

Before Ashok Bhan & N.K. Agrawal, JJ.
THE COMMISSIONER OF INCOME TAX,
JALANDHAR,—*Applicant*

versus

M/S JANTA CO-OPERATIVE SUGAR MILLS LTD.,
BHOGPUR,—*Respondent*

I.T.R. No. 55 of 1984

24th July, 1997

Income Tax Act, 1961—Taxable income—Assessee charging difference of price under an ad-interim order of the Court—Assessee furnishing guarantee for refund of the price—Matter pending in High Court—Whether assessee liable to pay tax on the said income.

Held, that the difference of price in levy sugar realised by the assessee under the orders of the High court was hedged by certain conditions. Assessee did not acquire an absolute right to the amount realised by it and it was liable to refund the same in the event of the writ petition being dismissed. The writ petition is still pending for final adjudication. Under the circumstances, the difference in price of the levy sugar realised by the assessee could not be treated as its income arising or accruing to it for the relevant assessment year.

(Para 17)

B.S. Gupta, Sr. Advocate with Sanjay Bansal,
Advocate, *for the appellant.*

M.R. Sharma, Advocate, *for the Respondent.*

JUDGMENT

Ashok Bhan, J.

(1) At the instance of Commissioner of Income tax Jalandhar. Income tax Appellate Tribunal, Amritsar, (hereinafter referred to as the Tribunal), has referred the following question of law to this Court for its opinion :—

“Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that the amount of Rs. 6,27,944 being the difference in price of levy sugar @ Rs. 50.87 per quintal allowed to be charged by the

assessee by the High Court under an interim order had not accrued to the assessee as its income and hence not liable to tax?"

(2) Briefly stated the facts are :—

(3) Assessee is a Co-opetrative Society deriving income from manufacture and sale of sugar. The accounting year, relevant to the assessment year 1975-76 ended on 31st March, 1975. Government of India fixed the price of levy sugar at Rs. 151.36 per quintal by issuing Sugar Control Order in November, 1972. Assessee challenged the price fixed by the government by filing a writ petition in this Court. It was *inter alia* contended that the cost of manufacture of sugar worked out to Rs. 202.23 per quintal, and therefore, the Government was not justified in fixing the price of levy sugar at Rs. 151.36 per quintal. High court while admitting the writ petition passed an interim order permitting the assessee to sell levy sugar at Rs. 202.23 per quintal as against Rs. 151.36 fixed by the Government on the condition that the assessee shall deposit the difference of Rs. 50.87 per quintal pending disposal of the writ petition. Assessee was required to furnish a bank guarantee to the satisfaction of this Court for return of the amount of difference in price of Rs. 50.87 per quintal in case the writ petition is ultimately dismissed. Assessee acted in accordance with the orders of the High court and furnished bank guarantee from Jalandhar Central Cooperative Bank Ltd. Jalandhar by getting an equal amont deposited with the bank. The sum of Rs. 6,27,944 being the difference in the sale price of levy sugar was credited by the assessee in its suspense account. Copy of the interim order passed by the High Court was not made available before the Tribunal. The same has not been made available to us either. A copy of the letter dated 7th April, 1980 written by Government of India, Ministry of Agriculture, Department of Food, enquiring about the furnishing of bank guarantee and the assessee's reply thereto dated 17th April, 1980 were included in the paper book of the Tribunal. Counsel appearing for the department as well as the assessee did not know about the serial number of the writ petition filed by the assessee in this Court. On our enquiry from the office, it has been reported that the assessee had filed CWP 782 of 1973 (*M/s Janta Co-operative Sugar Mills Ltd. v. Union of India*) which is still pending along with other writ petitions on the same point.

(4) On behalf of the assessee, it was argued before the Income tax Officer that the amount of Rs. 6,27,944 put in the suspense

account, that is the difference in the price of levy sugar did not represent the income of the assessee for that year as the assessee did not have any absolute right to that amount. Income tax Officer did not accept this contention. He was of the view that price difference of Rs. 50.87 per quintal represented the amount realised by the assessee from the purchasers and as such it forms part and parcel of the sale price. That being so, it was a trading receipt representing income of the assessee for the assessment year 1975-76. Income tax Officer was of the view that the amount realised by the assessee from the purchasers to whom the levy sugar had been sold was retained by the assessee and deposited in its own accounts. Assessee had not accepted the price of levy sugar fixed by the government. Bank guarantee furnished by the assessee did not mean that the difference in sale price of levy sugar credited by it to its suspense account did not represent its income for the year in question. The sum of Rs. 6,27,944 put by the assessee in its suspense account was treated as income of the assessee for that year and was subjected to tax.

(5) Assessee filed an appeal before the C.I.T. (Appeals) challenging the inclusion of the amount of Rs. 6,27,944 in its income. C.I.T. (Appeals) after considering the submissions made by counsel for the parties held that the amount did not form part and parcel of the sale proceeds of the assessee. The sum of Rs. 6,27,944 was treated as trust money credited by the assessee to the suspense account and deposited in the bank as per directions of the Court. It was observed that the assessee did not have any absolute claim over the amount and deleted the addition.

(6) Aggrieved against the decision of the CIT(A) revenue went up in appeal before the Tribunal. Order of CIT (Appeals) was upheld by the Tribunal. It was held that the difference in price did not become the property of the assessee and, therefore, it could not be said that the disputed sale proceeds had accrued to the assessee as its income liable to tax.

(7) At the instance of the revenue, the aforesaid question of law has been referred by the Tribunal to this Court for its opinion.

(8) Assessee's system of accounting is mercantile. In view of this position, the relevant question will be whether the difference in price of Rs. 50.87 per quintal allowed to be charged by the assessee by the High Court under an interim order has accrued to the assessee as its income. While considering a similar question, Supreme Court of India in *Commissioner of Income Tax West*

Bengal-II v. Hindustan Housing and Land Development Trust Ltd. (1) though on slightly different facts held that the right to receive the amount by the assessee was not absolute and, therefore, it was not income arising or accruing to the assessee during the previous year relevant to the assessment year in question. In that case, certain lands belonging to the assessee which carried on business of dealing in land and maintained its accounts on the mercantile system were first requisitioned and then compulsorily acquired by the State Government. Land Acquisition Officer awarded a sum of Rs. 24,97,249 as compensation. On an appeal preferred by the assessee, the arbitrator made an award dated July 29, 1955 fixing the compensation at Rs. 30,10,873 and directing interest at the rate of 5% from the date of acquisition. Arbitrator also awarded an annual sum for the period of acquisition. State Government preferred an appeal to the High Court. Pending the appeal, State Government deposited in the Court Rs. 7,36,691 being the additional amount payable under the award dated April 25, 1956. Assessee was permitted to withdraw the amount on May 9, 1956 only on furnishing a security bond for refunding the amount in the event of the appeal being allowed. On receiving the amount, assessee credited it in its suspense account on the same date. The question was whether a sum of Rs. 7,24,914 could be taxed as the income of the assessee for the assessment year 1956-57 on the ground that it became payable pursuant to the arbitrator's award. Tribunal held that the amount did not accrue to the assessee as its income during the relevant previous year and, therefore, was not taxable in the assessment year in question. The order of the Tribunal was affirmed by the High Court in reference. Supreme Court of India affirming the decision of the High Court held that the amount credited to the suspense account by the assessee was in dispute in appeal before the High Court. High Court had regarded the dispute to be real and substantial because the assessee was not permitted to withdraw the amount deposited by the State Government without furnishing security bond in the event appeal being allowed. There being no absolute right to receive the amount at that stage, the extra amount of compensation of Rs. 7,24,914 was, therefore, not the income accrued to the assessee during the previous year relevant to the assessment year. After referring to a number of judgments, judgment of the High Court was upheld by observing as under :—

“It is unnecessary to refer to all the cases cited before us. It

is sufficient to point out that 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. We are of the opinion that the High Court is right in the view taken by it and, therefore, this appeal must be dismissed.”

(9) Andhra Pradesh High Court in *Commissioner of Income Tax A.P.-I v. Chodavaram Cooperative Sugars Ltd.*(2), while considering the following question of law i.e. :—

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the amount of Rs. 8,75,277 did not belong to the assessee and that it was not a trading receipt for the assessment years 1973-74 and 1974-75?”

which is similar to the one posed in the present case on the following facts answered the question in favour of the assessee and against the revenue.

(10) Assessee, a Sugar Mill, filed writ petition before the supreme Court questioning the validity of fixation of price in respect of levy sugar on the ground that Government had no power to fix the price of levy sugar and they should be permitted to sell the sugar at the rates existing prior to the introduction of the Control Order which was in excess of the price fixed by the Control Order. Supreme Court of India passed a conditional order permitting the assessee to collect the price of sugar at the rates existing prior to the introduction of the Control Order but directed the assessee to deposit in a separate account the difference in price collected and furnish a bank guarantee of an equal amount to the Registrar of the Supreme Court. Assessee collected the difference and also furnished the bank guarantee to the Registrar pending final disposal of the writ petition in the Supreme Court. Eventually Supreme Court of India dismissed the writ petition and upheld the validity of the Control Order with the result that the assessee had to be refunded to the constituents from whom the collections were made. On these facts, it was held :—

“We consider that the Tribunal was justified in its conclusion that the amount of Rs. 8,76,277 did not partake of the nature of a trading receipt and on that ground itself the amount fell to be excluded from the total income of the assessee. It may be pointed out that the right to collect the amount in excess of the price fixed by the control order was saddled with the obligation to deposit the amount in a separate account and the assessee is always held accountable for the excess collection, pending decision of the Supreme Court. The provisions of the Levy Sugar Price Equalisation Fund Act, 1976, clearly imposed an obligation on the assessee to repay the money to the constituents whether the excess price was collected before or after the commencement of the Act. Thus the assessee did not collect the excess sale price as part of its trading receipt.”

This judgment was later on followed by the same High Court in *Commissioner of Income Tax v. Jeyapore Sugars Co. Ltd* (3), High Court had not noticed the judgment of the Supreme Court in *Hindustan Housing and Land Development Trust Ltd.'s case* (supra).

(11) Thereafter, the matter was considered by the Karnataka High Court on almost the same facts in *Commissioner of Income Tax v. Mysore Sugar Co. Ltd.* (4). The only difference being that the writ petition had been filed in the High Court and the excess amount was credited under the interim directions of the High Court, under the head “Current liabilities”. The question was as to whether the difference in price of the levy sugar realised by the assessee under the interim directions of the High Court was its income liable to tax for the year in question. In that case also, assessee had challenged the fixing of the price of Levy sugar by the Government of India under the sugar Control Order. Relying upon the judgment of the Supreme Court in *Hindustan Housing and Land Development Trust Ltd.'s case* (supra) and of the Andhra Pradesh High Court in *Chodavaram Co. Operative Sugar Ltd's case* (supra), it was held :—

“.....But in the present case, what has happened is that the assessee was permitted to collect the amount in question only pursuant to the interim order made by the court which was subject to several conditions to make the right

3. (1989) 175 I.T.R. 627

4. (1990) 183 I.T.R. 113

absolute and, therefore, the collection made by the assessee at an enhanced rate is an inchoate one as this extra amount did not accrue to the assessee until the finalisation of the dispute pending before one court or the other. It is only on the final determination of the amount that the right to such income in the nature of levy price would arise or accrue and till then there is no liability in presentation in respect of the additional amount of price claimed by the assessee. Therefore, these cases fall within the scope of first class of cases noticed by the Supreme Court in *Hindustan Housing and Land Development Trust Ltd.'s* case (1986) 161 I.T.R.524 (SC), where it was held that where the right to receive the payment is in dispute and it is not merely a question of quantifying the amount to be received, no income would arise or accrue till the levy price is finally fixed. We are, therefore, of the opinion that the Tribunal is right in its view, and, therefore, we have got to answer the question referred to us in the affirmative and against the Revenue."

This decision was later on followed by the same High Court in *Commissioner of Income Tax v. Malaprabha Cooperative Sugar Factory* (5).

(12) Bombay High Court in *Commissioner of Income Tax v. Seksaria Biswan Sugar Factory Pvt. Ltd.* (6) again considered the same question and decided the same in favour of the assessee following the judgment rendered by the Supreme Court in *Hindustan Housing and Land Development Trust Ltd.'s* case (supra) and in *Mysore Sugar Co. Ltd.* case (supra). It was held:—

"Having heard the parties and after going through the decisions relied upon, we are in agreement with the view of the Karnataka High Court. What has happened in this case is that the assessee was permitted to collect the amount in question only pursuant to an interim order made by the Court which was subject to several conditions to make the right absolute. Therefore, the collection made by the assessee at an enhanced rate at that stage was in inchoate one as this extra amount did not accrue to the assessee until the finalisation of the

5. (1993) 200 I.T.R. 417

6. (1992) 195 I.T.R. 778

dispute pending before the Court. In fact, this is also the view taken by the Supreme Court in *CIT v. Hindustan Housing and Land Development Trust Ltd.* (1986) 161 ITR 524. Accordingly, we are in agreement with the Tribunal and answer the first question in the affirmative and in favour of the assessee."

(13) Special Leave Petitions No. (Civil) 5111—5115 of 1992 against the judgment of the Karnataka High Court in *Malaprabha Cooperative Sugar Factory's* case (supra) have been dismissed by the Supreme Court. (Refer to 7).

(14) Special Leave Petition (Civil) No. 886 of 1984 (*Commissioner of Income Tax v. Nawabganj Sugar Mills Ltd.*) against the judgment of the High Court of Delhi was dismissed by the apex Court declining to call for the statement of the case on the question—Whether the excess over the price of levy sugar realised by the assessee and held in the bank pending disposal of the writ petition filed by it against the fixation of levy sugar price (which was eventually dismissed) was income in the hands of the assessee. (Refer to (1991) 187 I.T.R. 74 (St.).

(15) Mr. B.S. Gupta, Senior Advocate, appearing for the revenue cited two judgments of the Supreme Court in *Chowringhee Sales Bureau P. Ltd. v. Commissioner of Income Tax, West Bengal* (8) and *U.P. State Agro Industrial Corporation v. Commissioner of Income Tax (Addl.)* (9) and a judgment of the Allahabad High Court in *Commissioner of Income Tax v. Kedar Nath Finishing Works* (10) to contend that the money received by the assessee under the interim orders of the High Court which had been put in the suspense account was income of the assessee for the relevant year and liable to be taxed. These judgments have been given on different facts, and are, therefore not applicable to the point in issue in this case.

(16) In *Chowringhee Sales Bureau P.Ltd.'s* case (supra), the assessee, a private company while dealing in furniture, also acted as an auctioneer. In respect of sales effected by it as auctioneer, the assessee realised during the relevant period, in addition to the commission, a sum of Rs. 32,986 as sales tax. This amount was credited separately in its account books under the head "sales tax

7. (1992) 197 I.T.R. (Statutes) 149

8. (1973) 87 I.T.R. 542 (SC)

9. (1993) 201 I.T.R. 707 (S.C.)

10. (1991) 188 I.T.R. 707

collection account". The amount was neither paid to the actual owner of the goods nor was it deposited with the State exchequer by the assessee. Position taken by the assessee was that the statutory provisions creating that liability upon it were not valid. In the cash memos issued by the assessee to the purchasers in the auction sales. On these facts, it was held by their lordships that the sum of Rs. 32,986 was the trading receipt in the hands of the assessee.

(17) We find ourselves in agreement with the view taken by the Andhra Pradesh High Court in *Chodavaram Cooperative Sugars Ltd's case* (supra) Karnataka High Court in *Mysore Sugar Co. Ltd's case* (supra) and Bombay High Court in *Seksaria Biswan Sugar Factory Pvt. Ltd.'s case* (supra). The difference of price in levy sugar realised by the assessee under the orders of the High Court was hedged by certain conditions. Assessee did not acquire an absolute right to the amount realised by it and it was liable to refund the same in the event of the writ petition being dismissed. The writ petition is still pending for final adjudication. Under the circumstances, the difference in price of the levy sugar realised by the assessee could not be treated as its income arising or accruing to it for the relevant assessment year 1975-76.

(18) For the reasons stated above, we answer the question referred to us in the affirmative, that is in favour of the assessee and against the revenue.

S.C.K.

Before Ashok Bhan and N.K. Agrawal, J.

DHAN KAUR,—Petitioner

versus

THE CONTROLLER OF ESTATE DUTY,
PATIALA,—Respondent

Estate Duty Reference No. 2 of 1989

16th July, 1997

Estate Duty Act, 1953-Ss. 59(b) and 64(1)—Validity of reopening assessment—Deceased—Karta sole surviving male coparcener of his HUF consisting of widow and unmarried daughter—Duty paid on value of half share—On audit objection