

**(1976) 07 AHC CK 0025**

**Allahabad High Court**

**Case No:** Income-tax Reference No. 38 of 1972

Commissioner of Income Tax

APPELLANT

Vs

Banwari Lal Madan Mohan

RESPONDENT

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**Date of Decision:** July 7, 1976

**Citation:** (1977) 110 ITR 868

**Hon'ble Judges:** R.M. Sahai, J; C.S.P. Singh, J

**Bench:** Division Bench

**Advocate:** Deokinandan, for the Appellant; R.R. Agarwal and Bharati Agarwal, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

C.S.P. Singh, J.

The Income Tax Appellate Tribunal, Delhi Bench "A", on the directions of this court, has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the amount of Rs. 11,484 paid as sales tax by the assessee is an admissible deduction in computing the assessee's income for the assessment year 1962-63 ?"

2. The assessee is a registered firm carrying on business in cloth at Bareilly. Up to the assessment year 1960-61, the assessment was completed in the status of Hindu undivided family, which consisted of seven members including its karta, Banwari Lal. On March 31, 1960, there was a partial partition of the Hindu undivided family in regard to the business, which was taken over by three members only out of the seven, viz., Banwari Lal, karta, Madan Mohan and Ghan Shyam. It carried on the business in the status of a firm. The balance-sheet of the Hindu undivided family as drawn on March 31, 1960, consisted of a number of assets and liabilities including a credit balance of Rs. 25,230 in respect of provision for sales tax liability of the Hindu undivided family. The shares received by them in the capital assets of the Hindu

undivided family were treated as their capital contributions to the firm and the shares received by the other members of the Hindu undivided family were treated as loans in the books of the firm. The assessment for the assessment year 1961-62 was completed in the status of a registered firm. In the present case, we are concerned with the assessment year 1962-63. The sales tax assessment of the family business in the financial year were made on March 31, 1961. The liability was of Rs. 1,23,518 which was reduced by an amount of Rs. 39,110 on appeal. A further appeal was preferred, but, in the meantime, instalments were granted. In consequence of this, an amount of Rs. 36,714 was paid in the financial year 1961-62, relevant to the assessment year 1962-63 by the assessee. Since there was already a provision in the account books for Rs. 25,230 the assessee claimed a deduction of Rs. 11,484 in the computation of the profits for the assessment year under appeal. The Income Tax Officer disallowed it on the ground that the demand related to the cloth business when it was carried on by the Hindu undivided family. The order was affirmed by the Appellate Assistant Commissioner. On appeal to the Tribunal, it was held that, as the whole business of the Hindu undivided family had been transferred to the firm and the assessee-firm had stepped into the shoes of the Hindu undivided family, and substantially the identity and continuity of the business were preserved. It was held that the sales tax computed was an allowable deduction. When the matter came up before this court, the question arose as to whether the assessee was following the mercantile system of accounting or kept its accounts on the cash system. As the order of the Tribunal was silent on this point, a Division Bench of this court by its order dated December 3, 1973, directed the Tribunal to draw up a supplementary statement of the case containing a finding with regard to the system of accounting with regard to the erstwhile family. The Tribunal has now submitted a supplementary statement of the case and returned a finding that the Hindu undivided family was adopting the mercantile system of accounting from the assessment year 1954-55 onwards, and the sales tax liability was being claimed on the basis of estimates and not on the cash basis. In the order calling for a supplementary statement of the case, this court has already held that although the liability of sales tax accrues as and when the sales took place under the Income Tax Act, the deduction on account of sales tax is permitted on accrual basis only, where the assessee follows the mercantile system of accounting. In the present case, the Tribunal has found that the assessee-firm had taken over all the assets and liabilities of the firm. This being so, it took over the liability to pay the sales tax also. The liability for sales tax was quantified, when the order was passed in appeal as a result of which the assessee made payment of Rs. 36,714 in the financial year in question.

3. As the assessee was maintaining its accounts on mercantile basis, it was entitled to claim the deduction. Our attention was drawn to a decision of the Madras High Court in the case of [Associated Printers \(Madras\) Private Ltd. Vs. Commissioner of Income Tax, Madras](#), a case relating to claim for bonus. In that case, the assessee had taken over a running business from 1st February, 1950, at a time when the

dispute between the predecessors and its workmen regarding a claim for bonus for 1949 and 1950 was pending for adjudication by the Industrial Tribunal. The award was made on the 9th February, 1951, and subsequently the assessee agreed on June 30, 1951, to pay the bonus for 1950. The assessee was maintaining its accounts on the mercantile system. It was held that the expenditure was properly debitable in the accounting year ending on January 31, 1952, as it was in that year that the liability had accrued. The liability in the earlier years was at best a contingent liability. It might be that, so far as sales tax liability is concerned, that is not a contingent liability but inasmuch as the Hindu undivided family had been following the mercantile system of accounting and making provision for the tax only on estimate basis, it was in the year in which it was quantified finally that the actual liability for sales tax was finally determined. The excess amount over that for which provision had been made thus undoubtedly accrued in the year in which it was finally quantified. This quantification took place in the financial year relevant to the assessment year 1962-63.

4. We, accordingly, answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to its costs which is assessed at Rs. 200. Counsel's fee is assessed at the same figure.