MISCELLANEOUS CIVIL

Before Bal Raj Tuli, J.

DES RAJ,—*Petitioner.*

versus.

THE TREASURY OFFICER AND ASSESSING AUTHORITY ETC.,—*Respondents.*

Civil Writ No. 2561 of 1965.

January 8, 1971.

Punjab Professions, Trades, Callings and Employments Taxation Act (VII of 1956)—Section 5—Punjab General Sales Tax Act (XLVI of 1948)—Sales tax realised by a trading concern—Whether forms part of its income—Profession tax on the sales-tax realised—Whether leviable.

Held, that under section 5 of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956, profession tax is payable on the total gross income of a person and in case of a trading concern, expenses mentioned in clause (b) of the Explanation to Section 5 are to be deducted while computing its income for the purposes of the assessment of profession tax. Sales tax is not an expense and, therefore, it is not mentioned in clause (b) of the Explanation. It is quite evident from the provisions of the Punjab General Sales Tax Act, 1948, that a dealer has to realize the sales tax on behalf of the Government as its agent and has to pay it to the Government. For this purpose, a dealer is required to maintain accounts and regular assessments are made. Hence it is absolutely illegal to include the sales tax realized by a trading concern in its gross income for the purposes of determining the profession tax under the Act. (Para 3).

Petition Under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, or any other appropriate writ, order or direction be issued quashing the impugned orders of assessment year 1963-64 and 1964-65 of respondent No. 1 and order of rejection of appeal dated 28th October, 1964 of respondent No. 2 and orders of rejection of revision dated 29th June, 1965 of respondent No. 3.

D. C. AHLUWALIA, ADVOCATE, for the petitioner.

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL, PUNJAB, for the respondents.

JUDGMENT.

B. R. TULI, J.—(1) The petitioner is one of the partners of the firm, M/s. Des Raj Ganga Ram, which deals in timber and is registered as a dealer under the Punjab General Sales Tax Act, 1948. The partners of the firm were also liable to pay tax under the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956 (hereinafter called the Act). For the years 1963-64 and 1964-65, the gross income of the firm was determined by including the sales tax realised by it and on the determination of that income the partners were assessed to profession tax of Rs. 120, each per year. The petitioner filed appeals against the orders of the Assessing Authority which were dismissed by the Appellate Authority, (Deputy Commissioner, Patiala) on October 28, 1964. The revision petitions against the appellate orders were dismissed by the Excise and Taxation Commissioner on June 29, 1965. All the authorities held that the sales tax was not deductible from the gross income of the firm because it was not mentioned in section 5(b) of the Act. It is also stated that instructions to this effect had been issued by the Government on September 10, 1958. The petitioner filed the present petition challenging the orders of the authorities under the Act.

(2) Written statement has been filed in which the same position has been taken.

(3) There is force in the submission of the learned counsel for the petitioner that sales tax realised by the firm does not constitute its income. This tax is realised by the firm as an agent for the Government and has to be paid to the Government. The sales tax realised by the petitioner's firm does not form part of its income. Under section 5 of the Act, the tax is payable on the total gross income of a person and in case of a trading concern expenses mentioned in clause (b) of the Explanation to section 5 are to be deducted while computing its income for the purposes of the assessment of profession tax. Sales tax is not an expense and, therefore, it was not mentioned in clause (b) of the Explanation. The point to be considered is whether the sales tax realised by the trading concern forms part of its income. It is quite evident from the provisions of the Punjab General Sales Tax Act, 1948, that the dealer has to realise the sales tax on behalf of the Government and has to pay it to the Government. For this purpose, he is required to maintain accounts and regular assessments are made. It is, therefore, absolutely illegal to include the sales tax realised by a trading concern in its gross income for the purposes of determining the tax under the Act.

(4) For the reasons given above, I accept this writ petition and hold that the sales tax realized by the firm Des Raj Ganga Ram has not to be included in the income for the purposes of determining profession tax on its partners. The Assessing Authority shall accordingly amend its assessment orders and refund the excess amount realised from the petitioner. The petitioner is also entitled to his costs of this petition. Counsel's fee Rs. 100.00.

B.S.G.