

(2006) 07 KL CK 0036
In the High Court Of Kerala
Case No : Income Tax A. No. 232 of 2002

Ishwardas Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Income Tax Act, 1961 — Section 43B

Citation : (2006) 206 CTR 551 : (2006) 4 KLT 426

Hon'ble Judges : V. Ramkumar, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P. Balakrishnan E and R. Amritharaj, for the Appellant; P.K. Raveendranatha Menon and K. George, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Assessee is the appellant. Following are the questions of law raised for our consideration.

1. Whether on the facts and in the circumstances of the case the tribunal is correct in law in reversing the order of the Commissioner of Income Tax (Appeals)?
2. Whether on the facts and in the circumstances of the case the Tribunal is correct in law and fact in holding that the "contingency deposit" being money received from the principals and retained by the agent for the discharge of the liability of the principals from the payments due to the principals is a trading receipt in the hands of the appellant?
3. Whether the Tribunal is correct in law and fact in holding that as "dealer" under the Sales Tax Act includes a commission agent also, the burden to pay turnover tax which is on the principals shifts to the appellant?
4. Whether the Tribunal has erred in not properly considering the relationship between the agent and the principals and in ignoring the fact that the agents

liability is only to the extent of the principals and that in the absence of any specific liability for the agent, the amount retained from the principal cannot be considered as a trading receipt?

Assessee is a dealer in rubber. Assessment was completed for the year 1989-90 vide assessment order dated 28-2-1992. While completing the assessment the assessing officer found that the sum of Rs. 5,47,582/- shown as "contingency deposit" in the balance sheet represents amounts collected from the principals as deposit towards sales tax and turnover tax for the period 1-7-1987 to 31-3-1988 and 1-4-1988 to 31-3-1989 and the collections made during the period relevant to the assessment year comes to Rs. 8,29,483/- and a sum of Rs. 4,02,000/- was paid during the period and the balance of Rs. 4,27,483 is includible in the total income of the assessee. Aggrieved by the same assessee took up the matter in appeal before the Commissioner (Appeals) stating that the disallowance of a sum of Rs. 4,27,483/- being disallowance u/s 43B in respect of contingency deposit liability is illegal. It was pointed out that the assessee is a commission agent receiving commission from agency despatches. During the year under consideration the assessee had shown a sum of Rs. 5,47,582/- under the head "contingency deposit". It was contended before the Commissioner (Appeals) by the assessee that Section 43B is not applicable with regard to contingency deposit. Accepting the said contention Commissioner (Appeals) deleted the addition made by the assessing officer.

2. Revenue took up the matter in appeal before the Tribunal. Tribunal noticed that as per Sales Tax Act and also the Turnover Tax Act, the term "dealer" includes a commission agent. The assessee's claim that the assessee being a commission agent cannot be treated on par with a real business person, i.e., a dealer was not accepted. Tribunal also placed reliance on the decision of the Apex Court in Commissioner of Income Tax, Madras Vs. Thirumalaiswamy Naidu and Sons, and took the view that the amount collected by the assessee be treated as income of the assessee. The appeal filed by the Revenue was accordingly allowed.

3. Counsel appearing for the assessee submitted that the Tribunal has committed an error in placing reliance on the decision of the Apex Court in Commissioner of Income Tax, Madras Vs. Thirumalaiswamy Naidu and Sons, . Counsel submitted that the amount retained by the assessee as agent cannot be treated as a tax collection and as such the same will not form part of the trading receipt. Counsel placed reliance on the decision of the Apex Court in The Chief Commissioner of Income Tax, Cochin Vs. Kesaria Tea Co. Ltd., and also in Commissioner of Income Tax Vs. D. Shankaraiah and Others, . Counsel submitted that the issue of payment of turnover tax by the assessee stood unsettled ever since 1-7-1987 and therefore the amount was shown in the "contingency deposit". Going by the dictum laid down in Kesaria Tea Co. 's case the liability of the assessee towards payment of turnover tax has not come to an end.

4. Senior counsel appearing for the revenue contended that the tax collected by

the assessee forms integral part of the trading receipt and therefore treated as income of the assessee to the extent not actually spent by the assessee by way of payment of tax. Counsel therefore submitted that the collections made are towards sales tax and turnover tax and the principle applicable to sales tax is squarely applicable to turnover tax as well. Counsel submitted that the mere fact that the assessee has made payment as contingent deposit would not change the character of the receipt. In support of his contention counsel placed reliance on the decision of the Apex Court in *Raghuvanshi Mills Ltd. Vs. Commissioner of Income Tax, Bombay City*, . Counsel also placed reliance on the decision in *Commissioner of Income Tax Vs. India Carbon Ltd.*, , *The Commissioner of Income Tax, Bombay Vs. Dharamdas Hargovindas*, , *Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan*, etc.

5. We are of the view that the mere fact that the liability to pay turnover tax and also the increase in the rate of rubber from 5% to 6% was disputed would not change the character of the amount received. Amount deposited by the assessee in the account by name "contingency deposit" was nothing but collection made by the assessee for payment of sales-tax and turnover-tax. Sales tax collections made by the assessee forms integral part of the trading receipt and has to be treated as income of the assessee to the extent not actually spent by the assessee by way of payment of tax. Collections were made by the assessee from the customers for making payment of sales-tax and turnover tax. The fact that collections were made by the assessee from customers for making payment of sales tax and turnover tax is not disputed. Collections made either as a trader or as a commission agent would not change the character of collection. Sales Tax Act recognises a commission agent also as "dealer" and the commission agent is also included in the definition of "dealer" under the KGST Act. Same is the position so far as the turnover tax is concerned. Therefore sales tax and turnover tax collections made by the assessee can be treated as part of their trading receipts.

6. The amount of sales tax and turnover tax collected, form part of the assessee's trading receipts. The mere fact that the assessee has created a head "contingency deposit" and kept the collection as such without paying the amount to the salestax department would not change the character of the receipt. Merely by maintaining an account under a head created by the assessee would not alter the nature of the receipt. This legal position is settled by the decision of the Apex Court in *The K.C.P. Limited Vs. Commissioner of Income Tax, Bangalore*, . The principles laid down in *Kesaria Tea's* case would not apply to the facts of this case. In *Kesaria Tea's* case the Apex Court held that the unilateral action of the assessee writing back the amount of liability in the books of account is not a conclusive evidence to hold that the liability has come to an end for all.

7. The question is not whether the liability-of the assessee towards payment of tax came to an end or not. In *Jonnella Narashimharao and Co. etc. Vs. Commissioner of Income Tax*, the assessee was a commission agent, collected in

the assessment year 1968-69 certain amounts by way of salestax under the name "rusum". The assessee disputed the liability to pay salestax by initiating various legal proceedings. Salestax amount was remitted consequent to retrospective amendment. The apex court held that the tax collected constituted business receipts for the year 1968-69. Principle in our view would squarely applicable to the facts of this case. Collections made by the assessee and shown under the head "contingency deposit" have to be treated as part of its trading receipts and was rightly included as assessee's income. Needless to say the assessee will be free to deduct whatever amount is paid towards salestax and turnover tax when it is actually paid u/s 43B of the I.T. Act.

8. We are of the view that the Tribunal is justified in holding that the amount collected by the assessee forms part of trading receipts and can be included in the income of the assessee. Questions raised are all answered in favour of the Revenue. Appeal therefore lacks merits and the same would stand dismissed.