

Commissioner of Income Tax, Madras

Vs

Thirumalaiswamy Naidu and Sons

Civil Appeal No. 1783 of 1984

(S.C. Sen, S. Saghir Ahmed JJ)

27.08.1997

ORDER

1. The question referred in this case is as under :

"Whether, on the facts and in the circumstances of the case, the tribunal was justified in deleting the sum of Rs. 1,37,379 from the taxable trading receipt of the assessee for 1974-75 ?"

2. The assessee in course of sale of its products, collected sales tax from the purchasers. The assessee, in its turn, was assessed under the Central Sales Tax Act and paid the tax. The sales tax collected by the assessee has to be treated as its income, according to the ruling of this Court in the case of Chowringhee Sales Bureau (P) Ltd. v. CIT. ((1973) 1 SCC 46 : 1973 SCC (Tax) 163 : 87 ITR 542). Any payment of sales tax made by the assessee was equally liable to be deducted from the profits made by the assessee. In this case the assessee had actually made the payment of sales tax under the provisions of the Central Sales Tax Act. Those provisions were under challenge and ultimately were struck down by the Madras High Court. The assessee got back an amount of Rs. 1,37,379 as refund. The entire amount of sales turnover of the assessee inclusive of the amount of tax collected was clearly includible in the assessee's taxable income. If any deduction was given from that income and later the same was refunded back to the assessee, the refund will have the character of revenue receipt. It has to be treated as a receipt on the revenue account and has to be assessed as such. The position has been placed beyond doubt by express provisions of Section 41(1) of the Income Tax Act.

3. The next question is that if the assessee returns any portion of the amount to its customers, will it still be liable to pay tax on the entire amount. Admittedly, the assessee had not refunded any part of this amount of Rs. 1,37,379 to anyone of its customers in the year of account. As and when such refund is made, the assessee will be entitled to claim deduction.

4. We are of the view that the Tribunal was in error in deleting the amount from the trading receipt of the assessee from the Assessment Year 1974-75. The question is, therefore, answered in the negative and in favour of the Revenue.

5. The appeal is allowed. There will be no order as to costs.