

Madras High Court

Commissioner Of Income-Tax vs Ambur Co-Operative Sugar Mills ... on 10 February, 1998

Equivalent citations: 1999 240 ITR 828 Mad

Author: R J Babu

Bench: R J Babu, N Balasubramanian

JUDGMENT R. Jayasimha Babu, J.

1. The following questions of law have been referred to us at the instance of the Revenue. They relate to the assessment year 1973-74 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal's view that the payments of additional sales tax relating to the earlier years should be allowed as a deduction for the assessment year 1973-74 is sustainable in law ?

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the extra shift allowance of plant and machinery should be granted with reference to the number of days the concern worked and not with reference to the number of days each item of machinery worked in the previous year ?"

2. We may dispose of the second question first, as there is no dispute that that question is required to be answered against the Revenue, in view of the decision of the Supreme Court in the case of South India Viscose Ltd. v. CIT [1997] 227 ITR 286. We, accordingly, answer the second question in the affirmative against the Revenue and in favour of the assessee.

3. Regarding the other question, this question also has to be answered in the negative in favour of the Revenue and against the assessee, in the light of the decisions of the Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. v. CIT [1971] 82 ITR 363 and in the case of CIT v. Kalinga Tubes Ltd. [1996] 218 ITR 164.

4. It is sufficient to advert to the recent decision of the apex court in the case of Kalinga Tubes Ltd. [1996] 218 ITR 164, wherein the court observed, that the earlier decision in the case of Kedarnath Jute Manufacturing Co. Ltd. :

"... squarely lays down the legal proposition that when the assessee is following the mercantile system of accounting, in case of sales tax payable by the assessee, the liability to pay sales tax would accrue the moment the dealer made sales, which are subject to sales tax. At that stage, the obligation to pay the tax arises. Raising of dispute in this connection before the higher authorities would be irrelevant."

5. It is undisputed that in this case the liability of the assessee for payment of sales tax did not accrue in the assessment year in question. The transactions in relation to which the liability had been incurred, and which liability was being disputed by the assessee had been incurred in the years 1963-64 to 1968-69. This is also not a case where the assessee had made any payment towards that liability during the assessment year. The assessee, therefore, was clearly disentitled to claim the

amount for which it had made a provision in its accounts towards its liability for sales tax. The case of the assessee was that though the assessee had succeeded before the Appellate Tribunal, the decision of the Tribunal has been reversed by the High Court and, therefore, it had become necessary to make a provision for this liability. Admittedly, no amounts were paid during that year.

6. Learned counsel for the assessee contended that the fact that a provision had been made by itself would be sufficient to claim the amount as a deduction, as it had been held by the High Court at Gauhati in the case of CIT v. Nathmal Tolaram [1973] 88 ITR 234 that in the year in which a demand is received, it would be open to an assessee to make provision and claim the amount as a deduction. This court in its decision in the case of CIT v. V. Krishnan [1980] 121 ITR 859 dissented from that view of the High Court of Gauhati. We are in respectful agreement with what has been stated by the Division Bench of this court in the case of CIT v. V. Krishnan [1980] 121 ITR 859.

7. Counsel for the assessee further submitted that this court in the case of V. Krishnan had not noticed another decision of the Division Bench of this court, wherein it had been held that the receipt of the demand in an assessment year constitutes a valid basis in law for making a provision in the accounts and claiming that amount as a deduction. Counsel referred to the case of Pope the King Match Factory v. CIT [1963] 50 ITR 495 (Mad). That was a case which related to a demand for excise duty. The assessee had debited the amount demanded in its accounts, and it was on that basis, this court held that the assessee was entitled to the deduction as the demand as also the debit in the accounts had been made in the same assessment year.

8. In the instant case, we are concerned with the assessee's claim for deduction for amounts payable as sales tax in a year in which the liability had not accrued and payment had not been made. The assessee was not entitled to any deduction for a liability which related to an earlier year and which liability had not been discharged during the year of the assessment. Our answer to the first question referred to us, therefore, as already stated above is in the negative, in favour of the Revenue and against the assessee. In the circumstances, there will be no order as to costs.