

# SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

D. Shankaraiah

(M Srinivasan and U Banerjee JJ.)

04.02.1999

## ORDER

1. These appeals are directed against the judgment of the Andhra Pradesh High Court in C. R. No. 4 of 1979, in which the High Court relied upon an earlier judgment of its own in C. R. No. 11 of 1981, dated April 13, 1983 (see [1985] 154 ITR 893), and answered the reference in the affirmative in favour of the assessee. When these petitions by special leave were filed, it was stated expressly in paragraph 7 that a special leave petition was already pending before this court against the order of the High Court in C. R. No. 11 of 1981 (see [1985] 154 ITR 893), dated April 13, 1983, which was the assessee's own case. On that basis when this court granted leave in these cases, it directed learned counsel to furnish the number of the other special leave petition within eight weeks from that date, i.e., May 10, 1991, and directed that the appeals should be listed along with the said special leave petitions. The number was not furnished. The appeals were again placed before this court on October 13, 1997. This court adjourned these matters for six weeks in order to enable counsel to comply with the direction given at the time of admission on May 10, 1991. Again the number was not furnished for the third time, when the matters were placed before this court on January 7, 1999, final opportunity was given to the appellant to furnish the said number and the matters were adjourned for four weeks for that purpose but till now nothing has been done.

2. Learned senior counsel represents that the appellant is not in a position to get the relevant records and furnish the number of the other case. In the circumstances he proceeds to argue these matters on the point of law that was raised before the Tribunal and the High Court. The only question which arose for consideration was whether the sales tax collected by the assessee, who was a commission agent from the purchasers and paid to the Sales Tax Department as well as the amount of refund of sales tax collected by the said assessee from the Department when it was found that sales tax was not payable, could be treated as income in the hands of the assessee and the same is liable for

payment of income-tax ? The Tribunal distinguished the judgment of this court cited before it, namely, Chowringhee Sales Bureau P. Ltd. v. CIT [1973] 87 ITR 542, and applying the principle laid down in Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC), held that the assessee was not liable to pay tax on such amounts.

3. The Tribunal referred the following question for the opinion of the High Court :

"Whether, on the facts and in the circumstances of the case, the amount of sales tax collections and refunds constituted business receipts liable to be included in the assessments of the assessee for the assessment years 1972-73, 1973-74 and 1974-75 ?"

4. The High Court answered the reference in favour of the assessee by following its own judgment in the case of the assessee in C. R. No. 11 of 1981, dated April 13, 1983 (see ).

5. Learned counsel for the appellant contends that the matters are covered by the judgment referred in Chowringhee Sales Bureau P. Ltd. v. CIT and the Tribunal was in error in distinguishing that case. We are unable to accept this contention. It is seen from the said judgment that the assessee in that case was an auctioneer and in the cash memos issued by the assessee to the purchasers in the auction sale the assessee was specifically shown as the seller. The amount realised by the assessee from the purchasers included sales tax. The assessee did not pay the amount of sales tax to the actual owner of the goods auctioned because the statutory liability for the payment of that sales tax was that of the assessee. It did not also deposit the amount realised by it as sales tax in the State exchequer because it took the position that the statutory provision fastening that liability" upon it was not valid. In such circumstances, the court held that the amount collected by the assessee in its character as an auctioneer, was part of its trading or business receipt and consequently liable for payment of income-tax.

6. In the present case, the ruling will not apply as the assessee here is only a commission agent when it collected sales tax. The assessee was doing so only as a commission agent of the principal and the amount cannot be treated as its income. It is argued that in the Andhra Pradesh General Sales Tax Act, 1957, the definition of "dealer" would also include a commission agent and it is wide enough to include its income collected by way of sales tax. But, in the grounds of appeal there is no reference to the provisions of the Andhra Pradesh General Sales Tax Act, 1957. The only grounds raised are that the decision rendered in Chowringhee Sales Bureau P. Ltd. v. CIT [1973] 87 ITR 542 (SC), would apply and the High Court is wrong in following its own earlier decision in C. R. No. 11 of 1981. As no other ground has been raised, we are not inclined to permit the appellant to raise such grounds which require further investigation of law and facts. It is also contended that when sales tax was collected, the assessee claimed benefit of revenue expenditure thereof and, therefore, when the assessee collected the refund it ought to show the same as its income and paid the tax therefore. No record is available to prove this. In the circumstances, we are unable to differ from the view taken by the High Court. The appeals fail and are dismissed.