

New Victoria Mills Co. Ltd. vs Commissioner Of Income-Tax on 9 January, 1952

Equivalent citations: AIR1952ALL812, [1952]21ITR567(ALL), AIR 1952 ALLAHABAD 812

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. In this reference under Section 66 (1), Income-tax Act the following question has been referred to us :

"Whether on the facts stated there was any evidence to prove that the expenditure to the tune of Rs. 1,39,561 on account of purchase of coal was incurred before 31-10-1943 and that the liability of the assessee to pay the same was ascertained or ascertainable before that date?"

The relevant account year with which we are concerned is 1-11-1943 to 31-10-1944. It was admitted before the Appellate Tribunal, the Assistant Commissioner and the Income-tax Officer that this amount of Rs. 1,39,561 was the price of coal which had been supplied to the assessee in the months of June, July and August, 1943, and it had been consumed in the account year before 1-11-1943. The assessee, however, claimed under Section 10 (2) (xv) a deduction of this amount as expenditure for the relevant year on the ground that there was an agreement with the pool association that the price of the coal supplied would not be payable till the invoices had been received by the assessee. The invoices were received after 31-10-1943, i.e. in the relevant account year. There was a coal crisis in Kanpur in 1943 and as a result of the coal crisis the various firms situate there entered into a pool association and it was the duty of this association to allot to each firm coal necessary for its requirements. Such allotments were made periodically. The assessee claimed that it was the association which fixed the price of coal and it was the association which sent the invoices for recovery of such price and so long as the price was not fixed and the invoices were not received it was not possible for the assessee to ascertain the price of the coal, nor did the liability arise prior to the relevant account year. The Appellate Tribunal, when dealing with this argument advanced by Sri Pathak before the Tribunal, observed as follows :

"No evidence appears to have been produced before the lower Courts to prove that according to the terms of the contract with the pooling association the purchasing companies were not debit (sic) in their books the price of coal consumed till the association sent its invoices nor any valid reason given why the assessee company could not obtain invoices from the pooling association of which it was one of the members within 31-10-1943 when coal had been received in June, July and August 1943. The expenses were definitely incurred before 31-10-1943 and the liability to pay the sum could be easily ascertained if the assessee company had cared to do so."

Under Section 82, Sale of Goods Act (III [3] of 1930) unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. From the order of the Appellate Tribunal it is clear that there was no agreement to the contrary between the pool association and the assessee. The assessee maintained the accounts on the mercantile basis and not on the cash basis. In the circumstances it was clearly an expenditure incurred in the year previous to the relevant account year.

2. The question, however, as framed requires us only to answer: whether there was any evidence to prove that the expenditure Rs. 1,39,561 was incurred in the previous account year? From what we have stated above it is clear that the fact that the coal was purchased and was consumed in the year previous to the relevant account year was admitted and the admission could, therefore, be treated as good evidence for the finding that coal was received and consumed in the year previous to the relevant account year. The question as to when the liability to pay the price arose was a question of law covered by Section 32, Sale of Goods Act and it was for the assessee, if he wanted to prove that there was an agreement to the contrary, to give such evidence. This is our answer to the reference.

3. The department is entitled to its costs which we assess at Rs. 400.