Act, 1922, at the instance of the Commissioner of Income Tax II, Calcutta. The assessment year concerned in this reference is 1956-57, the relevant previous year being 2011 Guzrati Diwali Sambat year corresponding to the period from 26th October, 1954, to 17th June, 1955. The assessee is Messrs. R. Shantilal and Company which was assessed in the status of an unregistered firm for the relevant assessment year, and which sold and transferred its business as a going concern to a private limited company styled as Messrs. R. Shantilal & Company Private Ltd. shortly before the close of the aforesaid accounting year and the assessee-firm was dissolved on the last date of the accounting year, viz., the 17th June, 1955. In its book of account for the current year which were maintained on the mercantile system of accounting the assessee made the following provisions for its liability under the Sales Tax Act:

Rs.

(a)

Estimated liability for the current year, i.e., from the 26th October, 1954, to 17th June, 1955

... 20,050

(b)

Liability for 2008 Sambat year for which demand notice was issued on 8th February, 1955

... 9,675

(c)

Liability for 2009 Sambat year for which the demand notice was issued on 8th February, 1955

... 17,780

Total 47,505

2. Out of the claim for deduction of the aforesaid sum the Income Tax Officer only allowed Rs. 253 for 2008 Sambat year and Rs. 1,250 for Sambat year 2009 actually paid during the accounting year and disallowed the claim for the balance and added back the sum of Rs. 46,001 to the assessee''s total income.

3. On further appeal, the Appellate Assistant Commissioner allowed a further sum of Rs. 20,233-4-9 being the sales, tax paid in the year of account and reduced the amount of disallowance to Rs. 27,271-4-9.

4. On the assessee''s further appeal before the Income Tax Appellate Tribunal, it was contended on behalf of the department that unascertained and estimated liabilities for sales tax could not be allowed as a deduction. The Tribunal observed that following the accepted practice of the assessee in this case the unascertained and disputed liabilities of the earlier years in respect of which no provision could possibly have been made, the liabilities could be deemed to have arisen for the first time only when the sales tax department had served the assessee with the demand notices. As in the present case such demand notices relating to the liabilities for the Sambat years 2008 and 2009 had been received by the assessee on the 8th February, 1955, the Tribunal held that the entire amount of Rs. 47,505 must be allowed as legitimate business expenses against the profits of the assessee of the Sambat year 2011.

5. On the application of the Commissioner the following question has been referred to this court by the Tribunal, viz. :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the entire sum of Rs. 47,505 represented the accrued liability of the assessee on account of sales tax and as such was liable to be allowed as a deduction in the computation of the income from business?"

6. Mr. Chandan Banerji, appearing for the department, accepted the position that, so far as the provision for the estimated liability for the current year, viz., 2011 Sambat year, was concerned, it must be allowed as a deduction in

accordance with the decision of this court in Commissioner of Income Tax Vs. Royal Boot House, the decision of a Bench of which my Lord was a member. Mr. Banerji, however, strenuously contended that, so for as the provisions made in the accounts for the liabilities of the two earlier years, 2008 and 2009 S.Y., are concerned, these are disputed liabilities for which no provision was made during the relevant accounting years and simply because the demand notices were received in the accounting year relevant to the assessment year concerned, it would not follow that the liability became an ascertained and undisputed liability in this year. There is nothing to show that the assessee accepted the liability for payment of the aforesaid two amounts as sales tax for those two years. Mr. Banerji also referred to the decision of the court in Kedarnath Jute Manufacturing Co. Ltd. v. Commissioner of Income Tax ITR 1968 (Cal.) 56 where the disallowance of a claim for deduction of sales tax was sustained on the ground that the assessee had denied its liability to pay the sales tax and had made no provision in its books of account. In our opinion that decision does not help Mr. Banerji on the facts of the present case. We asked Mr. Banerji to show us any finding by any of the three authorities below that even after the receipt of the demand notices the assessee was still disputing its liability to pay the sales tax demanded in respect of Sambat years 2008 and 2009. Mr. Banerji was unable to bring to our notice any such finding by any of the authorities below. In these circumstances, we are of the opinion that the Tribunal was justified in allowing the deduction of the amounts of sales tax for the Sambat years 2008 and 2009 for which the demand notices had been served on the assessee during the current account year.

7. The question referred to this court must, therefore, be answered in the affirmative and in favour of the assessee. There will be no order as to costs of this reference.

Sankar Prasad Mitra, J.

8. I agree.

Question answered in the affirmative.

