

(2005) 04 AHC CK 0166

Allahabad High Court

Case No: Income-tax Reference No. 66 of 1989

Commissioner of Income Tax

APPELLANT

Vs

U.P. Small Industries
Corporation Ltd.

RESPONDENT

Date of Decision: April 27, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 256(2)

Citation: (2006) 202 CTR 254 : (2006) 281 ITR 206 : (2006) 151 TAXMAN 108

Hon'ble Judges: Rajes Kumar, J; R.K. Agrawal, J

Bench: Division Bench

Advocate: Shambhu Chopra, for the Appellant; None, for the Respondent

Final Decision: Disposed Of

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, 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 justified in allowing a deduction of Rs. 6,02,125 in the assessment year 1978-79 ?

2. The reference relates to the assessment year 1978-79.

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

The assessee is a corporation wholly owned by the U.P. Government established for the purposes of promoting small scale industries in the State. The Government of U.P. sanctioned certain amounts for different schemes, which were not connected with the assessee's business but for which the assessee's assistance was obtained by the Government. An amount of Rs. 17,93,000 was sanctioned vide Government order dated March 25, 1975, for certain schemes to be executed with the assistance

of the assessee for and on behalf of the Government. The intention was that 50 per cent. of the aforesaid amount was to be regarded as grant-in-aid and the balance as a loan. One of the schemes was for the hire-purchase business of the assessee, for which an amount of Rs. 2,60,000 had been allocated. By an earlier order dated December 11, 1978, another amount of Rs. 1,00,000 was advanced to the assessee for the purchase system. Similarly, 50 per cent, was to be considered as grant-in-aid. In this way, a total amount of Rs. 6,30,000 was considered as Government grant to the assessee for a part of the business connected with hire-purchase. Both these amounts were shown in the audited balance-sheet of the assessee as on March 31, 1976 in schedule H. During the accounting period ending on March 31, 1976, the actual amount utilised for the business was Rs. 6,02,125 and this amount was credited to the profit and loss account for the year ended on March 31, 1976. In this way, this amount was assessed to Income Tax for 1976-77. Subsequently, the Government amended the scheme under which the amount of Rs. 6,30,000 which was previously to be treated as a grant was converted into loan. Thus, a grant of Rs. 6,30,000 was withdrawn in the year 1977-78. Out of the total amount of the grant, an amount of Rs. 4,02,125 was credited to the profit and loss account. The amount of Rs. 6,30,000 was subsequently withdrawn and, therefore, the amount of Rs. 6,02,125 which had been offered for assessment in the assessment year 1976-77 and which was in the nature of a debt to the Government was claimed in the assessment year 1978-79 as a deduction, because the debt was repudiated by the Government and became irrecoverable.

4. Before the Inspecting Assistant Commissioner (Assessment) the assessee claimed that the transaction was in the nature of a liability accruing to the assessee according to the earlier Government Order, which became irrecoverable in later years like a debt becoming bad which had to be written off in a subsequent year. However, the Inspecting Assistant Commissioner (Assessment) disallowed the same on the ground that deduction was not allowable though the amount might have been wrongly assessed earlier. He held that the liability should relate to the business activities and that the above amount did not relate to the assessment year 1978-79.

5. In appeal, the Commissioner of Income Tax (Appeals) held that the amount was not allowable as a bad debt as no debt had arisen against the Government. He also held that for the assessment year in question, the amount in question could also not be treated as a trading loss since the assessee had itself passed entries in the assessment year 1980-81. He held that the conversion of the grant into a loan was the result of a unilateral action of the Government from which the assessee had not suffered any loss incidental to its business. He was of the view that the receipt of grant by the assessee from the U.P. Government could not be termed as its stock-in-trade. The liability, it was held, was not incidental to the assessee's business.

6. Being aggrieved by the decision of the Commissioner of Income Tax (Appeals), the assessee-corporation filed an appeal before the Tribunal. It was contended on behalf of the assessee-corporation before the Tribunal that the amount was deductible against the income for the assessment year 1978-79 as it was in the assessment year that the amount was declared by the Government to be a loan, in spite of the fact that in the assessment year 1976-77 it had been given as a grant. This contention was opposed on behalf of the Department. The conclusion of the Tribunal was as follows :

We find that on facts the loss sustained by the assessee was incidental to its business during the assessment year 1978-79 since the U.P. Government had converted the grant into a loan. The fact that the book entries were not passed in the assessment year 1980-81 would, in our view, not materially affect the position. The Government D.O. dated March 31, 1977 and December 27, 1977, were received by the assessee in the assessment year in question and, therefore, in our view the assessee was quite justified in claiming the deduction for Rs. 6,02,125 as a trading loss. We hold accordingly.

7. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee.

8. The only point pressed by learned standing counsel is that the grant of Rs. 6,02,125 was assessed in the assessment year 1976-77 as an income of the respondent-assessee and vide D.O. dated March 31, 1977, the State Government decided to convert the grant into loan. Thus, the liability, if any, accrued in the previous year relevant to the assessment year 1977-78 and not during the assessment year in question, i. e., 1978-79. He further submitted that the respondent-assessee had passed necessary entries" in the previous year relating to the assessment year 1980-81 and, therefore, the deduction, if any, should have been allowed either in the assessment year 1977-78 when the liability accrued or in the assessment year 1980-81 when the entries were passed. The submission is misconceived. The Tribunal has held that the Government D.O. dated March 31, 1977 and December 27, 1977, were received by the respondent-assessee in the assessment year in question. We are of the considered view that the liability accrued during the assessment year in question and not in the assessment year 1977-78. It is well settled that if the assessee followed the mercantile system of accounting, deduction has to be claimed when the liability accrued and is not dependent upon the passing of the entries in the books of account as held by the apex court in the case of [The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, \(Central\), Calcutta,](#) . Thus, on the finding recorded by the Tribunal that the Government D.O. dated March 31, 1977 and December 27, 1977, issued by the State Government converting the grant into loan was received by the assessee during the assessment year in question, the liability accrued during the assessment year in question and has rightly been allowed. It may be mentioned that the competence or

the jurisdiction of the State Government in converting the grant into a loan has not been questioned before any of the authorities.

9. Accordingly, 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.