

## Hyderabad Co-operative Central Trading Society Ltd. Vs Commissioner of Income Tax

**Court:** Andhra Pradesh High Court

**Date of Decision:** Dec. 29, 1987

**Acts Referred:** Income Tax Act, 1961 &" Section 23, 23(1)

**Citation:** (1988) 73 CTR 260 : (1988) 173 ITR 690

**Hon'ble Judges:** Y.V. Anjaneyulu, J; A. Raghuvir, J

**Bench:** Division Bench

**Advocate:** K. Ranganathachary, for the Appellant; N.S.N. Murthy, for the Respondent

### Judgement

Y.V. Anjaneyulu, J.

This reference arises under the Income Tax Act, 1961, and relates to the Income Tax assessment years 1975-76 and

1976-77. At the instance of the assessee the Tribunal referred the following question of law for the consideration of this court :

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that where deduction has to be allowed in

terms of the proviso to section 23(1) of the Income Tax Act, 1961, of municipal taxes, only such amounts for which demand is made for the first

time in the accounting period could be allowed as a deduction ?

2. For the Income Tax assessment years 1975-76 and 1976-77, the assessee claimed deduction of Rs. 15,794 and Rs. 15,290, respectively, by

way of municipal taxes payable in respect of properties owned by it. The deduction was claimed under the proviso to section 23(1) of the Act.

The tax authorities scrutinised the claim and found that Rs. 4,866 and Rs. 7,400 are allowable for these two assessment years by way of tax. In

that view, the claim for deduction was restricted to the abovementioned two sums.

3. Aggrieved by the order of the Income Tax Officer, appeals were preferred. For the assessment year 1975-76, appeal was preferred before the

Appellate Assistant Commissioner, and for the assessment year 1976-77, appeal was preferred before the Commissioner of Income Tax

(Appeals). The two appellate authorities came to diametrically opposite conclusions. The Appellate Assistant Commissioner upheld the Income

Tax Officer's view and dismissed the appeal. The Commissioner of Income Tax (Appeals), however, took the contrary view and held that

whatever amount is paid by way of municipal taxes during the particular year is allowable in determining the income from property u/s 23, in the

absence of any limitation in the proviso to section 23(1) of the Act that tax relating to only one year should be allowed.

4. The assessee as well as the Revenue filed appeals before the Tribunal. The assessee was aggrieved by the decision of the Appellate Assistant

Commissioner for the assessment year 1975-76, while the Revenue was aggrieved by the decision of the Commissioner of Income Tax (Appeals)

for the assessment year 1976-77. The Tribunal held that whatever demands were received by way of tax for the first time from the municipal

authorities would have to be allowed in computing the income from property. In that view, the assessments were set aside and the Income Tax

Officer was directed to ascertain the municipal taxes levied in respect of each accounting period separately and to allow such amounts as a

deduction. The assessee filed an application u/s 256(1) of the Income Tax Act before the Tribunal and at its instance, the Tribunal has referred the

question of law which we have already indicated above.

5. Learned counsel for the petitioner, Ranganathachary, contends that the language of the proviso to section 23(1) does not contain any limitation

of the amount allowable by way of deduction towards municipal taxes while determining the income from property. According to learned counsel,

whatever amount is paid by way of tax in a particular year qualifies for deduction. In support of his contention, learned counsel relied on a decision

of the Madras High Court in Commissioner of Income Tax, Tamil Nadu-V Vs. L. Kuppuswamy Chettiar, . Learned counsel also invited our

attention to the amendment made by the Taxation Laws (Amendment) Act, 1984, with effect from April 1, 1985, to the effect that municipal tax is

allowable as a deduction irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the

method of accounting regularly employed by him. The amendment came into force on April 1, 1985, and applies to assessments for and

subsequent to 1985-86.

6. On a clear scrutiny of the language contained in the proviso to section 23(1) of the Act (prior to its amendment with effect from April 1, 1985),

we are of the view that an assessee is entitled to claim by way of deduction the taxes levied by the municipal corporation in respect of the property

in the accounting year relevant to the assessment year under consideration. It is immaterial whether the assessee paid the relevant tax or not. What

is crucial for purposes of consideration is whether there is any levy of tax. The levy may be by means of voluntary obligation contained in the

relevant Act enforcing payment of property tax (such as section 264 of the Hyderabad Municipal Corporation Act), or by issue of a separate

demand notice depending on the circumstances. The Revenue is bound to ascertain the amount of tax levied by the municipal corporation in any

particular year and allow the same as a deduction in determining the income from property, without consideration regarding its actual payment.

7. We have carefully gone through the decision of the Madras High Court on which reliance is placed by learned counsel for the petitioner. We do

not find any authority to support the proposition that whatever tax is paid is allowable as a deduction in the year. The ratio of that decision is also

to the effect that whatever tax is levied by the State should be allowed as a deduction, irrespective of the fact whether the assessee had paid that

tax in that year.

8. We also notice the effect of the subsequent legislative amendment to be the same. In bringing about amendment with effect from April 1, 1985,

the law recognised that an assessee is entitled to claim deduction by way of municipal taxes in respect of property, irrespective of the previous

years in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him. The

emphasis is, therefore, on the incurring of a liability by the assessee rather than on the actual payment. In our opinion, the effect of the amendment

with effect from April 1, 1985, is declaratory of the law as existing up to and including 1984-85. In that view, we hold that an assessee is entitled

to claim by way of deduction, in the determination of his property income u/s 23, the municipal taxes payable in respect of the property... the taxes

levied during the respective accounting year under consideration.

9. In view of our above finding, we answer the reference accordingly. There shall be no order as to costs.