(2007) 01 AHC CK 0186

In the Allahabad High Court

Commissioner of Income Tax — APPELLANT

Vs

Enterprises India — RESPONDENT

Date of Decision : 12-01-2007

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

Citation : (2007) 291 ITR 473

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 for the opinion of this court:

Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was legally justified in holding that the first proviso to Section 43B, inserted by the Finance Act, 1987, with effect from April 1, 1988, was retrospective in operation being clarificatory in nature, and thereby directing to restrict the disallowance u/s 43B, out of sales tax collections made during the year, to an amount which has not been paid in the succeeding year within the time allowed under the aforesaid proviso and the relevant sales tax laws ?

2. The reference relates to the assessment year 1987-88.

3. Briefly stated the facts giving rise to the present reference are as follows:

4. In the accounts of the assessee, there was an outstanding sales tax liability of Rs. 2,01,800 on account of sales tax. The assessee had made a payment of sales tax of Rs. 1,75,353 in the year under consideration, which amount had been disallowed u/s 43B in the assessment year 1986-87. After deducting this amount from the outstanding liability of Rs. 2,01,800, the balance of Rs. 26,447 was disallowed u/s 43B in the assessment for the assessment year under

consideration. In appeal, besides confirming the disallowance of Rs. 26,447 in view of Explanation 2 inserted by the Finance Act, 1989, with retrospective effect from April 1, 1984, the learned Commissioner of Income Tax (Appeals) enhanced the assessed income by Rs. 1,75,353 because the deduction on account of that amount of unpaid sales tax liability disallowed by the Assessing Officer, in the assessment year 1986-87 had been allowed by the first appellate authority. In further appeal by the assessee, the Appellate Tribunal, following the decision of the Patna High Court in the case of Jamshedpur Motor Accessories Stores Vs. Union of India (UOI) and Others, and certain other judicial decisions, directed the Assessing Officer to ascertain the amount of sales tax realisation during the year, the payments made during the year out of these collections and to ascertain whether the balance amount had been paid within the statutory time allowed under the first proviso to Section 43B of the Income Tax Act which, though inserted by the Finance Act, 1987, with effect from April 1, 1988, was held to be retrospective in operation, being explanatory in nature, and to delete the disallowance made u/s 43B to that extent. While holding so, the Appellate Tribunal pointed out that Explanation 2 to Section 43B does not control the first proviso to Section 43B but was subject to the said proviso.

5. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue.

6. In view of the decision of the apex court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, the question referred to was answered in favour of the assessee and against the Revenue.

7. We accordingly answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.

