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**Commissioner of Income Tax (Central) Vs Kumardhubi Engineering Works Ltd.**

**Income-tax Reference No. 221 of 1971**

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**Court:** Calcutta High Court

**Date of Decision:** April 24, 1978

**Acts Referred:**

Income Tax Act, 1961 " Section 256(1)

**Citation:** (1978) 115 ITR 58

**Hon'ble Judges:** Dipak Kumar Sen, J; C.K. Banerji, J

**Bench:** Division Bench

**Advocate:** Suhas Sen, for the Appellant; Debi Pal and Joydeb Chandra Saha, for the Respondent

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**Judgement**

Dipak Kumar Sen, J.

This reference u/s 256(1) of the Income Tax Act, 1961, is at the instance of the Commissioner of Income Tax

(Central), Calcutta. The Tribunal has drawn up a statement of case and referred the following question as a question of law arising from its order:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that neither the entire surplus of Rs. 1,61,186 nor the

sum of Rs. 45,845 being a part thereof in the sales tax account was liable to be added in the assessment of the assessee for the assessment year

1962-63?

2. The facts found and/or admitted in these proceedings may shortly be stated as follows :

3. At the Income Tax assessment of Kumardhubi Engineering Works Ltd., Calcutta, in the assessment year 1962-63 (the corresponding previous

year having ended on the 30th November, 1961), the Income Tax Officer found that the assessee maintained a separate sales tax account to which

receipts were credited and payments debited. The Income Tax Officer held that the sales tax receipts formed part of the sale price and the

payments (except to the extent paid out of the untaxed receipts of earlier years), constituted debits. On this basis, he treated the closing balance of

Rs. 1,61,186 in the said amount as income of the assessee.

4. Being aggrieved, the assessee preferred an appeal. The Appellate Assistant Commissioner held that the amount collected by the assessee on

account of sales tax in the accounting year in question was part of the sale price, but the sales tax, in fact, paid during the said year, was an

allowable deduction. Therefore, he reduced the addition by Rs. 43,845, on the basis that Rs. 4,44,835 has been collected and that a sum of Rs.

3,99,000 had been paid during the relevant period.

5. Both the assessee and the revenue went up on appeal from the order of the Appellate Assistant Commissioner to the Income Tax Appellate

Tribunal. The Accountant Member of the Tribunal held that it was the duty of the assessee to realise sales tax at the prescribed rate on all sales

from its customers and to deposit the same with the authorities. He found that the assessee had no beneficial interest in the amounts realised by it

on account of sales tax, and that the assessee had treated the same only as deposits. Alternatively, he found that even if the sales tax realised

formed part of the sale price, liability for payment of sales tax was embedded in the said receipts. The assessee being required to pay sales tax to

the authorities on all sales effected was, therefore, entitled to deduction of the said liability out of the trading receipt. The Judicial Member,

however, did not concur with the Accountant Member that the amounts collected on account of sales tax did not form part of the sale price or had

the character of a deposit. He found that the deduction claimed in respect of sales tax collected was disallowable because the receipt of the

amounts thereof was coupled with a corresponding liability of an equal amount ascertained and due under the sales tax law. He found that the

assessee was under a legal obligation to realise the sales tax due and make over the same to the Government and this liability of the assessee was

independent of any realisation by it from its customers and was determined purely with reference to the sales.

6. The controversy in the present reference is, in our opinion, settled by the decisions of the Supreme Court as also of this court in the following

cases:

(a) The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , where the Supreme Court observed as follows

at page 366 of the report :

Now under all sales tax laws including the statute with which we are concerned, the moment a dealer makes either purchases or sales which are

subject to taxation, the obligation to pay the tax arises and taxability is attracted. Although that liability cannot be enforced till the quantification is

effected by assessment proceedings, the liability for payment of tax is independent of the assessment.....An assessee who follows the mercantile

system of accounting is entitled to deduct from the profits and gains of the business such liability which had accrued during the period for which the

profits and gains were being computed. It can again not be disputed that the liability to payment of sales tax had accrued during the year of

assessment, even though it had to be discharged at a future date.

(b) *Chowringhee Sales Bureau P. Ltd. Vs. Commissioner of Income Tax*, where it was reiterated by this court as follows (page 391):

As clearly enunciated in the Supreme Court, the liability to pay sales tax arises the moment sale or purchase is effected. The fact that that liability

has not been quantified for payment, which the law enjoins an assessee to do, is not relevant in determining accrual of legal liability. It is also clearly

established by the decision of the Supreme Court in the case of *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax*,

(Central), Calcutta, . If that is the position, in order to determine that liability where the assessee had not paid the amount, it must be, according to

the scheme of the Sales Tax Act, an estimate of, the assessee. In a particular case, however, where there are materials to show that the estimate is

either frivolous or false or the estimate is disputed, other considerations might arise.....Therefore, for an assessee who was maintaining accounts

under the mercantile system of accounting the liability has arisen and if the assessee has estimated his liability that liability the assessee is entitled to

deduction.

7. In the instant case, both the members of the Tribunal have found that the assessee had a liability to pay the amount collected on account of sales

tax. No one has challenged the correctness of this finding. The method of accounting of the assessee is admittedly mercantile. Therefore, it is clear

that the assessee was entitled to claim a deduction of the amount collected by it from its customers on account of sales tax. No doubt, the sum

initially formed part of its trading receipt, but in the ultimate assessment it had to be allowed as a deduction.

8. For the reasons as stated above we answer the question referred to us in the affirmative and in favour of the assessee. In the facts and

circumstances there will be no order as to costs.

C.K. Banerji, J.

9. I agree.