

Commissioner of Income Tax Vs. Krishi Vikas

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Court : Allahabad

Decided On : Sep-24-1997

Reported in : (2000)163CTR(All)272

Appeal No. : IT Ref. No. 58 of 1982 24 September 1997 A. Y. 1975-76

Appellant : Commissioner of Income Tax

Respondent : Krishi Vikas

Judgement :

ORDER

By The Court:

The Tribunal at the instance of the Commissioner, Allahabad, under section 256(1) of the Income Tax Act, 1961, has referred the following question of law for the opinion of this court :

'Whether, on the facts and circumstances of the case, the Tribunal was justified in law in holding that the amount of Rs. 86,260 realised by the assessee from its customers during the accounting period relevant to the assessment year 1975-76 did not represent the income of the assessee and was not taxable in its hand ?'

2. The dispute relates to the assessment year 1975-76, During the year, the assessee inter alia dealt in the purchase and sale of fertilisers and seeds, etc. The assessment was completed by the Income Tax Officer on a total income of Rs. 64,768. However, it was revised by the Commissioner purporting to exercise his power under section 263 of the Act and he brought to tax an additional amount of Rs. 86,260 which represented an extra sale proceeds of the old stock of fertiliser held as on 31-5-1974. It may be observed that the selling rates of the fertiliser were revised by the Central Government at a higher rate on 31-5-1974, whereupon the State of Uttar Pradesh issued an ordinance prohibiting the dealers in fertiliser to sell the old stock of fertiliser held by them immediately before the date when the rates were revised. However, the dispute was carried to the Supreme Court which permitted the dealers to sell their old stock on new rates and to deposit the excess amount in Post Office Savings Account in the name of the District Magistrate pending litigation before it. The amount of Rs. 86,260 which was added to the income of the assessee by the Commissioner, as stated earlier, represented the excess amount which the assessee had realised on the sale of old stock of fertiliser. The amount in dispute was deposited in the post office in the terms of the directions issued by the Apex Court, There is no dispute so far these facts are concerned.

On appeal the Tribunal reversed the decision of the Commissioner and held that the amount of Rs. 86,260 was not liable to tax in the hands of the assessee in the year in dispute pending litigation before the Supreme Court as it could not be said that the amount in dispute had accrued to the assessee as its income.

3. Learned counsel for the parties agree that the controversy involved in this reference is now fully covered by a decision of this court in CIT v. Gmdnd Prasad Prabhu Nath : [1988]171ITR417(All) , where identical issue had come up for consideration.

For the reasons given in that decision with which we agree, the question referred to this court is answered in the affirmative in favour of the assessee and against the revenue.

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