
(1997) 03 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2210 of 1983

Punjab Feed Mills

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Citation : (1997) 228 ITR 386

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : Ramesh Kumar, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Judgement

N.K. Agrawal, J.—This is a petition filed under articles 226 and 227 of the Constitution for quashing the assessment order dated March 27, 1979, the appellate order passed by the Appellate Assistant Commissioner on December 9, 1981, and the revisional order passed by the Commissioner of Income Tax on February 16, 1983.

2. The petitioner in the status of a partnership-firm was carrying on the business of manufacturing poultry feed at village Jandiali in the district of Ludhiana. The petitioner made a provision for Rs. 20,000 in the books of account for the assessment year 1976-77 on account of purchase tax which was payable under the Punjab General Sales Tax Act, 1948. Though the question of levy of purchase tax was still under challenge, the provision as aforesaid was made in the books of account so as to meet the liability as and when it was finalised. The assessee's plea was that purchase tax liability relating to the assessment year 1974-75 was still to be quantified but, since the liability on account of purchase tax did accrue on the event of purchase, the assessee was entitled to claim deduction on account of the tax liability on accrual basis. The Assessing Officer, however, did not accept the plea and disallowed the deduction claimed at Rs. 20,000.

3. The petitioner went in appeal with the same plea that liability on account of purchase tax had to be allowed as a deduction on the ground of accrual of liability. The Appellate Assistant Commissioner, vide order dated December 9, 1981, accepted the petitioner's plea and allowed deduction at Rs. 20,000 on the basis of the provision made by the petitioner in the books of account. The petitioner, however, did not feel satisfied and went in revision before the Commissioner of Income Tax. The petitioner's plea was that the total tax liability of Rs. 40,514 should be allowed by way of deduction on the basis of accrual of liability. The Commissioner of Income Tax, while exercising powers u/s 264 of the Income Tax Act, 1961, dismissed the petition for revision on the ground that whatever claim had been made by the assessee by way of making the provision at Rs. 20,000 in the books of account, that stood accepted by the Appellate Assistant Commissioner in appeal and, therefore, the assessee had no case to claim any further deduction.

4. Shri Ramesh Kumar, learned counsel for the assessee, has argued that additional demand of purchase tax had been created by the Assessing Officer for the assessment year 1974-75, vide assessment order dated May 4, 1977. An appeal was filed against the said assessment order but the demand created at Rs. 40,514 was upheld, vide the appellate order dated November 7, 1979. Since the liability to pay tax had accrued in the year 1974-75 and was payable to the Government in the next year, it was for that reason that deduction has been claimed during the Income Tax proceedings initially at Rs. 20,000 before the Income Tax Officer but subsequently at Rs. 40,514 before the Appellate Assistant Commissioner.

5. Deduction on account of tax liability can be claimed on accrual basis, because liability to pay tax arises no sooner than the event of sale or purchase, as the case may be, takes place. The Supreme Court in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, has laid down that the moment a dealer made either purchases or sales, which was subject to sales tax, the obligation to pay the tax arose. Although that 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.

6. This view has been reaffirmed by the Supreme Court in *Commissioner of Income Tax, Orissa Vs. Kalinga Tubes Ltd.*, . The precise question which arises in the present petition relates to the assessee's claim made before the income tax Officer. The assessee never claimed deduction of Rs. 40,514 before the Income Tax Officer but based his claim for deduction on the basis of a provision made at Rs. 20,000 in the books of account on account of the probable purchase tax liability. Since the liability was under dispute, it was perhaps for that reason that the assessee had chosen to make a provision at Rs. 20,000 only during the

assessment year 1976-77. When the assessee's claim was rejected by the Income Tax Officer, the assessee went in appeal but did not raise a ground to claim deduction at the enhanced amount of Rs. 40,514. The appellate authority accepted the assessee's plea to the extent of Rs. 20,000 but declined to give any further relief for the enhanced deduction on the ground that no such ground had been raised by the assessee in the grounds of appeal and it was only in the statement of facts that a reference was made to the liability having been determined at Rs. 40,514 by the sale's tax authority. The Appellate Assistant Commissioner allowed deduction at Rs. 20,000 but declined to grant deduction at the enhanced amount.

7. The revision petition filed by the assessee was rejected by the Commissioner of Income Tax for the same reasons which have been discussed by the Appellate Assistant Commissioner. So far as the maintainability of a revision petition u/s 264 of the Income Tax Act is concerned, there is no discussion about the same by the Commissioner of Income Tax but it appears that the petitioner was not well advised to file a revision petition after the order of the Income Tax Officer had merged with the order of the Appellate Assistant Commissioner. The proper course for the petitioner was to file an appeal before the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner. Be that as it may, the petitioner's claim came to be again rejected by the revisional authority also. The facts arising from the petitioner's plea make it clear that the assessee had claimed a deduction at Rs. 20,000 only in the books of account which was ultimately allowed in appeal. Therefore, the petitioner has no case against the assessment made by the Income Tax Officer in the light of the appeal effect. However, the petitioner's claim for the enhanced deduction before the appellate authority appears to be a misplaced one, because the petitioner had filed appeal against the disallowance at Rs. 20,000 only and it was not by way of a statement of facts before the appellate authority that a revised claim could be put forward. The assessee could have claimed higher deduction by way of filing a revised return before the assessing authority. In appeal, a grievance can be raised against the order of the lower authority and, if the matter was never contested on a particular issue before the lower authority, no grounds can legitimately be raised before the appellate authority. As has been seen, the assessee had claimed a deduction at Rs. 20,000 only, which was allowed in appeal. Therefore, there was no occasion to raise the claim from Rs. 20,000 to Rs. 40,514 before the appellate authority. The appropriate forum to claim higher deduction was the Assessing Officer only. The assessee can be held to be entitled to claim deduction for the entire amount of tax liability on accrual basis, but that alone would not entitle him to claim deduction by way of an appeal or revision inasmuch as the higher claim was never sought at the time of assessment. The appellate authority can grant relief only to the extent it was declined unjustifiably by the lower authority.

8. In the result, the petition is found to be without substance and is dismissed. No order as to costs.