**(1995) 11 RAJ CK 0069**

**In the Rajasthan High Court**

**Case No :** DB IT Ref. No. 62 of 1995, 22nd November, 1995

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

CHANDRA SINGH and SONS. — RESPONDENT

**Date of Decision :** 22-11-1995

**Acts Referred:**
Income Tax Act, 1961 — Section 256, 43B

**Citation :** (1996) 131 CTR 547

**Hon'ble Judges :** B. R. Arora, J

**Bench :** Division Bench

# Judgement

B. R. ARORA, J. :

The Tribunal, Jaipur Bench, Jaipur for the asst. yr. 1986-87 referred the following question of law under s. 256(1) of the Act for the opinion of the High Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the outstanding sales-tax amounting to Rs. 52,268 is not disallowable under s. 43B of the Act as the same was paid before the due date of return filing whereas the amendment to that effect came into force w.e.f. 1st April, 1988 only?"

2. The material facts on the basis of which the above question of law is to be decided is similar to those in DB IT Ref. No. 9/92, Commissioner of Income Tax Vs. Achaldas Dhanraj and Sanklecha Brothers, The question referred for the opinion of the High Court is identical with the question which were referred in DB IT Ref. No. 9/92. While answering the reference in DB IT Ref. No. 9/92 this Court held that :

"The Tribunal was justified in directing that the amount of unpaid Sales-tax liabilities to the last date of previous year could not be disallowed if it is found to have been paid subsequently, within the time allowed under the relevant Sales-tax Act. The proviso to s. 43B for that purpose is to be interpreted as clarificatory and applicable to the assessment years from 1984-85 to 1987-88."

 

3. For the reasons given in DB IT Ref. No. 9/92 (supra) decided on 27th March, 1995, the question referred is also answered in favour of the assessee and against the Revenue.

4. Consequently, the reference is answered in favour of the assessee and against the Revenue and it is held that the Tribunal was justified in holding that the outstanding sales-tax amounting to Rs. 52,268 is not disallowable under s. 43B of the Act as the same was paid before the due date of return filing whereas the amendment to that effect was made on 1st April, 1988 is retrospective and is applicable to the assessment year in question, i.e., 1986-87.