(2006) 01 MAD CK 0035

In the Madras High Court

Case No : Tax Case No. 310 of 2001

Commissioner of Income Tax APPELLANT

Vs

Everest Litho Press RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 28, 43B

Citation : (2006) 285 ITR 297

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant; None, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—At the instance of the Revenue, the Tribunal has stated a case and referred the following question of law u/s

256(1) of the IT Act:

Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in not holding that the amounts of sales-tax on printing receipts

collected by the assessee formed part of the assessee''s trading receipts in view of the ratio of the Supreme Court''s decisions in the cases of

Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, , Jonnella Narashimharao and Co. etc. Vs. Commissioner

of Income Tax, and Sinclaire Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta, ?

2. The relevant assessment year is 1987-88 and the corresponding accounting year ended on 9th Sept., 1986. The respondent/assessee was

carrying on printing work. The only point of dispute pertains to the inclusion of Rs. 19,685 representing the amounts collected towards sales-tax held by the assessee as contingent deposit. The AO made addition u/s 43B of the IT Act. Aggrieved by the order of the AO, the assessee filed an

appeal to the CIT(A), who accepted the contention of the assessee and allowed the appeal. Against the order of the CIT(A), the Revenue

appealed before the Tribunal. The Tribunal held that the assessee did not claim amount as deduction u/s 43B of the Act and held that Section 43B

of the Act could not be applied to the present case and hence, confirmed the order of the CIT(A).

3. The learned Counsel for the Revenue contended that the assessee collected sales-tax and did not deposit the same to the Sales-tax Department.

On the other hand, the amount was shown as contingent deposit and the said amount was never paid to the Government and therefore, Section

43B of the Act has been rightly applied by the AO. Despite service on the respondent/assessee there is no representation.

4. Section 43B of the IT Act reads as follows:

Section 43B--Certain deductions to be only on actual payment.--Notwithstanding anything contained in any other provision of this Act, a

deduction otherwise allowable under this Act in respect of--

(a) any sum payable by the assessee by way of tax or duty under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or other

fund for the welfare of employees, shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the

assessee according to the method of accounting regularly employed him) only in computing the income referred to in Section 28 of that previous

year in which such sum is actually paid by him.

5. A reading of Section 43B of the Act makes it clear that if tax having become payable is not paid by the assessee then alone Section 43B of the

Act comes into operation. Section 43B of the Act was inserted w.e.f. 1st April, 1984, to discourage taxpayers who did not discharge their

statutory liability of payment of sales-tax, excise duty, employer''s contribution to provident fund, etc., for long periods of time, but claimed

deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. After the insertion of Section 43B, even if the assessee had regularly adopted the mercantile system of accounting, the amount of tax payable

by the assessee could be deducted only in the year in which the sum was actually paid and not in the year in which the assessee incurred the liability

to pay that tax.

6. In the case on hand, the amount collected as sales-tax was never claimed as deduction by the assessee. Section 43B of the Act is not attracted

at all when the assessee has not claimed any deduction of the amount collected by it. The Gauhati High Court, in the case of India Carbon Ltd. Vs.

Inspecting Assistant Commissioner of Income Tax and Another, , considered a similar issue and held as follows:

The amount of sales-tax appeared on the liabilities side of the balance-sheet of the petitioner-company. The petitioner did not claim the added

amount as deduction nor did he charge it to the P&L a/c. The amount of sales-tax could not be added back to the income of the assessee u/s 43B.

In the present case, the question was whether Section 43B applied and not whether sales-tax collected formed part of the trading receipts.

7. In the instant case, the amount had been added by the AO u/s 43B of the Act. All the authorities below had given a factual finding that the

assessee never claimed deduction u/s 43B of the Act and therefore, Section 43B of the Act is not applicable.

8. The learned Counsel appearing for the Revenue relied on the decision in Commissioner of Income Tax Vs. Southern Explosives Co., . The issue

in that case is whether sales-tax collected can be considered as a trading receipt or not. In the instant case, the issue is whether the addition can be

made u/s 43B of the Act or not. The decision referred supra has no relevance and does not help the Revenue''s contention. The question of law

raised by the Revenue deals only with the question whether sales-tax collected but not paid would form part of the business or trading receipt. The

question raised does not bring out the real controversy in issue. It does not deal with the real issue. It is well settled law that the jurisdiction of the

High Court in a reference is in the nature of advisory jurisdiction and only such issues can be and are answered as arise properly on the facts and

the questions referred to the High Court. The Revenue in the appeal did not bring about the real controversy in this case. In view of the above, we return the question referred to us unanswered. Further, we have also noticed that the tax effect in the present case is very negligible.

