

(1991) 06 KAR CK 0028

In the Karnataka High Court

Case No : Income-tax Referred Case No. 200 of 1987

Chief Commissioner (Administration)

APPELLANT

Vs

Sanjay Sales Syndicate

RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

Income Tax Act, 1961 — Section 139, 145, 43 B

Citation : (1992) 197 ITR 255 : (1993) 69 TAXMAN 15

Hon'ble Judges : N. Venkatachala, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : Chandra Kumar, for the Appellant; G. Sarangan, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The question for our consideration referred under the provisions of the Income Tax Act, 1961 reads thus :

"Whether, on the facts and in the circumstances of the case, while computing the income on accrual basis on the mercantile method of accounting in accordance with section 145, sales tax which was an accrued liability, not payable within the accounting year, could be added back u/s 43B of the Income Tax Act, 1961 ?"

2. The question pertains to the assessment year 1984-85. The assessee is a dealer registered under the provisions of the Karnataka Sales Tax Act. Sale tax collected by the assessee in one month having regard to the provisions of the Karnataka Sales Tax Act and the Rules framed thereunder. According to the assessee, he has been maintaining the mercantile system of accounting. During the relevant previous year, a sum of Rs. 2,904 was collected by the assessee as sales tax and surcharge and this was during the last month of the previous year. Naturally, this will have to be paid within a month thereafter, which will actually to be the first month of the next accounting year. The Revenue refused to deduct this amount from the receipts of the assessee and thereby disallowed the claim of the assessee for deduction. Ultimately, the matter came up before the Appellate Tribunal. The Tribunal also upheld the deduction. Several reasons are

given by the Appellate Tribunal ultimately holding that section 43B of the Income tax Act, 1961, was not at all applicable to the facts of the case. Hence, the Revenue has sought this reference.

3. The Appellate Tribunal mainly proceeds on the assumption that the sales tax collected by the assessee was never part of the income of the assessee but throughout it was set apart in a separate account and therefore, the question of deduction of the said amount does not arise. The assumption seems to be that since the amount never went into grossing up of the income, the question of deduction will never arise.

4. The other reasoning is based on the principle applicable to the mercantile system, i.e., the liability having accrued, the assessee is entitled to have deduction in the accounts.

5. Both these reasonings need not be considered by us in view of the specific language of section 43B of the Income Tax Act, 1961, read with Explanation 2 thereto introduced with effect from April 1, 1984, by the Finance Act, 1989. The effect of this Explanation is that every sum payable by an assessee if not paid during the relevant accounting year cannot be deducted under the main provision of section 43B even though the liability was incurred during the said accounting year. Whatever argument that may have been available to the assessee as to the interpretation" of the phrase "any sum payable" found in the main provision of section 43B is not available now in view of this Explanation 2. At the same time, we have to note that the sales tax collected by the assessee normally partakes of the character of a trading receipt and there is no reason to ignore the said quality of receipt in the instant case.

6. Explanation 2 was introduced with retrospective effect by the Finance Act, 1989. This was not available to the Appellate Tribunal when it considered the case. Consequently, the matter will have to go back to the Appellate Tribunal to consider the question afresh.

7. At the same time, we have to note that there is first proviso to the main section 43B which enables deduction of the sum referred to in the main provision, provided the amount was paid by the time the assessee files his return for the relevant accounting period as stated in the proviso; that is to say, even though the liability of payment arose earlier and the accounting year stood closed and the payment was made during the next accounting year, still the payment is traced back to the benefit of the earlier accounting year in case the assessee had made the payment before the return of income was filed on or before the due date applicable for furnishing the return of income under sub-section (1) of section 139 of the Income Tax Act, 1961, and the assessee had furnished proof of having made such payment. This proviso was inserted by the Finance Act, 1987, with effect to this proviso in the present case in actually making the said proviso effective retrospectively. We are of the view that the said proviso is only a machinery provision which could be applied to all pending

matters which are not concluded finally.

8. Now, since the matter is sent back to the Appellate Tribunal to consider the effect of Explanation 2 in the light of the observation made already, it is but fair for the Appellate Tribunal to give effect to the first proviso to section 43B in the instant case. In case the assessee had actually paid the amount on or before the due date as stated in the said proviso and furnishes proof of the same, at least now, the benefit shall be given to the assessee.

9. The reference is disposed of accordingly.