(1960) 04 CAL CK 0012

Calcutta High Court

Case No: IT Reference No. 103 of 1976

Commissioner of Income Tax		APPELLANT
	Vs	
Rajeshwari Distributors (P.) Ltd.		RESPONDENT

Date of Decision: April 8, 1960

Citation: (1981) 5 TAXMAN 162

Hon'ble Judges: Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

Bench: Division Bench

Advocate: Ajit Kr. Sengupta, for the Appellant;

Judgement

Sudhindra Mohan Guha, J.
In this reference at the instance of the Commissioner of income tax, we are faced with the question, viz.:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the provision of Rs. 1,84,734 for sales tax liability was allowable as a deduction in computing the business income of the assessee-company?"

The assessee is a private limited company and the reference relates to the assessment year 1971-72. For this assessment year, the assessee-company claimed a deduction of Rs. 1,84,734 on account of sales tax liability on sales of "Kuil " and "Star" brand matches. The ITO, however, was of the view that since under the West Bengal Sales Tax Act, sales tax was not payable on sale proceeds of matches made or processed otherwise than in a factory as defined in the Factories Act, 1948, and matches in which match sticks were made from bamboo splints came under that category, sales tax was not attracted on sales of those two brands of matches and the assessee had also not been asked to pay sales tax on these sales when the sales tax assessment was made. He did not agree with the assessee-company that since the assessment already made was sought to be reopened by the sales tax authorities for which a notice dated 27th January 1973, had been given and the

proceedings in respect of which were still pending, the assessee''s claim should be allowed. He, therefore, disallowed the claim for deduction.

2. The assessee went up in appeal before the AAC. The AAC accepted the assessee-company''s claim for deduction of Rs. 1,84,734 on account of sales tax liability in respect of sale proceeds of "Kuil" and "Star" brand matches.

3. Being aggrieved by the said order, the revenue went up in appeal before the Appellate Tribunal. It was argued on behalf of the revenue that the AAC erred in deleting the disallowance of Rs. 1,84,734. It was contended that prior to the notification the above-said brands of matches were exempted from sales tax but by proceedings started by the sales tax department, the assessee was made liable to pay sales tax on the sale of the above-said matches. It was, however, urged by the assessee that although no tax had been collected by the sales tax department yet the proceedings initiated by the sales tax authority for collection of the disputed amount were still pending and, therefore, the assessee rightly provided the liability in its accounts which was an admissible deduction. Reliance was placed on the decisions in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, and in the case of Commissioner of Income Tax Vs. Royal Boot House, .

4. In the light of the circumstances, it was observed by the Tribunal that it could not be categorically stated that the fictitious provision for sales tax had been made by the assessee. The question of allowing as a deduction a liability in the accounts in the year to which this appeal pertains it would not be relevant to determine the correctness of such liability. The fact that it is in dispute will not conclude the controversy about the correctness of this liability. What is more relevant is the fact that it has been provided for. Such provision in the opinion of the Tribunal cannot be stated to have been made by the assessee to avoid the incidence of tax and with a view to defraud revenue. The conduct of the assessee goes to show that it was itself in two minds about its liability in respect of sales tax of these particular matches. The eventual decision as might be arrived at by the sales tax authorities in respect of this liability will naturally have a bearing upon the claim for deduction as has been made by the assessee; however, such decision would necessarily debar the assessee from making the claim.

5. In the result, the Tribunal was of the view that the assessee''s claim for deduction of Rs. 1,84,734 was an admissible deduction and thus the appeal was dismissed.

6. In this reference learned advocate appearing for the revenue, distinguishes the decision in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . According to him, in that case only the quantum of tax was disputed but not the liability to pay tax. It was observed by their Lordships of the Supreme Court in that case that under all sales tax laws including the statute with which they were concerned, the moment a dealer made either purchases or

sales which was subject to taxation, the obligation to pay the tax arose and the tax liability was attracted. It was, further, observed that although that liability could not be enforced till the quantification was effected by assessment proceedings, the liability for payment of tax was independent of the assessment.

7. In the present case, originally the sale proceeds of the matches of the two brands referred to above were not assessable to tax but subsequently by a notification the sales tax authorities wanted to levy sales tax on such sale proceeds. Accordingly, the assessment was reopened. The assessee in this case disputed the liability to pay such tax. So, not only the liability but also the quantification of taxation were challenged. The liability, as held by their Lordships of the Supreme Court, would not be enforced till quantification was effected by the assessment proceedings. The liability for payment of tax was independent of the assessment. In this view of the matter, the assessee who was following the mercantile system of accounting in the case before their Lordships of the Supreme Court was entitled to deduct from the profits and gains all its business liability and the sales tax which arose on sales made by it during the relevant previous year.

8. In support of his arguments, the learned advocate also refers to the decisions of this court in the case of Commissioner of Income Tax Vs. Hindusthan Housing and Land Development Trust Ltd., . In this case a sum of Rs. 24,97,249 was awarded as compensation by the Land Acquisition Collector to the assessee. The assessee preferred an appeal to the court of arbitrator who gave an award in favour of the assessee fixing the amount of compensation at Rs. 30,10,875, thus enhancing the compensation amount by Rs. 5,13,624 on which interest was to run at 5% per annum from the date of acquisition, i.e., January 8, 1963, till the date of payment. The arbitrator also directed that father recurring compensation should be paid to the assessee. Against the order of the arbitrator, the State Government preferred an appeal to the High Court, which was pending. The State Government deposited a sum of Rs. 7,36,691, which the assessee withdrew after furnishing a security bond on May 9, 1966. The ITO assessed the said amount as income of the assessee which had accrued to the assessee in the relevant year. The assessee''s appeal to the AAC was dismissed. On further appeal, the Appellate Tribunal allowed the appeal and held that, as the appeal to the High Court challenging the validity of the enhanced amount was still pending and the claim of the assessee to receive the amount was sub judice and as the assessee had drawn the amount only after furnishing security, the assessee had no absolute right to receive the extra amount of compensation till the decision of the appeal by the High Court and, therefore, it could not have accrued during the relevant year.

9. On a reference, it was held that the compensation amount could be considered to have accrued or arisen only when the said amount had become determinate and payable. The enhanced amount might be affirmed or reduced by the High Court or the entire amount might be disallowed. Thus, the right of the assessee to receive

any further amount was clearly unsettled.

10. Thus, with regard to the enhanced amount which was subsequently fixed by the order of the arbitrator, the said amount could not be said to be a determinate amount as the said amount was pending in appeal. The decision referred to by Mr. Sengupta has little bearing with the present case. It was decided in a different perspective of the matter. In that case, the question of enhanced amount as compensation was sub judice. But in the case before us a proceeding had been started by the sales tax authorities to levy tax on the sale proceeds of the matches. The liability to pay such tax was undoubtedly disputed, but, pending such a proceeding, the assessee made a claim for certain deductions.

11. Next, Mr. Sengupta refers to another decision of this court in the case of Commissioner of Income Tax Vs. Roberts McLean and Co. Ltd., . In this case, certain differences which arose between the company and its sole selling agent were referred to arbitration and an award was made against the company for certain amount with interest thereon at 51/2%. The company then transferred part of the said interest to the interest account of the earlier year and certain sum as the principal sum and the balance interest to the profit and loss account of the year ending on July 31,1960. In the assessment for the assessment year 1961-62, the ITO disallowed the claim for deduction of Rs. 1,08,370 made by the company but the AAC allowed the company''s claim and this was confirmed by the Appellate Tribunal. It was held on reference that the company had incurred a business liability not in the earlier year, but in the accounting year. The agreement between the parties was wholly silent on interest. It was also held that if the liability was contingent and did not raise any definite obligation in the accounting year, it could not be the subject-matter of deduction even under the mercantile system of accounting. This decision has also little bearing in the case on hand. In this case, it cannot be said that the liability was contingent. Liability to pay sales tax was disputed by the assessee. As the sales tax authority levied tax only on sale proceeds and reopened assessment, the assessee claimed deduction. The claim for deduction cannot be said to be fictitious. So the assessee could be entitled to claim deduction in respect of sales tax which might not have been actually paid to the sales tax authorities. By subsequent notification the assessee was made liable to pay sales tax for the transactions which had been made earlier. Whatever might be the ultimate result, the claim for deduction by the assessee could not be rejected.

12. In view of the foregoing findings, we are of the opinion that the department was perfectly justified in allowing the claim as prayed by the assessee following the decision of the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . We answer the question in the affirmative and in favour of the assessee. We, however, propose to make no order as to costs.

Sabyasachi Mukharji J.

I agree with the order passed and answer given by my learned brother. I would like to rest my decision on the point that in the mercantile system of accounting an assessee is entitled to deduction in respect of provision for sales tax from its income even though such tax has not been actually paid or was disputed before the sales tax authority so long as the provision was made bona fide. This principle was stated in the decision of Commissioner of Income Tax Vs. Royal Boot House, and approved in the Supreme Court decision in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . The principles which are applicable to cases where right of enhanced compensation is dependent upon adjudication or cases of accrual of right to compensation which is dependent upon the adjudication of breach and damages are entirely different from the principles applicable to provision for liability on accrued basis in the mercantile system of accounting. I, therefore, agree with the answer proposed by my learned brother.