

(1992) 01 CAL CK 0017
In the Calcutta High Court
Case No : IT Ref. No. 90 of 1991

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

BIMAL MRISHNA SIL and BROS.

RESPONDENT

Date of Decision : 06-01-1992

Acts Referred:

Citation : (1992) 108 CTR 197

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Full Bench

Judgement

AJIT KUMAR SENGUPTA, J. :

In this reference under s. 256(1) of the IT Act, 1961 for the asst. yr. 1985-86 the following question of law has been referred to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the first proviso to s. 43B would be applicable from the asst. yr. 1984-85 onwards and thereby confirming the order of the CIT(A) deleting disallowance of Rs. 19,093 added by the ITO under s. 43B of the IT Act, 1961 ?"

2. Shortly stated the facts are that the Assessing Officer on examination of books of account of the assessee firm found that there was outstanding sales tax liability of Rs. 19,093 reflected in the balance sheet. He invoked the provisions of s. 43B and disallowed and added back the above liability in the income of the assessee.

3. Being aggrieved, the assessee challenged the above disallowance in appeal before the CIT(A). Before the CIT(A) it was contended that the assessee firm was a registered dealer within the meaning of Bengal Finance (Sales Tax) Act, 1941 and was required to furnish sales tax return quarterly accompanied with challans within 30 days from the end of each quarter. The sales tax shown as liability pertained to the last quarter ending on 30th April, 1985. This liability was cleared

and the amount was paid within 30 days of the end of the accounting year. As such s. 43B was not applicable. The CIT(A) accepted the above contentions and directed the ITO to allow the claim after verification.

4. The Revenue challenged the above order before the Appellate Tribunal. It was not disputed that amount of sales tax shown as outstanding was actually paid on 9th May, 1985 well before the time of furnishing of return for the asst. yr. 1985-86. The Tribunal held that the case to be covered by the decision of the Income Tax Appellate Tribunal. A Bench, Ahmedabad in the case of (1989) 31 ITD 305 In the abovesaid case the Bench after considering amendments introduced in s. 43B by the Finance Act, 1989 had held that the sales tax payable for the last quarter which is duly paid well before the due date for furnishing the return of income of the relevant previous year cannot be disallowed under s. 43B. The Tribunal agreed with the view taken by the Ahmedabad Bench and upheld the order of the CIT(A).

5. It is not in dispute that this question is now concluded by the decision of this Court in the case of Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, . Following the said decision we answer the question in this reference in the affirmative and in favour of the assessee.

There will be no order as to costs.

SHYAMAL KUMAR SEN, J. :

I agree.