(1974) 11 MAD CK 0009

In the Madras High Court

Case No : Tax Case No. 89 of 1969 (Reference No. 10 of 1969)

M.S. Balakrishna Chetty APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-11-1974

Acts Referred:
Income Tax Act, 1961 — Section 28, 37

Citation : (1975) 101 ITR 557

Hon'ble Judges : V. Sethuraman, J;V. Ramaswami, J

Bench : Division Bench

Advocate : V. Venkatraman, for the Appellant; V. Balasubrahmanyan and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—The assesses is a wholesale trader in rice and pulses. In respect of the assessment years 1955 56 and 1956-57, the sales

tax authorities, on the basis of certain anamath accounts recovered during a raid, adopted a multiple of ten times of the turnover not disclosed in the

returns and added on the same The assessee was questioning the addition to the turnover but without success. Thereafter, he filed a revision to this

court. Pending the tax revision petition, the assesses prayed for stay of collection of the disputed sales tax. This court ordered payment of the

disputed tax in monthly instalments of Rs. 1,000 each. As per this direction the assessee paid the disputed tax between February, 1959, and

March, 1961, that is, before 1st April, 1961. Ultimately, the High Court by an order dated September 4, 1961, modified the assessment orders by

adopting a multiple of seven times on the turnover disclosed in the anamath accounts. The total sales tax on the disputed turnover amounted to Rs.

26,317 and this amount, as already stated, was paid before April 1, 1961.

2. In the ledger of the assessee under the head ""Sales tax account"" he showed the opening balance as Rs. 26,317.65 and at the end of the year on

March 31, 1963, the sales tax liability at Rs. 34,675.76. In the trading and profit and loss account for the year ending March 31, 1963, the whole

of the tax liability of Rs. 34,675.76 was shown as an expenditure. In the trial balance for the year ending March 31, 1962, he had shown the sales

tax as Rs. 26,317.65.

3. On the basis that only in the year of account relevant for the assessment year 1963-64, the assessee had adjusted his sales tax liability on the

disputed turnover amounting to Rs. 23,389 which figure was arrived at after deducting the sum of Rs. 2,928, received as refund as per the High

Court''s order dated September 4, 1961, from the total sales tax of Rs. 26,317 paid on the disputed turnover, he claimed the sum of Rs. 23,389

as a deduction in his income for the previous year ending March 31, 1963. The Income Tax Officer rejected this claim on the ground that the sales

tax liability to the extent of Rs. 23,389 did not relate to the previous year ending March 31, 1963. This order was confirmed by the Appellate

Assistant Commissioner. On a further appeal, the Tribunal observed that the sales tax liability of Rs. 23,389 neither related to the previous year

ending March 31, 1963, nor did it become final during that year, nor was it paid during that year. The Tribunal also pointed out that the assessee

was maintaining his accounts on the mercantile system and, therefore, the deduction could be claimed only in regard to a liability accruing during the

previous year. In that view, the Tribunal confirmed the orders of the Income Tax Officer and the Appellate Assistant Commissioner. At the

instance of the assessee the Tribunal has referred the following question :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law holding that the assessee was not entitled to the deduction

of sales tax amount of Rs. 23,389 in computing the total income for the assessment year 1963-64 ?

4. The assessee also applied to the Tribunal to send certain documents as annexures to the stated case but the Tribunal refused to send them on

the ground that those documents were not produced before it at the time of the hearing of the appeal.

5. In this reference, the learned counsel for the assessee contended that he

came to know of his exact sales tax liability only when that was

determined by the sales tax authorities in pursuance of the order of the High Court on September 4, 1961, that so long as that amount was not

determined in pursuance of the order of the High Court, he could not account it as a liability or expenditure in his account and that it was only in the

accounting year relevant to the assessment year 1963-64, the sales tax authorities determined that liability and on that basis he had adjusted the

sum of Rs. 23,389 in the profit and loss account for the year ending March 31, 1963. In support of this he also relied on an extract of the profit

and loss account and the ledger page of the sales tax account which are sent to us as annexure with the stated case.

6. The learned counsel is not able to rely on any specific provision in the Income Tax Act, 1961, enabling him to claim this amount as a deduction

in the assessment year 1963-64. As already seen, the assessee was maintaining his accounts on the mercantile system. If that be so, the sales tax

liability would be referable only to the year in which the transaction of sale or purchase took place, that is, in the assessment years 1955-56 and

1956-57. The liability did not arise in the assessment year 1963-64. Therefore, he is not entitled to claim deduction of this amount in the

assessment year 1963-64. Even otherwise, under Sections 28 and 37 of the Income Tax Act, 1961, he could claim deduction of an expenditure

only if the expenditure had been incurred for earning the income returned in the relevant assessment year. Certainly, the assessee could not claim

the sum of Rs. 23,389 as an expenditure incurred for earning the income of the assessment year 1963-64, nor could it be said as having any

relation to the income that was earned during the assessment year 1963-64. The assessee could not also claim it on the basis of the payment made

in the assessment year 1963-64, as the entire disputed amount was paid prior to April 1, 1961. Therefore, even on the basis of payment the

assessee could not claim any deduction in the assessment year 1963-64.

7. The learned counsel strongly relied on the fact that in his accounts he adjusted the amount only when finally he was held to be liable to pay sales

tax and that was in the assessment year 1963-64. There is no evidence to show in this case that the sales tax authorities determined the sales tax

liability on the basis of the High Court''s order dated September 4, 1961, only subsequent to April 1, 1962. We are not to be understood as

saying that if such evidence was available it would in any way have mattered. As held by the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd.

Vs. The Commissioner of Income Tax, (Central), Calcutta, . the moment a dealer made either purchases or sales which were subject to sales tax,

the obligation to pay the tax arose and it does not depend on the quantification under an assessment. In that case also the assessee which was

following the mercantile system of accounting incurred a liability of Rs. 1,49,776 on account of sales tax determined to be payable by the sales tax

authorities. The assessee was disputing this amount. When the sales tax assessment proceedings were pending in appeal, the assessee claimed

before the Income Tax Officer deduction of this disputed tax liability but the Income Tax Officer rejected the same on the ground that the assessee

had contested the sales tax liability in the appeal and that it had made no provision in the books with regard to the payment of that amount. The

Supreme Court held that the assessee was entitled to the deduction and that the liability to pay sales tax did not cease to be a liability merely

because the assessee had taken proceedings before the superior authorities for getting it reduced or wiped out. With regard to the question as to

whether the assessee''s failure to debit the liability in its books of account in any way debarred him from claiming the sum as a deduction, the

Supreme Court observed that the allowability of the amount depended upon only the provisions of law relating thereto and not on the view which

the assessee might take of his rights nor on the existence or absence of entries in the books of account.

8. The fact that in the instant case the assessee had adjusted this amount of sales tax only in the accounting year relevant to the assessment year

1963-64 is, therefore, neither decisive nor conclusive.

9. We would have considered the request of the learned counsel to look into the letter of the sales tax authorities and its enclosures which he

wanted the Tribunal to send along with the stated case to this court, if we had considered them necessary. But, as already stated, neither on the

ground of liability arising nor on the ground of the expenses relating to the income relevant to the assessment year 1963-64, the documents have

any bearing. Therefore, it was not necessary for us to consider that question.

10. In the result, we answer the reference in the affirmative and in favour of the revenue with costs. Counsel fee Rs. 230.

