

(1982) 01 MP CK 0016

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 3 of 1979

Bhagwandas Jagdishprasad and
Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Jan. 13, 1982

Acts Referred:

- Income Tax Act, 1961 - Section 256(1)

Citation: (1982) 28 CTR 33 : (1983) 144 ITR 845

Hon'ble Judges: G.P. Singh, C.J; K.K. Dubey, J

Bench: Division Bench

Advocate: B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

G.P. Singh, C.J.

This is a reference made u/s 256(1) of the I.T. Act, 1961, referring for our answer the following four questions of law:

- "1. Whether the Income Tax Appellate Tribunal is justified in considering and deciding the ground of method of accounting suo motu which has neither been taken by the Department in the memorandum of appeal nor at the time of hearing ?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of the Appellate Assistant Commissioner and confirming the addition made by the ITO of Rs. 36,405 recovered from FCI as sales tax payable to the State Govt. ?
3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance made by the ITO Rs. 1,936 of provision of sales tax liabilities ?
4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance made by the ITO Rs. 766 of Refugee Tax ?"

2. The reference relates to the assessment year 1973-74. The previous year ended on Diwali 1972, The assessee sold goods to the Food Corporation of India. The assessee realised sales tax along with the price. The sales tax so realised was not paid to the sales tax dept. in the previous year. The question, therefore, was whether the amounts of sales tax and refugee tax could be allowed as deductions. The assessee's contention was that it maintained accounts according to mercantile system and was, therefore, entitled to the deduction of the amounts of sales tax and refugee tax. The ITO did not accept this contention on the finding that the mode of accounting adopted by the assessee was mixed. The AAC held that the assessee adopted the mercantile system of accounting and was entitled to the deductions claimed by it. The Income Tax Appellate Tribunal, in appeal, restored the order of the ITO. On an application made by the assessee, the aforesaid four questions have been referred by the Tribunal.

3. If the assessee maintained accounts in respect of sales tax on mercantile basis, the Supreme Court's decision in [The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, \(Central\), Calcutta](#), will squarely apply and the assessee would be entitled to the deductions claimed by it. Further, an assessee may employ different methods of accounting for different sources of income, or one method of accounting for one part of his business or one class of customers and a different method for another part of his business or another class of customers ; and if he employs such different methods regularly and consistently, the profits would have to be computed in accordance with the respective methods (See Kanga and Palkhivala's Income Tax, 7th Edn., Vol. I, p. 869). The crucial question, therefore, was whether the assessee maintained accounts in respect of sales tax on cash basis or on mercantile basis. Although the Tribunal considered the question of method of accounting, it did not examine the matter from a proper angle. The Tribunal just upheld the finding of the ITO that the method of accounting applied was mixed and, therefore, it was not mercantile. The Tribunal should have gone into the question whether in respect of sales tax the method of accounting adopted by the assessee was mercantile or not. It may here be mentioned that it is not in dispute that so far as the assessment year 1973-74 is concerned, the assessee had maintained accounts according to the mercantile system.

4. Learned standing counsel for the Department relied upon [Sinclair Murray and Co. \(P\) Ltd. Vs. The Commissioner of Income Tax, Calcutta](#), and [Chowringhee Sales Bureau \(P\) Ltd. Vs. Commissioner of Income Tax , West Bengal](#), . These cases are distinguishable, because it was not argued in them that the assessee had maintained their accounts according to mercantile system.

5. For the reasons stated above, we answer the questions referred as follows:

Q. No. 1 : The Tribunal was justified in considering the question of method of accounting. The Tribunal, however, did not decide that question properly as it did not examine the crucial question as to what method of accounting was adopted by

the assessee in respect of sales tax.

Q. Nos. 2, 3 and 4 : The Tribunal was not justified in setting aside the order of the AAC in respect of the items of Rs. 36,405, Rs. 1,936 and Rs. 766, without correctly examining the question of method of accounting.

6. There will be no order as to costs of this reference.