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Court : Delhi

Decided On : Jan-08-2001

Reported in : [2001]116TAXMAN285(Delhi)

Appeal No. : IT Ref. Nos. 111 of 1981 8 January 2001

Appellant : Cit

Respondent : Trading Engineers

Advocate for Pet/Ap. : Sanjiv Khanna; and Ajay Jha, for the Revenu

Judgement :

Pasayat, C.J.

Following question has been referred for opinion of this court under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Tribunal, Delhi Bench C, New Delhi :

'Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the sum of Rs. 71,390 is allowable as sales tax liability in computing the assesses income for the assessment year 1977-78 ?'

The dispute relates to the assessment year 1977-78.

2. Factual position as indicated in the statement of case is as follows :

The assessed, a registered partnership firm, derived income from several agencies and also earned income by providing technical know-how for installation of pumping plants. It followed mercantile system of accounting and its accounting year ended on 30-9-1976. For the relevant assessment year, assessed declared income of Rs. 5,75,596. Subsequently, a letter was filed claiming deduction of Rs. 71,390 on account of provision made for additional sales tax levied for the assessment year 1971-72, in respect of goods worth Rs. 14,27,786.62, transferred by the assessed to its Branch Offices outside Delhi. A copy of the order of assessment dated 28-11-1975 passed by the Sales Tax Officer was also filed. Said demand was disputed by the assessed before the Additional Commissioner of Sales Tax. Appeal was dismissed on 30-6-1976. The assessed filed further appeal before the Sales Tax Tribunal on 27-7-1976. A writ petition was also filed before the Supreme Court, which set aside the sales tax assessment order by judgment dated 20-2-1978 and directed the assessing authorities to pass a fresh order in the light of the judgment. In the meantime, the Income Tax Officer passed the assessment order on 25-1-1978. Claim of Rs. 71,390 as made by the assessed was rejected subject to the condition that the assessed could come up under section 154 of the Act after disposal of the writ petition by the Supreme Court. Matter was carried in appeal by the assessed before the Commissioner (Appeals). The said authority held that assessed would be entitled to a deduction for the additional liability for payment of sales tax only in the year in which such liability arose. Claim was, however, not allowed for the reason that assessment order of the Sales Tax Officer had been set aside by the Supreme Court.

In further appeal before the Tribunal, the assessed contended that it could claim deduction in the assessment year 1977-78 on the basis of assessment order dated 28-11-1975. The Tribunal held that the assessed was entitled to claim deduction even if such liability had not been quantified or paid or even when such liability was being disputed. Accordingly, it held that assesses claim was to be allowed as a deduction. On being moved for reference, the question as set out above has been referred.

3. We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed in spite of notice.

The learned counsel for the revenue submitted that since the liability itself has been wiped out on the basis of the judgment of the Apex Court, question of allowing it as a liability in particular year does not arise.

4. We find that the Tribunals approach was erroneous since the liability itself has been subsequently wiped out by the order of the Apex Court. The question of a liability being allowed in respect of any particular assessment year does not arise. However, as has been rightly conceded by the learned counsel for the revenue that if on the Sales Tax Officer passing an order, complying with the directions of the Supreme Court, if any liability is created, the same has to be allowed as a liability in the year in which it is crystallized.

Our answer to the question, thereforee, is in the negative, in favor of the revenue and against the assessed.

Reference, accordingly, stands disposed of.