
(2003) 03 RAJ CK 0044

In the Rajasthan High Court

Case No : IT Appeal No. 28 of 2000 10 March 2003 & Income Tax Appeal No. 28 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Devendra Udhyog

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Income Tax Act, 1961 — Section 43B

Citation : (2004) 186 CTR 462 : (2003) 264 ITR 701 : (2006) 146 STC 593

Hon'ble Judges : Y.R. Meena, J;K.C. Sharma, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; None, for the Respondent

Judgement

Y.R. Meena, J.—This appeal is directed against the order dated June 6, 2000. The following questions are raised for our consideration in appeal :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the liability for payment of collected sales tax to the Government having been deferred under the said scheme, is allowable u/s 43B in spite of the fact that there was no amendment in the Sales Tax Act to the effect that the sales tax deferred under the scheme shall be treated as actually paid as provided in the Central Board of Direct Taxes Circular No, 496, dated September 25, 1987 (see [1988] 169 ITR 53) ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law by holding that the Board's Circular No. 674, dated December 29, 1993 (see [1994] 205 ITR 119), is applied in the assessee's case whereas the assessee did not produce any order of the State Government notifying that the sales tax deferred would deemed to have been actually collected and disbursed as loans ?"

2. The brief facts of the case are that the assessee has shown the sales tax incentive under the heading "Reserve fund and surpluses" amounting to Rs.

2,34,845 for the assessment year 1989-90. During the course of proceedings, the Assessing Officer found that the amounts were related to the Sales Tax Deferment Scheme for Industries, 1987 of the Government of Rajasthan.

3. Under the scheme, the assessee had collected the sales tax but not paid to the State Government within the accounting period or before filing of the return of income. The Assessing Officer has invoked the provisions of Section 43B and added the amount of Rs. 2,34,845 in the assessment year 1989-90, i.e., the assessment year in hand.

4. The assessee carried the matter before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) has also confirmed the addition vide order dated October 29, 1993.

5. In appeal before the Tribunal, the Tribunal has applied Circular No. 674, dated December 29, 1993 (see [1994] 205 ITR 119), and has taken the view that in the light of the sales tax deferment scheme the assessee has discharged his liability and addition cannot be made invoking the provisions of Section 43B of the Act.

6. None appeared for the assessee.

7. Heard Mr. Bhandawat, learned counsel for the Department. Mr. Bhandawat submits that for the purpose of benefit of the Central Board of Direct Taxes Circular No. 496, dated September 25, 1987 (see Vazir Sultan Tobacco Co. Ltd. Vs. Commissioner of Income Tax, unless the Government made an amendment in the Sales Tax Act to the effect that the sales tax collected under the sales tax deferment scheme shall be treated as actually paid for the purpose of Section 43B, the addition u/s 43B should be made. Admittedly, no such amendment has been made in the Sales Tax Act by the State Government.

8. He further submits that in the Central Board of Direct Taxes Circular No. 674, dated December 29, 1993 (see [1994] 205 ITR 119), if the sales tax liability of the sales tax collected has not been paid actually nor that liability has been converted into loan as required under Circular dated December 29, 1993, that amount is hit by the provisions of Section 43B of the Act. He submits that in this case the amount of sales tax collected has not been converted into loan as required under the Circular dated December 29, 1993, therefore, the Tribunal has committed an error in allowing the deduction contrary to the circular and the provisions of Section 43B of the Act.

9. Considering the submissions of Mr. Bhandawat that neither there is amendment in the Sales Tax Act to give effect to the provisions of the scheme nor the sales tax collected has been converted into loan as required in the circular of 1993, in our view, the Tribunal has committed an error in allowing the deduction contrary to the provisions of Section 43B of the Act, 1961.

10. Consequently, we set aside the order of the Tribunal and restore the order of the Assessing Officer.

11. The appeal stands disposed of accordingly.