(2004) 09 AHC CK 0315

In the Allahabad High Court

Case No : IT Reference No. 185 of 1984

Commissioner of Income Tax APPELLANT

Vs

Sunder Printing Press RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:
Income Tax Act, 1961 — Section 10(1), 10(2)(xv), 147, 256(1)

Citation : (2005) 143 TAXMAN 49

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Shambhoo Chopra, for the Appellant; P.K. Jain, for the Respondent

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal, New Delhi has referred the following question of law u/s 256(1) of the income tax Act, 1961, hereinafter referred to as the Act, for opinion to this Court: Whether the Tribunal is right in holding that the case of the assessee was covered by the decision of the Supreme Court in the case of Kedarnath Jute Mfg. Co. and not by the decision in the case of Chowringhee Sales Bureau Pvt. Ltd. even though the amount of extra-sales tax had neither been demanded by the Sales Tax Department nor yet paid by the assessee?

Briefly stated the facts giving rise to the present reference are as follows:

The present reference relates to the assessment years 1974-75 and 1975-76. The respondent assessee is a registered firm running a Press. The controversy is regarding the assessability of excess Sales-tax collected by the respondent from its customers though much smaller amounts were deposited as sales-tax with the Sales-tax Department during the relevant years. The excess sales-tax collection is Rs. 6,427 in the assessment year 1975-76 and Rs. 77,279 in the assessment year 1975-76 were brought to tax under proceedings u/s 147 of the Act. In appeal the liability to pay tax on the aforesaid amount was deleted by the Commissioner of income tax (Appeals) by holding that the liability to pay sales tax arose as soon as the transaction was entered into and finalized as the respondent was following mercantile system of accounting and the fact that the sales tax was paid in the year was of no consequence. The Revenue''s appeal before the Tribunal had failed.

2. We have heard Sri Shambhoo Chopra, learned counsel appearing for the Revenue and Sri P.K. Jain, learned counsel appearing for the respondent.

3. The learned counsel for the Revenue submitted that the amount of sales tax realized by the respondent from its customer is part of the trading receipts as held by the Apex Court in the case of Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, and Sinclaire Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta, . He further submitted that the respondent had collected 7% as sales tax from its customer whereas it had paid only 3% and had transferred the balance amount to the security account. Since it had not paid the entire amount collected from its customers the balance amount would form part of the trading receipts and was not the liability towards the Sales Tax. Relying upon a decision of the Supreme Court in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, he submitted that the amount which the respondent had paid over to the Sales Tax Department can be treated as sales tax liability and can be allowed.

4. Sri P.K. Jain, learned counsel for the respondent, however, submitted that the respondent had collected sales tax at the rate of 7% as the position was not clear. However, it had paid only 3% as tax to the Sales-tax Department and the balance amount had been kept in the security deposit account. According to him the entire amount of sales tax has been collected from the purchaser and it is immaterial as to whether it has been paid to the Sales Tax Department or not. It remains the liability towards the Sales Tax and therefore was an allowable deduction. He relied upon a decision of the Calcutta High Court in Commissioner of Income Tax Vs. Ellenbarrie Industrial Gases Ltd., .

5. Having heard the learned counsel for the parties, we find that the amount has been realized by the respondent at the rate of 7% as sales tax even though he had paid only part of it i.e., 3%. The balance amount had been transferred to the sales tax security account. The stand taken by the respondent before the sales tax authority was that the tax legally payable was only at the rate of 3%. The order of assessment had not been passed till the end of the relevant previous year. In the case of Chowringhee Sales Bureau (P.) Ltd. (supra) the appellant-company was a dealer in furniture and also acted as an auctioneer. In respect of sales effected by the appellant as auctioneer, it realized during the year in question, in addition to the commission, Rs. 32,986 as sales tax. This amount was credited separately in its account books under the head ''Sales tax collection account''. The appellant did not pay the amount of sales tax to the actual owner of the goods nor did it deposit the amount realized by it as sales tax in the State exchequer because it took the position that the statutory provision creating that liability upon it was not valid. The appellant also did not refund the amount to

persons from whom it had been collected. In the cash memos issued by the appellant to the purchasers in the auction sales the appellant was shown as the seller. The Apex Court had held that the sum of Rs. 32,986 realized as sales tax by the appellant company in its character as an auctioneer formed part of the trading or business receipts. The fact that the appellant credited the amount received as sales tax under the head "Sales tax collection account" did not make any material difference. According to the Apex Court, it is the true nature and quality of the receipt and not the head under which it is entered in the account books that would prove decisive. If a receipt is a trading receipt, the fact that it was not so shown in the account books of the assessee would not prevent the assessing authority from treating it as trading receipt. The Apex Court had further observed that the appellant-company would be entitled to claim deduction of the amount as and when it paid it to the State Government.

6. The Apex Court had applied the aforesaid decision in the case of Sinclair Murray & Co. (P.) Ltd. (supra) and held that there is no scope from the conclusion that the amount of Rs. 7,14,398 should be treated as trading receipt. However, it had made it clear that if and when the appellant pays the sum of Rs. 7,14,398 or any part thereof either to the State Government or to the purchaser, the appellant would be entitled to claim deduction of the sum so paid.

7. In the case of Kedarnath Jute Mfg. Co. Ltd. (supra), the Apex Court has held that the moment a dealer made either purchases or sales, which were subject to sales tax, the obligation to pay the tax arose. Although the liability could not be enforced till quantification was effected by assessment proceedings, the liability for payment of tax was independent of the assessment. The assessee, which followed the mercantile system of accounting, was entitled to deduct from the profits and gains of its business liability to sales tax which arose on sales made by it during the relevant previous year. The assessee was entitled to the deduction of the sum of Rs. 1,49,776 being the amount of sales tax, which it was liable under the law to pay during the relevant accounting year. That liability did not cease to be a liability 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. Further the fact that the assessee had failed to debit the liability in its books of account did not debar it from claiming the sum as a deduction either u/s 10(1) or u/s 10(2)(xv).

8. In the case of Ellenbarrie Industrial Gases Ltd. (supra) the Calcutta High Court has held that collection by the assessee is in its essential nature a mere deposit to be realized on the reciprocity of release of declaration forms by the purchasing dealer. This deposit gets transformed into sales tax only to the extent the declaration form does not finally come forth at the last point of time when such form is to be presented to the sales tax authority under Sales Tax Rules, i.e., at the time of assessment or before expiry of the extended by such authority and therefore, the Tribunal was right in treating the collection of sales tax being the differential between the sales tax collection from a registered dealer furnishing

the declaration form and the sales tax payable by the purchaser treated for the time being as an unregistered dealer, as the deposit of security not partaking of the character of trading receipt.

9. In the case of Commissioner of Income Tax, Orissa Vs. Kalinga Tubes Ltd., the Apex Court has held that when the assessee is following the mercantile system of accounting, in the case of sales tax payable by the assessee, the liability to pay sales tax would accrue the moment the dealer made the sales which are subject to sales tax. At that stage, the obligation to pay the tax arises. The raising of a dispute in this connection before the higher authorities would be irrelevant. The Apex Court on the facts of that case had held that even though the demand was reduced by the Tribunal on May 28, 1970 since it related to the year 1962-63 the deduction could have been claimed only for the assessment year 1962-63 as the liability had accrued during that year.

10. In the case of Commissioner of Income Tax, Madras Vs. Thirumalaiswamy Naidu and Sons, the Apex Court has held that the sales tax collected by the assessee had to be treated as its income according to the ruling of this Court in the case of Chowringhee Sales Bureau (P.) Ltd. (supra). Any payment of sales tax made by the assessee was equally liable to be deducted from the profits made by the assessee.

11. In the case of Commissioner of Income Tax Vs. Hotel Srilekha (P.) Ltd., the Madras High Court had held that the principle laid down by the Apex Court in Chowringhee Sales Bureau (P.) Ltd. (supra), Sinclair Murray & Co. (P.) Ltd. (supra) and Thirumalaiswamy Naidu & Sons (supra) are that the revenue amount collected by the appellant as tax constitutes its trading receipts and it had to be included in its total income and if and when the appellant pays the amount collected to the State Government or refund any part thereof to the purchaser, the appellant would be entitled to claim deduction of the amount so paid or repaid.

12. Applying the principle laid down by the Apex Court in the aforesaid cases, we find that the respondent had realized the amount of 7% as tax from its customers. Thus, in view of the law laid down by the Apex Court in Chowringhee Sales Bureau (P.) Ltd. (supra), Sinclair Murray & Co. (P.) Ltd. (supra) and Thirumalaiswamy Naidu & Sons (supra) the said amount forms part of its trading receipt. The respondent had paid to the Sales Tax Department only 3% as tax, therefore the balance 4% cannot be said to be liability which had accrued during the assessment year in question. As and when it is paid over to the department, it can be deducted. Thus, the present case is squarely covered by the principle laid down by the Apex Court in Chowringhee Sales Bureau (P.) Ltd. (supra). In view of the foregoing discussion, we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.

