(2002) 08 KAR CK 0047

In the Karnataka High Court

Case No : Income Tax A. No. 171 of 2001

Commissioner of Income Tax and Another — APPELLANT

Vs

Narasegowda — RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Income Tax Act, 1961 — Section 43 B
Karnataka Excise Act, 1965 — Section 17

Citation : (2004) 267 ITR 766

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant;

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The question of law raised in the present appeal is :

"Whether the Tribunal was correct in holding that the kist amount payable by the assessee to the State Government which has not been actually paid cannot be disallowed u/s 43B of the Act in view of the judgment of this hon''ble court ?"

2. Sri M.V. Seshachala, learned standing counsel appearing for the appellants, fairly concedes that the issue raised in these appeals has been answered by a Division Bench of this court in the case of Commissioner of Income Tax Vs. Sri Balaji and Co., D. Dasappa, Renukasri and Co., S.S.B. Gowdaiaha and Sons, Tirumal Traders, Sri Rajeshwari Enterprises, Anjanappa and Co. and P.K. Shankaranarayana and Co., , wherein it has been held that (page 761) :

"The provisions of Section 17 of the Karnataka Excise Act, 1965, have referred to the power to grant lease of the right to manufacture. Section 24 has conferred the additional power on the State Government to accept payment of a sum or levy such licence fee or privilege fee as may be prescribed, in consideration of grant of lease or licence or both, by or under this Act. This power is in addition to any excise duty or countervailing duty leviable under Sections 22 and 23. If the

Legislature has used specific language then it cannot be stretched to include certain sums which are not in the nature of payment mentioned by the Legislature. Payment of lease money/rental may be a statutory liability but however any statutory liability does not come within the purview of Section 43B. It is only that statutory liability which is in the nature of tax, duty, cess or fee to which the provisions of Section 43B are attracted. Since the kist/rental could not be considered to be falling under either of the items, the provisions of Section 43B cannot be attracted and as such we are of the view that the Tribunal was justified in law in holding that the kist amount payable to the Government by the assessee could not be brought within the purview of the provisions of Section 43B of the Income Tax Act, 1961. It is a different matter that the licensees are not paying the rent in time for which it is only the Legislature which could intervene and not the courts."

3. In the above view of the matter, the appeal is dismissed.