PUNJAB AND HARYANA H IGH COURT

Punjab Steel Scrap Merchants Association Limited

Vs

Commissioner of Income Tax

(Grover, J)

20.02.1961

JUDGEMENT

Grover, J.

(1.) THIS order will dispose of Income-tax References Nos. 278, 179 and 280 of 1959-60 in which the same questions are involved. The assessee is a limited company and is a dealer in scrap iron. According to the control orders which were in force during the years under consideration (assessment years 1954-55, 1955-56 and 1956-57), the assessee was required to obtain licence for acquiring scrap iron from various mills. That iron could be sold by the assessment of selling scrap iron was to obtain from the permit holder the approximate quantity of scrap iron required by him and after finding out the weight, the calculation of the price of the quantity in round figures was made and the constituent was asked to deposit the amount so calculated by the assessee. The actual quantity of scrap iron which would, in fact, be supplied to the constitutent would be sometimes more or sometimes less that that for which the would be sometimes more or sometimes less than that for which the price had been calculated and for which the deposit had been obtained from the constituent. After the delivery of the scrap iron, it often happened that there remained a small surplus out of the money deposited. In cases where the deposits were slightly more than the amount deposited, the necessary recovery was made by the assessee but in the cases where the deposits were slightly more than the purchase price of the total goods supplied, the constituent in the assessees books. The board of directors of the assessee company passed the following resolution on November 23, 1953 : "(a) The manager be and is hereby authorised to transfer unclaimed credit balances as became over three years old to the sundry creditors balances written back account. (b) Claims for refund, if any, out of the above said written back amounts may be referred to the managing committee, who may, if satisfied that the claimant is a rightful claimant, give instructions to the office for refund thereof."

(2.) THE three year old unclaimed balances in this account amounted to Rs. 2,080 in the assessment year 1954-55, Rs. 10,692 in the assessment year 1955-56 and Rs. 1,993 in the assessment year 1956-57. THE unclaimed balances were duly transferred by the assessee to the profit and loss account and out of the net profit thus arrived at dividend was distributed. When the returns for the assessment years in question were filed, the assessee claimed to deduct these

unclaimed balances on the ground that they did not represent revenue receipts by the assessee. For the two years 1954-55 and 1955-56 the Income-tax officer did not include the unclaimed balances in the income and for the year 1956-57 he treated the unclaimed balance of Rs. 1,993 as a realization by the company on account of trading activity and the amount was included in the revenue receipt of the company. THE Commissioner of Income-tax revised the assessment for the years 1954-55 and 1955-56 under section 33B and held that the unclaimed balances during those years represented the revenue income of the assessee. For the year 1956-57 an appeal was taken to the Appellate Assistant Commissioner who held that the same was not assessable. THE order passed by the Commissioner of Income-tax was challenged on appeal before the Appellant Tribunal by the assessee and similarly the order passed by the Appellate Assistant Commissioner was taken up on appeal by the Income-tax Officer. THE Tribunal decided all the three appeals together and there was difference of opinion between the two Members who constituted the Tribunal. THE President of the Tribunal in agreement with the Judicial Member decided against the assessee. That is how the following question of law has been referred to this court :"Whether the unclaimed balances of Rs. 2,080 in the assessment year 1954-55, Rs. 10,692 in the assessment year 1955-56 and Rs. 1,993 in the assessment year 1956-57 represent the revenue income of the assessee liable to tax under the Indian Income-tax Act, 1922 ?" THE President of the Tribunal relied on the following facts for coming to the conclusion that the payments which were made to the assessee were by way of payment of price : (I) THE payment is subject to a stipulation that if there is a shortage or excess, it has to be adjusted. (2) THE assessee has not shown the amount as a liability in his own balance-sheet. (3) Any excess payment or short recovery is always liable to be adjusted in every business when a mistake has to be rectified. (4) According to the method of accounting employed by the assessee, the amounts in question were never the liability of the business but were revenue receipts. The learned counsel for the assessee has mainly relied on a decision of the Court of Appeal in Morley v. Tattersall. The Accountant Member of the Tribunal, Shri A. L. Seghal, who decided in favour of the assessee, also based his decision largely on that case. As will be presently seen, Morleys casea is clearly distinguishable and has no applicability whatsoever to the facts of the present case. There are two decisions of our own Supreme Court, however, which are more in point and which almost conclude the matter. They are Lakshmanier and Sons v. Commissioner of Income-tax and Punjab Distilling Industrial Ltd. v. Commissioner of Income-tax. In Lakshmanier & Sons case the appellants, who were the assessees, were carrying on the business as sole selling agents for yarn manafactured by Madura Mills. They sold the yarn to their constituents and in the relevent accounting years the sales were made under three succcessive arrangements. Under the first aggangement the appellants had two accounts for each constituent, manely, a "contract deposit account" and a current yarn account". Wh en monies were received from the customers, they were credited in the former account and then transferred to the yarn account in adjustment of the price of the bales supplied as and when deliveries were made under a contract either in instalments or in full. A question arose as to the nature of these payments. It was held that the amounts which had been received from the customers were revenue receipts as they were merely advance payments of the price and could not be regarded to be money which had been borrowed. The second type of arrangement was that the payment made by a constituent at the time of making of a contract was taken as "contracts advance fixed deposit". It was refunded when the goods had been supplied and the price in respect thereof paid in full irrespective of the earlier payment. The following passage from the judgment of Patanjali Sastri C.J., which was relied on

in the Punjab Distilling Industries case, is noteworthy : "... we are of opinion that, having regard to the terms of the arrangement then in force, they partake more of the nature of trading receipts than of security deposits. It will be seen that the amounts received were treated as advance payments in relation to each contract number and though the agreement provided for the payment of the price in full by the customer and for the deposit being returned to him on the completion of delivery under the contract, the transaction is one providing in substance and effect for the adjustment of the mutual obligations on the completion of the contract. We hold accordingly that the sums received during this period cannot be regarded as borrowed money....." The principle which has been enunciated by the learned Chief Justice is fully applicable to the facts of the present case. The deposits which were made by the various constituents were towards the payment of price and the transactions were those essentially involving adjustment of mutual obligations on the completion of the contract. If any shortfall existed, the constituent was bound to make the deficiency good and if any excess amount was left, the assessee was under an obligation to refund it but that would not change the real nature of the transaction and could not give the character of a loan to the amounts which had been deposited by the constituents initially as has been contended by the learned counsel for the assessee. An attempt was also made to bring it within the arrangement that prevailed in the third part of the accounting period in Lakshmanier & Sons case, the initial payments made during which had been held to be loans. As pointed out in the subsequent case of Punjab Distilling Industries by the Supreme Court, under this arrangement a certain sum was kept in deposit once and for all and thereafter Lakshmanier and Sons started entering into trading transactions, namely, forward contracts for sale of yarn with the constituents who had deposited the money. In the words of Sarkar J., the sum so deposited was to be refunded with interest at 3 per cent. per annum at the end of the business connection between the parties, if necessary, after retaining thereout any amount due on the contracts made with the constituents which the latter was, at the termination of the business, found not to have been paid. The case of Lakshmanier and Sons1 engaged the attention of their Lordships in the Punjab Distilling Industries case in which the Amritsar Distillery Co,. had, under the instructions of the Government, devised a scheme with regard to bottles in which liquor was to be sold called the "buy-back scheme". According to that scheme, a distiller, on a sale of liquor, became entitled to charge a wholesaler a price for the bottles in which the liquor was supplied at rates fixed by the Government which he was bound to repay to the wholesaler on the latter returning the bottles. The distillery company insisted on the wholesalers paying to it, in addition to the price of the bottles fixed under the buy-back scheme, amounts which were described as security deposits with an undertaking to pay back for each bottle returned at the rate applicable to it and further to pay back the entire amount when 90 per cent. of the bottled covered by it had been returned. Thus the assessee realized these additional sums. No time limit had been fixed within which the bottles had to be given back in order to entitle a wholesaler to the refund not was it proved that a refund had been refused at any time. The amount consisting of these additional sums which had not been claimed by those who had deposited them swelled up and the question arose whether these amounts called security deposits were trading receipts. Their Lordships in agreement with this court held that the amounts which had been received by way of security deposits were actually a part of the consideration for the sale and, therefor, part of the price of what was sold. The following observations of Sarkar J. are important : "It seems to us that the amounts involved in the present case were exactly of the nature of the deposits made in the second period in Lakshmanier & Sons case. There, as here, as

soon as a transaction of sale was made the seller received certain moneys in respect of it. It is true that in Lakshmanier & Sons case the transaction was a contract to sell goods in future whereas in the present case the transaction was a sale completed by delivery of the goods and receipts of the consideration. But that cannot change the nature of the payment. In Lakshmanier & Sons case the payment initially made was refundable after the price had been paid; in the present case the contract is to refund the amount on the return of the bottles already sold. In each case therefore the payment was made as part of a trading transaction and in each case it was refundable on certain events happening. In each case again the payment was described as a deposit. As in that case, so in the present case, the payment cannot be taken to have been made by way of security deposit. We must therefore on the authority of Lakshmanier & Sons case hold the amounts in the present case to have been trading receipts." It was further observed that the deposit was part of each trading transaction and was refundable under the terms of the contract relating to that trading transaction. It has not been made under any independent contract not was it a refund conditioned by a collateral contract. The case of Morley v. Tattersall was distinguished on the ground that Tattersall was a firm that sold horses of its constituents on their behalf and received the price which it was liable to pay them. It happened that various customers did not come and take away the amounts due to them. At first the firm showed these amounts in its accounts as liabilities. Later on, however, those amounts were transferred to the credit of the partners. It was never contended that the amounts when received as price of the constituents horses sold were Tattersall were never the moneys of the firm. They had been received on behalf of others and liability existed on account of that receipt. As pointed out in the Punjab Distilling Industries case it is not possible to say that the amounts in the present case were not the assessees moneys in the sense that the constituents moneys in the hands of Tattersall were not its. The amounts had not been received on account of anyone but the assessee. These moneys were refundable on the happening of certain events but that did not make them "the moneys of those who might become entitled to the refund." Thus there can be no doubt that if the amounts in question in the present case were payments towards price of the scrap iron which was to be supplied to the constituents, then they were essentially trading receipts, with the result that "they must have a profit making quality about them." That would fix them with the character of revenue receipts for all times and it would make no difference if ultimately the assessee took upon itself the liability to pay those amounts even by means of a resolution. In this view of the matter, we answer the question in the affirmative. The respondent will be entitled to the costs which we assessee at Rs. 200 (consolidated figure for all the three references). ;