



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.04.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, THE CHIEF JUSTICE

and

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Tax Case No. 64 of 2002

-----

The Commissioner of Income Tax,  
Madurai.

... Applicant

vs.

M/s. Sri Murugan Offset Printers,  
Sivakasi.

... Respondent

For Appellant

... Mrs.Pushya Sitaraman  
Standing Counsel for Income Tax

For Respondent

... Mr.P.P.S.Janardhana Raja  
for M/s. Subbaraya Iyer

Reference under section 256(1) of the Income-Tax Act, 1961, the Revenue seeks reference of the following questions said to be questions of law and claimed to have arisen out of the order of the Income Tax Appellate Tribunal, Madras Bench "B" dt.22.4.1997 in ITA No.1706/Mds/90 (Assessment year 87-88) against the order of the Commissioner of Income Tax (Appeals), Madurai dt. 23.2.1990 in ITA No.471/89-90 against the order dt. 10.3.1989 of the Income Tax Officer, Ward I(2) in Px-039/87-88/VNR (2) , PA No.47-018-Fx-0389.

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in not holding that the amounts of sale tax on printing receipts collected by the assessee formed part of the assessee's trading receipts in view of the ratio of the Supreme Court's decisions in the case of chowringhee Sales Bureau P.Ltd. (87 ITR 542), Jonnalla Narashimarao and Co. and Others (200 ITR 588) and Sinclair Murray Co.P.Ltd. (97 ITR 615)



WEB COPY

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the essentials of the deposits are present in this case, overlooking that the liability of the assessee to return the amount to the parties arises only if and when the High Court allows the petition filed by the assessee in this regard ".

## J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

This is a reference under Section 256(1) of the Income Tax Act, 1961 at the instance of the Department in which the following question has been referred to us for our opinion: -

" Whether on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in not holding that the amounts of sales tax on printing receipts collected by the assessee formed part of the assessee's trading receipts in view of the ratio of the Supreme Court's decisions in the case of Chowringhee Sales Bureau P. Ltd (87 ITR 542), Jonnalla Narashimarao and Co. and others (200 ITR 588) and Sinchclair Murray Co. P. Ltd (97 ITR 615)"

2. Heard the learned counsel for the parties.

3. The assessee is a partnership firm. For the assessment year 1987-88, the Assessing Officer had made an addition of Rs.1,49,620/- on the ground that the assessee was found to have collected sales-tax contingency deposit of Rs.1,49,620/- which had not been remitted to the Government account. The assessee contended that the Tamil Nadu Government had brought in an amendment to the Sales-Tax Act to the effect that all contract receipts are liable for levy of sales tax. As the assessee had received charges on printing and processing on job work basis, the Sales Tax Department had interpreted that the receipts are in the nature of contract receipts and proposed to levy sales tax. The assessee had objected to this levy of sales tax in a writ petition filed in this Court and obtained a stay order which was subsequently vacated. It is submitted that the said petition is still pending.





WEB COPY

6. Following the above said decision, and also the decision of this Court in C.I.T v. Southern Explosives Co. (supra), the question referred to us is answered in the affirmative i.e., in favour of the department and against the assessee.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

pv/

Copy to:

1.The Assistant Registrar  
Income Tax Appellate Tribunal,  
Rajaji Bhavan, Besant Nagar,  
Chennai 90 (5 copies)

2.The Secretary,  
Central Board of Direct Taxes,  
New Delhi (3 Copies)

3.The Commissioner of I.T.  
Madurai.

4.The Commissioner of Income Tax, (Appeals)  
Madurai.

5.The Income Tax Officer, Ward I (2)  
Virudhunagar.

+1cc to Ms.Pushya Sitaraman, Advocate Sr 19760

KC (CO)  
km/2.5.

T.C.No.64 of 2002