

Jonnella Narashimharao & Co. Etc. vs Commissioner Of Income-Tax on 17 February, 1993

Equivalent citations: AIR1994SC1650, [1993]200ITR588(SC), 1994SUPP(3)SCC688, AIR 1994 SUPREME COURT 1650, 1994 AIR SCW 1383, 1994 TAX. L. R. 565, (1993) 68 TAXMAN 340, 1994 (3) SCC(SUPP) 688, (1993) 112 CURTAXREP 126, 1994 SCC (SUPP) 3 688, 1993 (112) CURTAXREP 12, (1993) 114 TAXATION 364, (1993) 200 ITR 588

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy

JUDGMENT

1. These appeals are directed against the judgment, of the Andhra Pradesh High Court answering the two questions referred to it in favour of the Revenue ; and against the Department. For the sake of convenience, we may refer to the facts in one of the appeals viz., the one arising from R. C. : No. 1 of 1975. The basic facts in all the cases are identical; only the assessment years and amounts are different. The two questions referred in R. C. No. 1 of 1975 read thus :-

1. Whether on the facts and in the circumstances of the case, the sum of Rs. 32,846.00 collected by the assessee towards rusum on commission sales of jaggery constitutes income liable to tax for the assessment year 1968-69? .

2. Whether on the facts and in the circumstances of the case, a sum of Rupees 32,846 is allowable as an admissible deduction as Sales Tax payable by the assessee under the Andhra Pradesh General Sales Tax Act for the assessment year 1968-69?.

2. The assessee is a Commission Agent in jaggery. The assessment year concerned is 1968-69. During the relevant accounting year, the assessee had collected certain amount by way of sales-tax but inasmuch as he was disputing the very levy of sales-tax during that year, he collected it under the the name "rusum". He was questioning his liability in various proceedings. Be that as it may, all doubts in that behalf were set at rest by the Amendment effected in 1970 to the Andhra Pradesh General Sales Tax Act which was upheld by the High Court and this Court. By virtue of this amendment Sections 5 and 11 of the Act were amended with retrospective effect from 1-6-1963. As a result of the said amendment, the assessee became liable to pay sales tax on the sales/purchases effected by him during the relevant accounting year. It is an admitted fact that the assessee did not remit the tax during the assessment year 1968-69. He did it later. The questions raised in these appeals are whether the collection of the said amount in the name of "rusum" constitutes his business receipt and secondly whether it is a deductible expenditure for the assessment year 1968-69 notwithstanding the fact that he did not actually remit the tax during that assessment year.

So far as the first question is concerned, there can hardly be any doubt. It constitutes his business receipt, though collected under the name "rusum". See *Chowringhee Sales Bureau Pvt. Ltd. v. C.I.T.*. The only question is whether it is deductible in that assessment year though it was not actually remitted. It is not disputed that the assessee maintained his accounts on mercantile basis. Section 43-B was not there during the relevant assessment year; it came into force much later. In these circumstances, it cannot be disputed in view of the decision of this Court in *Kedarnath Jute Manufacturing Co. Ltd. v.* it is a deductible expenditure. In the circumstances, the first question is answered in the affirmative, that is, in favour of the Revenue and against the assessee. But so far as the second question is concerned, it is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

3. No other question is argued before us.

4. Accordingly, the appeals are allowed in part. The answer given by the High Court on question No. 2 is set aside as indicated above. No costs.