IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

I.T.R. No. 24 of 1995

Judgment reserved on: 24.10.2007

Date of decision: 29.10.2007

M/s Jai Kumar Muni Chand ..Applicant

Versus

Commissioner of Income Tax ..Respondent

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge

Whether approved for reporting?[1] Yes

For the Applicant: Mr.Vishal Mohan, Advocate

For the Respondents: Ms. Vandana Kuthiala, Advocate

Per Deepak Gupta, J.

The following question has been referred for the opinion of this court:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee's liability relating to sales-tax amounting to Rs. 3,15,000/- on account of increase in the rate of tax had arisen on 1.2.1979, the date of amendment in the Sales-Tax Law of the State of

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Himachal Pradesh and not in the previous year relevant to the assessment year 1983-84, irrespective of the fact that the Hon'ble Supreme Court had passed a stay order in favour of the assessee on 18.6.1980 and had vacated the stay on 18.11.1982 ?"

The brief facts necessary for adjudicating the present matter are that the petitioner was working as a Forest Contractor. He entered into an agreement with the District Forest Officer, Kotgarh on 3.7.1979. He was liable to pay the sales tax which, at the relevant time, was 10%. The rate of sales tax was enhanced by a retrospective amendment to the H.P. General Sales Tax Act w.e.f. 1.2.1979. The assessee challenged the amendment before the High Court. His writ petition was dismissed on 23.4.1980. Thereafter the assessee filed Special Leave Petition before the Supreme Court in June, 1980 and stay order was granted in his favour on 18.6.1980. The matter was finally decided on 18.11.1982 and the stay order was vacated on the said date. As a result of the aforesaid decision the assessee deposited the amount of sales tax. He claimed deduction with respect to the enhanced liability of sales tax of Rs. 3,15,000/- by showing it liable

to be paid in the year 1982, i.e. the assessment year 1983-84. This claim was disallowed on the ground that the liability to pay tax had arisen on 1.2.1979 and since the assessee was following the mercantile system of accounting the deduction could have only been sought for the relevant year. The appeal filed by the assessee was dismissed.

We have heard Mr. Vishal Mohan, learned counsel for the asseessee and Ms. Vandana Kuthiala, learned counsel for the Revenue.

The parties have cited a number of decisions. In **Kedarnath Jute Mfg. Co. Ltd. Vs. Commissioner of Income Tax (Central), Calcutta (1971) 82 ITR 363** the Apex Court held that the assessee who was maintaining accounts on the mercantile system was justified in claiming deduction of the amount of sales tax which it was liable under law to pay in the relevant accounting year.

The Apex Court dealt with a totally converse position in **Commissioner of Income Tax, Wes Bengal-II Vs. Hindustan Housing and Land Development Trust Ltd. (1986) 161 ITR 524.** In that case certain land belonging to the assessee had been acquired by the

State. The land Acquisition Officer awarded certain compensation. The assessee filed an appeal and the Arbitrator enhanced the compensation. Thereafter the State Government field an appeal in the High Court. The enhanced amount was deposited in the court and the respondent was permitted to withdraw that amount on furnishing a security bond for refunding the amount n the event of it being allowed. On receiving the amount the assessee credited it in its suspense account. The question was whether this enhanced amount could be taxed as the income of the respondent for the assessment year in which the Arbitrator had made the award or for the year in which the amount was actually received by the assessee. The Supreme Court held as follows:-

> "There is a clear distinction between cases such as the present one, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles."

It has been urged by Mr. Vishal Mohan, Advocate, that this authority lays down a principle of law and will apply with equal force in relation to the liabilities of the assesses and according to him where the liability to pay tax is in dispute and is not merely a question of quantifying the amount of tax, then the liability to pay tax will arise only when the dispute is determined and finally settled.

The Punjab and Haryana High Court in **Commissioner of Income-Tax Vs. Aggarwal Rice and General Mills (1989) 180 ITR**, has taken the view that the liability to pay tax accrued during the assessment year in which the tax was payable and the mere fact that the leave to appeal was dismissed by the Supreme Court in the subsequent year would not be sufficient to claim the deduction in the subsequent assessment year. This is, however, the only ruling which has been brought to our notice taking this view.

No doubt, under the ordinary law if an assessee is maintaining accounts on mercantile basis the liability to pay sales tax will accrue on the date when the company becomes liable to pay the tax regardless of the

fact whether the tax has been actually paid or has been quantified or not. In the present case the factual situation is somewhat different. At the time when the assessee entered into an agreement his liability to pay tax was only at the rate of 10%. He is not disputing that the tax at the rate of 10% has to be deducted as an expense in the relevant assessment year. However, by way of amendment, that too with retrospective effect, the rate of sales tax was enhanced. The assessee challenged this amendment and finally this matter was decided on 18.11.1982. The assessee was found liable to pay the tax only on this date. There was a valid stay order operating in his favour till the said date. In our opinion, the law laid down by the Apex Court in Hindustan Housing case, supra applies with full force to the present case also.

While taking this view we are supported by a decision of Gujarat High Court in **Commissioner of Income Tax Vs. Arvind Industries (1993) 2001 ITR 821** wherein the Gujarat High Court held as follows:-

> "Consequently, on accrual basis, sales tax liability could have been brought on the books only when the assessee was informed in 1972 about the withdrawal of sales tax exemption and not prior

thereto. Consequently, the entire sales tax liability, even though spilling over to the earlier year, had to be taken into consideration on accrual basis only in the current assessment year 1973-74."

In **Commissioner of Income Tax Vs. O.E.N. India Ltd. (2000) 241 ITR 682** a Division Bench of Kerala High Court was dealing with a virtually identical question. The assessee was following the mercantile system of accounting and claimed deduction in the assessment year 1983-84 for the custom duty which was found payable in respect of the year 1975-76 to 1983-84 because in between the question relating to payment of custom duty was in dispute. The High Court held that custom duty in respect of the assessment years 1975-76 to 1983-84 which were actually paid in the year 1982 could be claimed as a deduction in the assessment year 1983-84.

In **Alembic Chemical Works Ltd. Vs. Deputy Commissioner of Income Tax (2004) 266 ITR 47**, a Division Bench of the Gujarat High Court after consideration of the entire law held as follows:-

"Thus, the settled position in law is that in the case of an assessee following the mercantile system of accounting a liability is said to be properly

> incurred when the dispute between the parties is amicably settled or finally adjudicated, where the liability in question is not a statutory liability. In the case of the appellant it is apparent that the liability is pending adjudication by way of appeal in the Supreme Court and till the point of time the same is finally adjudicated, the liability in question would remain a contingent liability."

Keeping in view the entire law cited before us, we are of the opinion that even in a case where the assessee maintains his accounts on mercantile basis the liability to pay tax can be said to be properly arising only when the dispute between the parties is settled or finally adjudicated upon. Therefore, we are of the opinion that the assessee was entitled to claim deduction of the amount of sales tax of Rs. 3,15,000/- in the assessment year 1983-84. The aforesaid reference is accordingly answered in favour of the assessee and against the Revenue. A copy of this judgment under the signature of the Registrar General of this court be forwarded to the Tribunal.

(Deepak Gupta), J.

October 29, 2007(K) (V. K. Ahuja), J.