

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

TAX CASE (INCOME TAX APPEAL) NO. 30 OF 2016

Assistant Commissioner of Income Tax-I, Bhilai, District Durg (C.G.)

... Appellant

Versus

M/s Ganapati Motors, G.E. Road, Supela, Bhilai, District Durg (C.G.)

... Respondent

TAX CASE (INCOME TAX APPEAL) NO. 8 OF 2017

Joint Commissioner of Income Tax, Bhilai Range, Bhilai, District Durg (C.G.)

... Appellant

Versus

M/s Ganpati Motors, G.E. Road, Opposite Basant Talkies, Supela, Bhilai, District Durg (C.G.)

... Respondent

For Appellant	:	Ms. Naushina Ali, Advocate.
For Respondent	:	Mr. S. Rajeshwara Rao, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per **Thottathil B. Radhakrishnan, C.J.**

25/04/2017

1. These Appeals under Section 260-A of the Income Tax Act, 1961, are admitted on the following formulated substantial question of law:

“Whether in law on facts and circumstances of the case, the ITAT was justified in upholding the order of CIT(A) in deleting the addition of Rs. 1,36,72,297/- made by the AO applying the provision of Section 43-B of the Income Tax Act, 1961, on account of unpaid VAT when particularly, the Supreme Court in the **Chowringhee Sales Bureau (P) Ltd. Vs. CIT, (1973) 87 ITR 542**, has held that unpaid sales tax liability has to be included as part of receipts of the assessee and thereby in the present case, the provision of Section 43-B are attracted?”

2. Heard learned Counsel for the revenue and learned Counsel for the respondent-assessee. The fundamental issue that arises for decision is, as to whether a particular amount which is subject matter of the appeal is to be treated as relatable to Value Added Tax (VAT) payable by the assessee and, if so, whether it has to be actually paid by him before filing of the return under the Income Tax Act. This question is relevant, having regard to the manner in which the question of law has been framed. The issue as

to whether Section 43-B of the Income Tax is attracted even when the assessee does not claim any deduction on the strength of that provision may also be relevant.

3. The Assessing Authority, on the instant issue, noticed that the assessee's claim regarding the treatment of VAT in the Books of Accounts has been verified from the Books and that has been found to be in order. The Assessing Authority also found that VAT has been found separately accounted for in the Books of Accounts. The only ground on which the Assessing Authority refused to exclude the VAT collected by the dealer from the profit of business is on the basis that the VAT component was not paid off on or before the due date for furnishing the return in relation to the previous year under Section 139(1) of the Income Tax Act. The First Appellate Authority also noticed that it is an undisputed fact that the Appellant did not charge VAT to the Profit and Loss account. It was therefore noted by the First Appellate Authority that in such circumstances, the liability may still be unpaid, but it cannot be disallowed being not claimed as deduction in the Books of Accounts.

4. With the aforesaid fact situation, we are unable to hold that the Tribunal was in error in law in dismissing the revenue's appeal making a reference to the decisions referred to by it.

5. The decision of the Apex Court in **Chowringhee Sales Bureau (P) Ltd. Vs. CIT, AIR 1973 SC 376 = (1973) 87 ITR 542**, dealt with a case where the contents of the Profit and Loss account apparently showed that though the assessee had attempted to show that there is a separate account for tax collected, the collection would have been only of a composite amount. The transaction dealt with in **Chowringhee's** case (*supra*) related to auction and the nature of the income derived by an auctioneer in the process of auction. In contradistinction thereto, are the decisions of the High Court of Delhi in **Commissioner of Income Tax v.**

Noble & Hewitt (India) (P) Ltd., 2008 305 ITR 0324, which make a nice distinction between **Chowringhee's** case and instances where Profit and Loss accounts and Service Tax accounts are maintained separately following mercantile system of accounting. As rightly noticed therein, it is not for the Income Tax department to make out a case relating to the correctness or otherwise of the mercantile system of accounting, resorted to and maintained by an assessee. The acceptability or otherwise of the accounts in a mercantile system would obviously be a matter of concern for other taxation authorities.

6. In the case in hand, as already noted, the fact situation that the Assessing Authority and the First Appellate Authority did not doubt the modality of the accounting system adopted by the assessee is an outstanding phenomenon which goes in favour of the assessee. Under such circumstances, it is not necessary for the authorities to consider, whether Section 43-B of the Income Tax is to be relied on by the assessee to claim any deduction.

7. For the aforesaid reasons, on the facts and circumstances of the case in hand, we answer to the question formulated in these appeals in the negative, that is to say, against the revenue and in favour of the assessee.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge