
(1979) 02 MAD CK 0058

In the Madras High Court

Case No : Tax Case No. 411 of 1975 (Reference No. 308 of 1975)

Commissioner of Income Tax

APPELLANT

Vs

V. Krishnan

RESPONDENT

Date of Decision : 14-02-1979

Acts Referred:

Income Tax Act, 1961 — Section 10(2)(xv), 256(1)

Citation : (1980) 121 ITR 859

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant;

Judgement

Sethuraman, J.—The Appellate Tribunal has referred the following question under s. 256(1) of the I.T. Act, 1961, at the instance of the CIT:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sales tax liability to the extent of Rs. 16,220 was an admissible deduction in computing the total income for the assessment year 1972-73?

The assessee, though served, was not present and Mr. J. Jayaraman, the learned counsel for the Commissioner, placed before us all the aspects of the question. The facts relevant to the question are as follows:

The assessee is an individual who sells appalams by the trade name of "Ammami Appalam". The same business is carried on at Trichy and Salem. The same brand of appalam is also sold through a firm called Ammami Appalam Depot with its head office at Madurai and branch at Coimbatore. The partners of the firm at the relevant time were V. Krishnan and R.V. Easwaran. Easwaran also like the assessee carries on individual business of selling Ammami Appalam in Madras. The assessee and Easwaran jointly manufacture appalams at Kallidaikurichi and the sales are effected through the various depots mentioned above. According to the assessee, since the appalams were manufactured and sent to various depots

for sale, there were no sales from the Kallidaikurichi manufacturing unit and as such sales tax was not leviable. The sales tax department did not accept this contention and levied sales tax for the years 1958-59, 1959-60 and 1960-61.

2. The matter went on appeal to the Sales Tax Appellate Tribunal and the Tribunal allowed the appeals resulting in a refund of Rs. 13,546 which was received in the relevant previous year for the assessment year 1969-70. The amount received as refund was duly adjusted in the books. For the accounting years 1961-62, 1962-63 and 1963-64, similar assessments to sales tax were made and the AAC of Sales Tax decided the question of sales tax against the assessee.

3. There was an appeal to the Sales Tax Appellate Tribunal and the matter was stayed by the Tribunal pending the decision of the High Court in respect of the accounting years 1958-59 to 1960-61. For the accounting years 1964-65 and 1965-66, the assessee paid the sales tax as demanded but filed appeals before the AAC of Sales Tax. He allowed the appeals some time in January, 1974. For the accounting years 1966-67 and 1967-68, there were similar assessments to sales tax and appeals were preferred to the AAC of Sales Tax. He allowed them. The tax for the accounting year 1966-67 amounting to Rs. 6,049.21 had not been paid though as a result of the assessment made on the assessee a demand had been raised against him. Similarly, for the accounting year 1967-68, there was a demand made as against the assessee in a sum of Rs. 10,170.58. But this amount also had not been paid. The total of these two demands came to Rs. 16,219.70 and the assessee claimed the said amount as deduction on the ground that the liability arose in the accounting year relevant to the assessment year 1972-73. The ITO did not agree with this contention and, on appeal, the AAC dismissed the appeal.

4. When the matter came before the income tax Appellate Tribunal on appeal at the instance of the assessee, the Tribunal held that the assessee was justified in not making any provision for sales tax in the relevant accounting years to which they related and that when the STO raised the demand actually on August 31, 1971, the statutory liability to pay sales tax arose. The Tribunal, therefore, held that the amount was deductible in the year under consideration. It is this order of the Tribunal that has given rise to the present reference.

5. The learned counsel for the revenue submitted that the assessee was maintaining accounts on mercantile basis and that the liability to tax did not arise in this year. According to him, sales tax was liable to be deducted only in the year in which the transactions took place. As the transactions in the present case took place in the years 1966-67 and 1967-68, the assessee could not get a deduction of the sales tax liability in respect of those transactions which were under consideration. The correctness of this contention requires to be examined.

6. The Supreme Court considered the question as to the year in which sales tax had to be deducted in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of*

Income Tax, (Central), Calcutta, . In that case also, the assessee followed the mercantile system of accounting. For the relevant previous year to the assessment year 1955-56, the assessee claimed Rs. 1,49,776 on account of sales tax determined to be payable by the sales tax authorities on the sales made by the assessee during the said year. The assessee was disputing the liability to sales tax. In the I.T. assessment, the assessee's claim was negated on the ground that the assessee was denying its liability to sales tax. When the matter came before the High Court, Calcutta, the High Court was of the opinion that the unpaid and disputed sales tax liability could not form the basis of a claim for deduction. The assessee appealed to the Supreme Court and the Supreme Court pointed out (p. 366):

It is not possible to comprehend how the liability would cease to be one 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 with regard to the quantum of liability, etc. An assessee who follows the mercantile system of accounting is entitled to deduct from the profits and gains of the business such liability which had accrued during the period for which the profits and gains were being computed. It can again not be disputed that the liability to payment of sales tax had accrued during the year of assessment even though it had to be discharged at a future date.

7. There was also a contention in that case that the assessee had not debited the liability in its books of account and that it was debarred from claiming the amount as deduction. The Supreme Court pointed out that whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. This decision would support the contention of the revenue to this extent, namely, that the liability arose in the year in which the sales took place. The Supreme Court had not to go into the question of its deductibility in the year of payment. There may be cases where the assessee is not in a position even to estimate his liability because whether the transaction is liable to sales tax at all or not may itself be in dispute. In certain other cases, the question in dispute may relate to the point as to whether the tax liability arose on a single point or multi-point. There may even be cases where the sales tax department would raise estimated assessments and the assessee is obliged to pay sales tax in which case the assessee may not know about the existence or quantum of liability. In all these cases, it may not be possible even for a person maintaining his accounts on the mercantile basis to provide for the liability in the year to which it could be related taking into account the transactions of sale. In such cases, the assessee's claim for deduction would arise for consideration either in the year in which the assessee accepts the liability or in the year in which the amount is paid. As far as the present case is concerned, this is not the year in which either the liability to tax arose because of the transactions having been effected during that year, nor is this the year in which the assessee had

paid the tax. The assessee had received only a demand. There is nothing in the Sales Tax Act which would require the issue of demand notice as a condition precedent for making it a liability. In these circumstances the assessee's claim could not have been allowed as a deduction by the Tribunal in the year under consideration.

8. During the course of the arguments, reference was made to a decision in CIT v. Nathmal Tolaram [1973] 88 ITR 234 (Gauhati). In that case, the assessee was liable to pay sales tax amounting to Rs. 43,377 in respect of business transacted by it during the periods ending on March 31, 1949, September 30, 1949, and March 31, 1950. The assessee was maintaining its accounts under the mercantile system. There was no provision for payment of the amount. The demand for sales tax was made in the year 1957-58. The assessee also made a debit entry in its accounts in that accounting year and claimed it as a business expenditure. It was held that the sum of Rs. 43,377 representing the final demand for sales tax which the assessee was called upon to pay during the previous year relevant to the assessment year 1958-59 could properly be allowed as a deduction under s. 10(2)(xv) in the assessment of that year. The learned judges of the Gauhati High Court in coming to this conclusion noticed the decision of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , and they were of the opinion that there was no bar in law which disallowed expenditure relating to a period other than the previous year. We are unable to share this view. The I.T. Act takes the relevant previous year as a unit for the purpose of making an assessment. Therefore, the eligibility for deduction will be dependent on what had happened during the previous year. In the absence of any provision to show that the existence of a demand is a condition precedent to the liability arising, the liability to tax, as pointed out by the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , would ordinarily relate to the year in which the transactions took place. As we have already pointed out, it may also happen that that amount may have to be taken as a deduction in the year in which it is paid. Barring these two cases, mere receipt of the notice of demand in a particular year would not justify the allowance of deduction in that year. The deduction would thus be available either in the year of accrual of liability or in the year of payment, and not in the year of receipt of a disputed demand notice. The result is that the question is answered in the negative and in favour of the revenue. There will be no order as to costs.