

PETITIONER:
M/S HAJI LAL MOHD. BIRI WORKS

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, LUCKNOW II

DATE OF JUDGMENT: 19/02/1997

BENCH:
S.C. AGRAWAL, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

This appeal by the assessee arise out of a reference made by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') to the Allahabad High Court wherein two question were referred for opinion. Both the questions have been answered against the assessee and in favour of the Revenue. In the present appeal we are only concerned with question no. 2 which is in the following terms:

"Whether on the facts and in the circumstances of the case the payment of Sales Tax composition fee of Rs. 1,91,887/- was an allowable expenditure for the assessment year 1968-69?"

The matter relates to the assessment year 1968-69. The assessee deals in the business of manufacture and sale of biris. By notification published in the U.P. Gazette dated December 14, 1957 it was prescribed that no sales tax was payable with effect from December 14, 1957 in respect of biris provided that the additional central excise duties leviable thereon from the close of business on December 13, 1957 had been paid. By another notification published in the same Gazette it was provided that no tax under the General Sales Tax was payable by any dealer registered under Section 7, (3) of the Central Sales Tax and having his place of business in U.P. in respect of the sales made by it of biris in the course of inter-state trade and provided they were sales to a dealer who had moved business outside U.P. The assessee claimed that it was not liable to pay and sales tax on sales effected from December 14, 1957. But the Sales Tax Department took the view that sales tax was leviable for the period from December 14, 1957 to June 30, 1958. The matter was raised by the biri manufacturing Association of Allahabad before the Government of Uttar Pradesh praying that the Government may pass orders for exemption of sales tax on biris for the period from December 14, 1957 to June 30, 1958. The assessee also made an application for stay of recovery of the tax and such recovery was stayed. On June 10, 1959 the assessment was made for the period from April

1, 1957 to March 31, 1958 and assessment for the period from April 1, 1958 to March 31, 1959 was made on February 12, 1963. An amount of Rs. 1,14,357/- was determined as payable on sale of biris for the period from December 14, 1957 (to March 31, 1958 and a sum of Rs. 81,994/- was found payable for the period from April 1, 1958 to June 30, 1958. The total mount of tax come to Rs. 1,96,351/-. The stay against recovery of sales tax that was granted in the years 1959 was vacated on October 16, 1967. Thereafter the assessee paid a sum of Rs. 1,96,887/- out of the aforesaid tax liability of Rs. 1,96,351/-. The assessee claimed deduction of the amount tax paid in the assessment year 1968-69 on the ground that the actual payment was made in previous year relevant to that assessment year. The said claim was not allowed by the Income Tax Officer as well as the Appellate Assistant Commissioner and the Tribunal. The question aforementioned was referred by the Tribunal to the High Court which has been answered against the assessee by the High Court.

Placing reliance on the decision of this court in Kedarnath Jute Mfg. Con Ltd. v. Commissioner of Income Tax (Central), Calcutta, (1971) 82 ITR 363, the High Court has held that since the assessee was following the mercantile system of accounting the case was governed by the said decision and the assessee would not claim deduction of the tax liability which accrued in the year 1957-58 in the assessment year 1968-69.

Shri Rajiv Datta, the learned counsel for the appellant assessee, has submitted that since the tax was actually paid in the previously year relevant to the assessment year 1968-69, the High Court was in error in not permitting deduction of tax in the assessment year 1968-69 and has placed reliance on the observations of this Court in Chowringhee Sales Bureau P. Ltd. V. Commissioner of Income Tax, West Bengal, (1973) 87 ITR 542, wherein, in the context of sales tax liability, this Court has held that the amount received on account of sales tax on good sold has to be treated as trading receipt in the year in which it was received on account of sales tax on goods sold has to be treated as trading receipt in the year in which it was received and it has been observed that the assessee would be entitled to claim deduction of the amount as and when it pays to the State Government. The said decision in Chowringhee Sale Bureau P. Ltd. (supra) was also relied upon by the assessee before the High Court and it was distinguished by the High Court by pointing out that it did not relate to an assessee following the mercantile system of accounting. Since then the matter has been considered by this Court in the recent judgment in Commissioner of Income Tax V. Kalinga Tubes Ltd. (1996) 218 ITR 164, wherein, following mercantile system of accounting, in case of sales tax payable by the assessee the liability to pay sale tax would accrue the moment the dealer made sales which are subject to sales tax and, at that stage, the obligation to pay the sales tax arises and the raising of the dispute in this connection before the higher authorities would be irrelevant. The preset case is thus fully covered by the aforesaid decision of this Court.

We, therefore, do not find ay merit in the appeal and the same is accordingly dismissed. But in the circumstances there will not order as to costs.