
Commissioner of Income Tax Vs Ramala Sahkari Chini Mills Ltd.

Income-tax Reference No. 221 of 1992

Court: Allahabad High Court

Date of Decision: March 24, 2005

Acts Referred:

Income Tax Act, 1961 " Section 256(2)

Citation: (2005) 278 ITR 670 : (2005) 148 TAXMAN 565

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Division Bench

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

Judgement

1. The Income Tax Appellate Tribunal, New Delhi, has referred the following question of law u/s 256(2) of the Income Tax Act, 1961, hereinafter

referred to as "the Act", for opinion to this Court :

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal, was legally correct to delete the addition of Rs.

4,32,685 holding that the Revenue has failed to prove that these deposits were in the nature of revenue receipts ?

2. The present reference relates to the assessment year 1981-82.

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

4. The respondent-assessee has been assessed to Income Tax in the status of an association of persons. The previous year relevant for the

assessment year in question ended on June 30, 1980. The respondent-assessee is a cooperative sugar mill. It has obtained a loan of Rs. 80,00,000

from the Industrial Credit and Investment Corporation of India Ltd., hereinafter referred to as "the ICICI". It had entered into a mortgage deed

with the ICICI, according to which, it undertook to collect non-refundable deposits from the growers members at a minimum rate of Rs. 7.50 per

tonne of sugarcane supplied by them. These deposits were not to bear any interest. As per Clauses 41, 42, 43 and 44 of the bye-laws of the

respondent-assessee as approved by the U. P. Government, the said deposits were finally to be converted into the shares of the respondent-

assessee in the names of their respective members and in case after the issue of shares as per Clause 28(kha) of the bye-laws there remained any

surplus the same had to be refunded to the parties concerned. During the assessment year in question the respondent had received a sum of Rs.

4,32,685 from the cane growers on account of the loss equalisation fund as per details mentioned above, which was shown in the balance-sheet as

non-refundable deposit. The Assessing Officer, however, held that this was a revenue receipt and consequentially he added a sum of Rs. 4,32,685

in the total income of the respondent-assessee. Feeling aggrieved, the respondent-assessee preferred an appeal before the Commissioner of

Income Tax (Appeals), who had called for a report vide order dated June 26, 1986, and pursuant thereto the Assessing Officer submitted his

report dated November 12, 1986. The Income Tax Officer has mentioned in the report that no shares had been allotted till November 10, 1986,

and hence these non-refundable deposits were rightly taken as the income of the respondent-assessee. The Commissioner of Income Tax

(Appeals), however, came to the conclusion that the amounts realised by the respondent-assessee at the instance of the directions of the

Government could not constitute income of the respondent-assessee merely because the amounts had not been utilised so far. The Revenue feeling

aggrieved preferred an appeal before the Tribunal. The Tribunal has held that the onus was on the Revenue to prove that a particular receipt

partook of the character of a trading or revenue receipt and further mere nomenclature of a particular deposit was not determinative or decisive of

the character of that deposit. The Tribunal took into consideration the fact that only for the assessment year in question the deposits received from

the cane-growers had been termed as ""non-refundable deposits"" and that for subsequent years these deposits were shown as ""unsecured loans"". It

was further noted by the Tribunal that as the loans of the U. P. Government had not been paid in full, the amounts deducted from the cane-growers

had neither been converted into share capital nor paid to them in cash. It was of the view that the mere fact that these deposits had not been

converted into shares by the respondent-assessee till November 10, 1986, would not alter or change the character of the deposits and the

explanation regarding the non-conversion was plausible. The Tribunal, accordingly, upheld the order of the Commissioner of Income Tax

(Appeals).

5. We have heard Sri Shambhoo Chopra, learned standing counsel for the Revenue, and Sri Amitabh Agrawal, holding brief for Sri P. K. Jain,

learned Counsel appearing for the respondent-assessee.

6. From the narration of the facts as found by the authorities including the Tribunal, it is absolutely clear that the amount of Rs. 7.50 per tonne of

sugarcane, collected by the respondent-assessee from its member-cane growers, was towards deposit in terms of Clauses 41 to 44 of the bye-

laws and was to be adjusted on conversion into shares. The excess amount was to be refunded. Thus, it was a clear case of collection of amount

towards issuance of shares in future and cannot by any stretch of imagination be termed as trading receipts. The apex court in the case of

Siddheshwar Sahakari Sakhar Karkhana Ltd. Vs. Commissioner of Income Tax , Kolhapur and Others, , in somewhat similar circumstances has

held that the deposits taken from members do not partake of the nature of trading receipts.

7. Respectfully following the aforesaid decision, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against

the Revenue. However, there shall be no order as to costs.