(2005) 02 AHC CK 0024

In the Allahabad High Court

Case No : IT Reference No. 267 of 1991

Commissioner of Income Tax, Agra — APPELLANT

Vs

P.C. Industries — RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:
Income Tax Act, 1961 — Section 139, 256(1), 43B

Citation : (2005) 148 TAXMAN 495

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—The income tax Appellate Tribunal, Delhi has referred the following question of law u/s 256(1) of the income tax Act, 1961 (hereinafter referred to as ''the Act'') for opinion to this Court :-- "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the first proviso below section 43B inserted by the Finance Act, 1987, w.e.f. 1-4-1988 is retrospective in nature and, therefore, applicable for the assessment year 1984-85 onwards thereby allowing claim of deduction of sales tax liability amounting to Rs. 47,923 paid after the close of the accounting period, but before 30th of June, 1984?"

The reference relates to the assessment year 1984-85.

2. Briefly stated, the facts giving rise to the present reference are as follows:

During the course of the assessment proceeding, the Assessing Authority noticed that a sum of Rs. 47,923 was found payable on account of sales tax which was appearing at the balance sheet as at Dussehra, 1983 relevant to the assessment year 1984-85. In other words, the sales tax has been collected by the respondent assessee from its customers but was not paid to the Government. The Assessing Officer held it as a trading receipt in view of the provisions of section 43B, which was inserted with effect from 1-4-1984. He had held that the same could not be allowed as a deduction unless it was actually paid on or before the close of the accounting period ended on Dussehra, 1983. The order was upheld in appeal. However, in further appeal before the Tribunal, the Tribunal interpreting this provision of section 43B of the Act, held that even if the payment of tax liability was actually made beyond the end of the accounting period but before the expiry of time allowed under the relevant sales tax laws of the State, it was allowable as a deduction. It also took note of the Explanation II which was inserted in section 43B of the Act by the Finance Act, 1987, with effect from 1-4-1988, which provided that if before the due date of filing of the return the amount of tax is paid, the liability to pay tax is discharged, then the provisions of clause (a) would not be applicable. In the present case the Tribunal has found that the due date applicable for furnishing the return of income under sub-section (1) of section 139 was 30-6-1984 and payment has been made before this date. The Tribunal following the decision of the Delhi High Court in the case of Sanghi Motors Vs. Union of India and others, , has taken the view that this proviso is prospective in nature and it is applicable from the assessment year 1988-89 onwards. The Tribunal, therefore, allowed the claim.

3. We have heard Sri A.N. Mahajan, learned Standing Counsel for the Revenue. Nobody has appeared on behalf of the respondent assessee.

4. We find that the Apex Court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, , has held that the proviso is retrospective in nature. In this view of the matter, we do not find any legal infirmity in the order of the Tribunal. We accordingly answer the question of law referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.