Commissioner Of Income Tax, Delhi vs Bharat Carbon And Ribbon Mfg. Co. (P) Ltd on 17 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3260, 1999 AIR SCW 3240, 1999 TAX. L. R. 969, (1999) 105 TAXMAN 737, (1999) 6 JT 136 (SC), 1999 (4) LRI 193, 1999 (7) ADSC 454, 1999 (5) SCALE 28, 1999 (6) SCC 434, 1999 (8) SRJ 437, 1999 (6) JT 136, (1999) 113 ELT 9, (1999) 85 ECR 305, (1999) 239 ITR 505, (1999) 152 TAXATION 406, (1999) 7 SUPREME 161, (1999) 5 SCALE 28, (1999) 155 CURTAXREP 497

Bench: D.P. Wadhwa, M.B. Shah

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           CASE NO.:
Appeal (civil)  16688 of 1996

PETITIONER:
COMMISSIONER OF INCOME TAX, DELHI

RESPONDENT:
BHARAT CARBON AND RIBBON MFG. CO. (P) LTD.

DATE OF JUDGMENT: 17/08/1999

BENCH:
D.P. WADHWA & M.B. SHAH

JUDGMENT:
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JUDGMENT 1999 Supp(1) SCR 492 The Judgment of the Court was delivered by SHAH, J. The Commissioner of Income Tax, Delhi sought reference of the following two questions by filing an application before Delhi High Court under Section 256 (2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"):-

> 1. Whether on the facts and in the circumstances of the case the IT AT was correct in law in confirming that a contingent liability which is not acknowledged even as a debt by the assessee qualifies for deduction under the I.T. Act?
>
> 2 Whether on the facts and in the circumstances of the case the IT AT was correct in law in holding that the principles laid down by the Supreme Court in the case of Indian Molasses Co.(P) Ltd. 37 ITR 66 are not applicable to this case and the case is covered under the principles laid down in Kedar Nath Jute Mfg. Co. Ltd (1971) 82 ITR 363 by ignoring the material fact that excise duty in this case is neither determined nor owed as a debt by the assessee but is merely a contingent liability not provided for in the books of accounts?"

> The High Court dismissed the said application by holding that the questions of law raised are academic and the answer to the same is self evident in view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. Ltd. v. Commissioner of Income Tax (Central), Calcutta (1971) 82 ITR 363. Against that order Revenue has filed this appeal. It was the case of the assessee-respondent company that company was manufacturing carbon paper which was not liable to excise duty till 28th February, 1975.

By the Finance Act of 1975, duty @ 10% ad valorem was levied on by items not otherwise specified therein which included carbon papers. On 29th October, 1979, the Collector of Central Excise issued a general trade notice stating that `carbon paper' would be liable to be classified as coated paper under item 17(2) of the Central Excise Tariff. Prior to that, carbon paper was subjected to excise duty under residuary item 68. Hence, the respondent-assessee was required to clear the goods under the said item 17(2). However, the assessee did not accept this classification and contended that carbon paper was not coated paper at all. On 11th March, 1980 a notice was issued requiring the assessee to show cause as to why the approval of the classification of carbon paper under item 68 should not be withdrawn with effect from 16th March, 1976. Thereafter, the assessee received a demand letter dated 21st April, 1980 which is in the form of a demand notice for payment of basic excise duty and special excise duty for the years 1976-77, 1978-79 and 1979-80, in all demanding a sum of Rs. 92,98,805. The assessee challenged the levy of excise duty under item 17(2) by filing Civil Writ Petition No. 634 of 1980. Pending the writ petition, the assessee filed a revised return claiming the amount of Rs. 92,98,805 as deduction. The Income Tax Officer disallowed the claim of the assessee for the assessment year 1980-81 on the ground that only a show cause notice was issued in the said assessment year. In respect of subsequent assessment year 1981-82, the claim of the assessee was rejected by the Income Tax Officer on the ground that as the assessee maintains mercantile system of accounting, the claim for earlier years was inadmissible. He further observed that the liability had arisen in that year, but the same would have been allowed if the liability was in present and not in future as the dispute was pending in a writ petition and hence, it was contingent liability. In appeal, the Commissioner of Income Tax allowed the claim of the assessee on the basis of the decision of this Court in the case of Kedar Nath (supra). The Tribunal dismissed the appeal as well as the application under Section 256(1) for referring the questions to the High Court.

At the time of hearing of this appeal, the learned counsel for the appellant submitted that the High Court ought to have raised the questions and directed them to be referred because questions of law were required to be decided. He submitted that the liability of the assessee was contingent and the decision rendered by this Court in Kedar Nath (supra) does not deal with a situation where the liability had arisen in subsequent assessment year. It is his further submission that the so-called contingent liability to pay the excise duty related to previous assessment years 1976-77 to 1979-80 and, therefore, deductions were rightly not granted in assessment year 1981-82.

In the present case, the liability to pay excise duty had arisen on 21st of April, 1980 when the Excise Department issued demand notice asking the assessee to pay the basic excise duty and special excise duty for the said years on the basis of trade notice issued in October 1979. The assessee admittedly was following mercantile system of accounting and, therefore, he claimed deduction for the said

amount for the assessment year 1981-82. Prior to that assessment year, there was no demand as, for the excise duty, the carbon paper manufactured by the assessee was classified under tariff item 68, It is true that he has objected to the said demand and has filed writ petition challenging the said demand but, at the same time, obligation to pay the said excise duty arose in that assessment year, although the liability to pay the said amount might not have been enforced pending petition. The liability had been quantified and the demand thereof had been made under the demand notice dated 21st April, 1980. There was nothing uncertain, tentative, provisional or contingent in the matter of assessee's liability to pay the excise duty. Under the law, the assessee was bound to pay the same till the order directing the assessee to pay the same was set aside or modified. In the Kedarnath case (supra), this Court negatived the similar contention by holding thus:

> "it is not possible to comprehend how the liability would cease to be one because the assessee had taken proceedings before higher authorities for getting it reduced or wiped out so long as the contention of the assessee did not prevail with regard to the quantum of liability etc."

Further, in that case, the Court has approved the decision of the Madras High Court in the case of Pope The King Match Factory v. Commissioner of Income Tax, (1963) 50 ITR 495 where it was held that the assessee had incurred an enforceable legal liability on and from the date on which he received the Collector's demand for payment and that his endeavour to get out of that liability by preferring appeals could not in any way detract from or retard the efficacy of the liability which had been imposed upon by the competent excise authority.

The learned counsel for the appellant further submitted that in the books of accounts the respondent had not debited the said amount and no entries are made acknowledging the said liability In our view, this contention also does not require much consideration as similar contention was negatived by this Court in the Kedarnalh's case by holding thus:

> "Whether the assessee in entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. The assessee who was maintaining accounts on the mercantile system was fully justified in claiming deduction of the sum of Rs. 1,49,776 being the amount of sales tax which it was liable under the law to pay during the relevant accounting year."

The learned counsel for the appellant, however, relied upon the decision of this Court in the case of Indian Molasses Co. (P) Ltd v. C.I.T., West Bengal, (1959) 37 ITR 66 for contending that the expenditure would be deductible for income tax purpose which is towards a liability existing at the time, but putting aside the money may become expenditure on the happening of a event is not expenditure. He submitted that the liability of the assessee in the present case was only contingent and not actual liability in praesenti. It is not necessary to discuss in detail the said decision because in that case itself the Court has observed:-

> "thus, in finding out what profits there be, the normal accountancy practice may be to allow as expense any sum in respect of liabilities which have accrued over the accounting period to deduct such sums from profits"

The Court after discussing various contentions finally held:-

> "Expenditure which is deductible for income tax purpose is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure"

In the present case, the liability accrued over the accounting period because of demand notice issued by the Excise Department. The said demand notice was issued after the show cause notice and on the basis of the trade notice issued by the Collector of Customs in October, 1979 providing that coated paper would be liable to be classified under tariff item 17(2). The obligation under the law to pay the excise duty arose at that stage. Raising of the dispute by the assessee by filing writ petition for quashing or deduction of the said liability would not be ground for holding that liability to pay the excise duty as per the demand notice was not incurred.

In this view of the matter, in our view, the High Court rightly rejected the application filed by the Revenue for raising and referring the questions stated above. In the result, the appeal is dismissed with no order as to costs.