Supreme Court of India
U.P State Agro Industrial Corpn vs Commr. Of Income Tax on 8 April, 1993
Equivalent citations: 1994 AIR 735, 1994 SCC Supl. (1) 636
Author: K Singh
Bench: Kuldip Singh (J)

PETITIONER:
U.P STATE AGRO INDUSTRIAL CORPN.

Vs.

RESPONDENT:
COMMR. OF INCOME TAX

DATE OF JUDGMENT08/04/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
YOGESHWAR DAYAL (J)

CITATION:
1994 AIR 735 1994 SCC Supl. (1) 636

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The question referred to the High Court under Section 256(2) of the Income Tax Act, 1961 was as under:

> "Whether on the facts and in the circumstances of the case the Tribunal was legally correct in holding that the sums of Rs 12,80,428 and Rs 2,23,480 were not rightly included in the total income of the assessee."

2. The High Court answered the question in the negative and against the assessee.

3. The appellant-assessee (Agro Corporation) entered into a contract with the State Trading Corporation of India (Trading Corporation) for the sale of tractors imported by the Trading Corporation. The Agro Corporation under the terms of contract were not to charge from the

customers/purchasers of the tractors' price more than the ceiling price as approved by the Trading Corporation. During the accounting year ending March 31, 1972 relevant for the assessment year 1972-73 the Agro Corporation sold a number of tractors imported through the Trading Corporation. The sale price realised by the Agro Corporation from the sale of such tractors exceeded the total amount which it was entitled to realise from the customers in accordance with the ceiling fixed by the Trading Corporation. It is not disputed that the excess amount realised by the Agro Corporation for the relevant year was Rs 15,45,504. On August 5, 1971, the Trading Corporation wrote to the Agro Corporation asking it to refund the excess amount realised by them from the customers. It is, however, not disputed that the refund was not made in the relevant year. The Agro Corporation at the end of the relevant accounting year debited its sale by a sum of Rs 15,45,504 showing it as an amount which it had been required to refund to its customers. It, however, approached the Government of India claiming that it was entitled to add the excess amount to the sale price. It is not disputed that the Government of India, on August 28, 1973, rejected the request of the Agro Corporation and permitted it to retain Rs 700 per tractor as assembling charges.

4. In the assessment proceedings, before the Income Tax Officer, the Agro Corporation claimed deduction of the excess amount realised by them. The Income Tax Officer disallowed the deduction and added the same in the income returned by it for the year 1972-73. The appeal filed before the Appellate Commissioner was dismissed. Further appeal filed by the Agro Corporation before the Tribunal was, however, allowed on the following reasoning :

> "After considering the above facts, we hold that on the basis of the mercantile system of accounting, followed by the assessee and the contract with the S.T.C. dated September 10, 1970, the sum of Rs 12,80,428 were not rightly included as income of the assessee during the year and, therefore, they are deleted."

5. The Tribunal concluded that the excess amount charged by the assessee was not its trading receipt. It is on these facts that the reference under Section 256(2) came to be made before the High Court for its opinion. The High Court reversed the findings of the Tribunal and came to the conclusion that the Income Tax Officer and the Appellate Commissioner had rightly disallowed the exemption. This appeal by certificate granted by the High Court is by the Agro Corporation.

6. Mr O.P. Rana, learned counsel appearing for the appellant has taken us through the judgment of the Tribunal and also of the High Court. The High Court in a detailed judgment has come to the conclusion that there was no statutory or contractual obligation on the part of the Agro Corporation to refund the amount to the purchasers of the tractors. In this view of the matter the High Court came to the conclusion that the excess amount charged was a part of the sale price. The High Court reached the said conclusion on the following reasoning :

> "Liability to pay back an amount may either arise under a statute or it may arise as a result of a contract. Such liability to pay back would be there only if as a result of some statutory provision or contract the person to whom the refund is to be made can claim it from the assessee as of right. As already stated, merely because the Agro Corporation charged a price higher than that fixed by the Trading Corporation in

> derogation of its contract with the Trading Corporation, the purchasers who had agreed to purchase the tractors from the Agro Corporation at higher price were not entitled to claim refund of the excess price from the Agro Corporation. The letter dated August 5, 1971 did not improve the situation in favour of the purchasers at all. By the said letter the Trading Corporation merely invited the attention of the Agro Corporation to the fact that it had acted in derogation of the contract to refund the excess amount. But then it does not mean that because the Trading Corporation had called upon the Agro Corporation to refund excess amount, the purchasers could enforce the direction contained in the letter and claim refund of the excess price paid by them. If, to begin with, there was no legal enforceable liability to refund the amount, the same certainly was not created by the letter dated August 5, 1971. No other material was brought to our notice whereunder such a liability to refund the amount had been created in the year in question."

7. The High Court, thus, came to the conclusion that the excess amount charged by the Agro Corporation was part of the sale price of the tractors sold by it and it was under no legal or constitutional obligation to refund the same to the customers.

8. We see no infirmity in the High Court judgment. We agree with the reasoning and the conclusions reached therein.

9. The appeal is dismissed. No costs.