

(1970) 10 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 15 of 1968

Commissioner of Income Tax

APPELLANT

Vs

Sardar Singh Sachdeva

RESPONDENT

Date of Decision : 21-10-1970

Acts Referred:

Banking Companies Act, 1949 — Section 17

Income Tax Act, 1922 — Section 10(2), 22(3), 66(1)

Citation : (1973) 1 ILR (P&H) 285 : (1972) 86 ITR 387

Hon'ble Judges : D.K. Mahajan, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : B.S. Gupta and D.N. Awasthy, for the Appellant; Atma Ram and Jagmohan Singh, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal (Delhi Bench "C") has referred the following question of law for opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the requirements of proviso (b), Clause (vib), of Sub-section (2) of Section 10, of the Indian Income Tax Act, 1922, for creation of development rebate reserve have been satisfied?"

2. On facts there is no dispute. We are concerned with the assessment year 1961-62. The previous year is the financial year ending March 31, 1961. The assessee at all material times was carrying on business of manufacture and sale of chain links used in sugar mills. The assessee filed return dated 6th of July, 1961, and in that return no development rebate was claimed. With this return a profit and loss account had been filed. In the profit and loss account no claim was made for the development rebate. The assessee then filed a revised return dated 10th July, 1962. In this return again no claim was made for the development rebate. On 29th October, 1963, the assessee filed a second revised return. Along with this return he filed a revised profit and loss account in which development rebate of Rs. 8,101.50 was claimed. The procedure adopted was

that in the account books ending March 31, 1961, a development rebate reserve was created and this account was credited with the sum of Rs. 8,101.50. In the profit and loss account this amount was debited. The Income Tax Officer completed the assessment on March 30, 1966. The claim on account of development rebate u/s 10(2)(vib), proviso (b), of the Income Tax Act, 1922, was disallowed. The reasoning adopted by the Income Tax Officer may best be stated in his own words:

"It is, therefore, clear that when the books of accounts were closed and profit and loss account was drawn up, no reserve for development rebate was created as is clear from the balance-sheet and profit and loss account accompanying the original return. The assessee, therefore, did not comply with an essential condition for the allowance of development rebate. The reserve created on October 29, 1963, cannot help the assessee. The assessee must have carried forward his balance on April 1, 1961, to the books of assessment year 1962-63 and again balance of assessment year 1962-63 must have been carried forward to the books of assessment year 1963-64 on April 1, 1961. The assessee, therefore, created the reserve when the balances for not only assessment year 1961-62 were struck but balances were also struck for the assessment year 1962-63 and 1963-64. Vide his written explanation filed on March 29, 1966, the assessee has argued that reserve can be created at any time provided the entries are passed in the books of the relevant year."

3. The assessee was dissatisfied with the order of the Income Tax Officer and preferred an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner also rejected the assessee's claim to the development rebate. The assessee then filed a further appeal to the Income Tax Appellate Tribunal and the Tribunal by its order dated August 8, 1967, accepted the assessee's contention and allowed the claim to the development rebate. The contention of the department to the contrary before the Tribunal based on the decision of the Madras as High Court in Commissioner of Income Tax, Madras Vs. P. Veeraswami Nainar Bus owner and the mill owner Ginjee and Others, was not accepted. It was held that this decision was not applicable and was clearly distinguishable. The department being dissatisfied with the decision of the Tribunal made an application u/s 66(1) of the Income Tax Act, 1922, for reference to this court. That is how the matter has been placed before us. The contention of the learned counsel for the department is that the relevant entries in the account books and the profit and loss account must be made before the close of the year. In the instant case it is argued that they should have been made on or before the 31st of March, 1961, and in any case at the time of the preparation of the profit and loss account. The matter is not res integra. There are two direct decisions, dealing with this question, one of the Andhra Pradesh High Court and the other of the Rajasthan High Court, namely, VEERABHADRA IRON FOUNDRY AND ANOTHER Vs. COMMISSIONER OF Income Tax, A.P., and Commissioner of Income Tax, Delhi and Rajasthan Vs. Mazdoor Kisan Sahkari Samiti, Village Bhadu, . Both these cases considered the decision of the Madras

High Court in Veeraswami Nainar's case and have clearly explained it. It is not necessary to cover the same ground again. In a nut-shell if the argument urged by the learned counsel for the department is accepted, we would be reading something into the proviso (b) to Section 10(2)(vib), namely, that in order to get the development rebate the requirements of the proviso must be satisfied before the close of the account year. In our opinion this course would not be permissible. We cannot read something more into the statutory provision. If the intention of the legislature was that the entries had to be made before the close of the account year or before the completion of the profit and loss account, it would have said so. It is well-known that the profit and loss account cannot be made immediately on the close of the year. It depends upon the facts and circumstance of each case as to at what time the profit and loss account can be made. It is no doubt true that in the profit and loss account he is to make the debit entry regarding the development rebate but the question is up to what point of time it can be done? If a reference is made to Section 22(3) of the Income Tax Act, the assessee has a right to modify his return right up to the date before the assessment is made which indicates that he can also correct the mistakes in his account books or the statement of profit and loss account. This provision fully justifies the conclusion at which the learned judges of the Andhra Pradesh High Court reached while interpreting Section 10(2)(vib), proviso (b), and we are entirely in agreement with that decision.

4. The learned counsel for the department strongly relies upon the decision of the Supreme Court in *The Indian Overseas Bank Ltd. Vs. The Commissioner of Income Tax, Madras*, . This decision was delivered by their Lordships of the Supreme Court in an appeal from the judgment of the Madras High Court in *Indian Overseas Bank Ltd., Madras Vs. Commissioner of Income Tax, Madras*, . The question that fell for determination by their Lordships of the Supreme Court was whether a reserve u/s 17 of the Banking Companies Act, 1949, was a reserve within the meaning of Section 10(2)(vib), proviso (b), of the Income Tax Act, and their Lordships were of the opinion that such a reserve could not be treated as a reserve for development rebate u/s 10(2)(vib), proviso (b), of the Act. The question with which we are concerned was not debated before their Lordships and all that their Lordships said was that the requirements of the proviso had to be complied with. So far as the present case is concerned, the requirements have been complied with. The only argument stressed before us is that the requirements should be complied with before the close of the accounting year or before making up of the profit and loss account. In our opinion it was open to the assessee to make these entries at any time before the assessment was completed. The entries only become final as and when they are accepted or rejected by the Income Tax Officer, i.e., when the assessment is made. Till then, they are in a fluid state and any error or defect in them could be corrected.

5. For the reasons recorded above, we reply the question referred to us in the affirmative, that is, against the department. There will be no order as to costs.