(2002) 06 GUJ CK 0023

In the Gujarat High Court

Case No : IT Reference No. 206 of 1989 20 June 2002 & Income-tax Reference No. 206 of 1989

Commissioner of Income Tax APPELLANT

Vs

Electro Controls RESPONDENT

Date of Decision : 20-06-2002

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

Citation : (2002) 123 TAXMAN 824

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Full Bench

Advocate : Ms. Mona Bhatt, for the Revenue and R.K. Patel, for the Assessee, for the Appellant;

Judgement

M.S. Shah, J.

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of the assessment year 1984-85:

Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 35,272 on account of unpaid sales tax u/s 43B of the

Income Tax Act, 1961?

2. We have heard Ms. Mona Bhatt, the learned counsel for the revenue and Mr. R.K. Patel, the learned counsel for the respondent- assessee.

3. The controversy pertains to the amount which was collected by the respondent-assessee as sales tax in the last quarter of the previous year but

payable statutorily in the subsequent year. The Tribunal had held in favour of the assessee in view of the decision or the Andhra Pradesh High

Court in Srikakollu Subba Rao and Co. and Others Vs. Union of India and Others,

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4. At the hearing today, our attention is invited to the decision of the Supreme Court in Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax,

Delhi,

. The Apex Court has held that as per the first proviso added to section 43B of the Income Tax Act, 1961 by the Finance Act, 1987, the main

part of section 43B will not apply in relation to any sum which was actually paid by the assessee in the next accounting year if it was paid on or

before the due date for furnishing the return of income in respect of previous year, in which the liability to pay such sum was incurred and the

evidence of such payment is furnished by the assessee along with the return. Explanation 2 was, therefore, added by the Finance Act, 1989 with

retrospective effect from 1-4-1984 for the purpose of removing any ambiguity about the term ''any sum payable'' under clause (a) of section 43B.

5. Following the aforesaid decision, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

6. The reference, accordingly, stands disposed of.

