Commissioner of Income Tax Vs Kwality Restaurant and Ice-Cream

Court: Delhi High Court

Date of Decision: Aug. 1, 2001

Citation: (2001) 119 TAXMAN 718

Hon'ble Judges: Arijit Pasayat, C.J; D.K. Jain, J

Bench: Full Bench

Advocate: Wazir Singh, R.C. Pandey and Ms. Prem Lata Bansal, for the Revenu, for the Appellant;

Judgement

At the instance of the revenue, the following questions have been referred for opinion of this court u/s 256(1) of the Act, 1961 (hereinafter referred

to as the Act) by the Tribunal, Delhi Bench :

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessment in

question stood merged with the first appellate order and, hence, it was no longer open to the Commissioner, Central II, after 28-10-1978 to

exercise revisional jurisdiction ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that assessed''s liability to pay sales tax had not

within the meaning of section 41(1) of the Income Tax Act, closed on 27-3-1974, the date of Delhi High Court''s decision, but would cease in the

later previous year, namely, on the date when Supreme Court decides the Delhi Administration''s appeal; against the Delhi High Court''s decision?

2. Dispute relates to the assessment year 1975-76. Previous year ended on 31-12-1974. Originally the assessment was completed on 27-3-1978.

Subsequently, proceedings u/s 263 of the Act were initiated and the assessment was enhanced to Rs. 10,43,422. The said figure comprised of two

items of Rs. 4,000 and Rs. 10,39,422.

3. The assessed preferred an appeal before the Tribunal. Mainly two contentions were raised. Firstly, that order of assessment had merged with

the first appellate order dated 28-10-1978 and, Therefore, no notice could have been issued u/s 263. It was urged that the Commissioner was not

competent to invoke the revisional power because the order had merged with the appellant order. It was, however, accepted that grounds raised

at the first appellate stage did not cover the aforesaid two items.

4. The Tribunal held that the assessed''s plea was to be accepted. However, it also decided the issues involved on merits. So far as the sum of Rs.

10,30,422 is concerned it was noted that Rs. 1,84,914 related to tax liability which had arisen during the assessment year in question. So far as

balance amount is concerned, it was noted that Delhi High Court''s decision dated 27-3-1974 holding that no sales tax was chargeable on sales of

milk product (including ice-cream) had been the subject-matter of challenge before the Apex Court in March, 1977, i.e., before completion of

assessment in 1978. Therefore, it was held that section 41(1) of the Act had full application to the facts of the case. Accordingly, it was held that

the claim was allowable u/s 41(1) so far as the assessment year 1975-76 is concerned.

5. On being moved for reference, questions as set out above have been referred for opinion of this court. We shall deal with the second question

first. In the light of what has been held by the Apex Court in Union of India and another Vs. M/s. J.K. Synthetics Ltd., view of the Tribunal does

not suffer from any infirmity and the view expressed by the Apex Court is fully applicable to the facts of the present case. The second question,

Therefore, is answered in favor of the revenue. Coming to the first question, in view of the answer to the second question, the first question is

rendered academic but it is to be noted that in view of what has been stated in COMMISSIONER OF Income Tax Vs. SHRI ARBUDA MILLS

LTD., , the Tribunal''s view was not correct. Therefore, the first question is answered in the negative in favor of the revenue and against the

assessed.

6. Reference is disposed of.