

(2003) 132 TAXMAN 57

Madras High Court

Case No: Tax Case (Reference) No's. 237 to 240 of 1999 3 December 2002

Commissioner of
Income Tax

APPELLANT

Vs

Paulson Litho Works

RESPONDENT

Date of Decision: Dec. 3, 2002

Citation: (2003) 132 TAXMAN 57

Hon'ble Judges: N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench: Full Bench

Advocate: Mrs. Pushya Sitharaman, for the Appellant;

Judgement

K. Raviraja Pandian, J.

Pursuant to the order of this court dated 13-3-1998 in T.C.P. Nos. 441 to 444 of 1997, the Income Tax Appellate Tribunal set out the case and referred the following questions of law for our consideration :

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in not holding that the amounts of sales tax on printing receipts collected by the assessee formed part of the assessee's trading receipts in view of the ratio of the Supreme Courts decisions in the case of [Chowringhee Sales Bureau \(P\) Ltd. Vs. Commissioner of Income Tax, West Bengal](#), and [Sinclair Murray and Co. \(P\) Ltd. Vs. The Commissioner of Income Tax, Calcutta](#), ?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the essentials of the deposits are present in this case, overlooking that the liability of the assessee to return the amount to the parties arises only if and when the High Court allows the petition filed by the assessee in this regard ?"

2. The assessment years involved are 1987-88 to 1990-91.

3. The assessee is a partnership firm assessed as a registered firm. The assessee submitted its returns of income for the abovesaid assessment years. According to the assessee, during the relevant years, the transaction carried out by the assessee is only contract works. However, the Sales Tax Authority initiated proceedings against the assessee under the provisions of the Tamil Nadu General Sales Tax Act levying tax on the transaction. The assessee and the persons similarly placed like that of the assessee filed writ petitions before this court challenging the provisions of the Sales Tax Act levying tax on works contract. The High Court granted an interim stay. During that period, as an abundant caution the assessee collected sales tax from his customers and in the invoices it was indicated that the tax collected under protest. Before the assessing officer the assessee contended that in view of the interim stay granted by the Madras High Court, the amount collected is not sales-tax, but only a deposit and hence cannot be subjected to Income Tax. The assessing officer has rejected the assessee's contention on the ground that the assessee did not produce any contract to show that the collection was made by the assessee subject to repayment to its customers. On appeal, the Commissioner (Appeals) confirmed the order of assessment and on further appeal, the Tribunal held that the amount collected as deposits with a liability to return would not be regarded as trading receipts and hence decided the issue in favour of the assessee. The question as to whether the amount collected by way of deposits during the period when the interim stay was granted cannot be subjected to Income Tax has been considered in an identical set of facts, by this court in the case of [Commissioner of Income Tax Vs. Southern Explosives Co.](#), has held that the true character of a receipt must be judged with reference to the reason for the collection, and the liability for meeting which the collection was made. When the liability is a statutory liability, which the assessee was required to meet and for meeting which it was by the statute or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. We are of the view that the abovesaid judgment would in all force applicable to the facts of the present case. In view of the said judgment, both the questions of law referred to us are answered against the assessee and in favour of the revenue. In the circumstances of the case, there will be no order as to costs.