(2002) 07 GUJ CK 0110

In the Gujarat High Court

Case No : Income Tax Reference No. 110 of 1995

Commissioner of Income Tax	APPELLANT
Vs	
Goodluck Silicate Ind. (P.) Ltd.	RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:
Income Tax Act, 1961 — Section 43B, 47(4)

Citation : (2004) 134 TAXMAN 715

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

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant;

Judgement

K.A. Puj, J.—In this reference, at the instance of the applicant-Revenue, the following question of law is referred to for the opinion of this Court for Assessment Year 1987-88:-

"Whether, the Appellate Tribunal is right in law and facts in deleting the addition made by the Income Tax Officer invoking the provisions of Section 43B in respect of unpaid sales tax liability?"

2. In this reference, the only dispute is about disallowance u/s 43B for unpaid sum of Rs. 2,05,607/- for Sales Tax. It is the stand of the assessee before the Assessing Authority that the State Government had allowed the assessee to return Sales Tax collected as a sort of incentive provided for the growth of industry. On this basis, it was contended by the assessee that its case was covered by the provisions contained in Section 43B of the I.T. Act. The Income Tax Officer has however, rejected the assessee''s claim.

3. Being aggrieved by the said Order of the Income Tax Officer, the assessee has preferred an appeal before the Commissioner of Income Tax (Appeals) and while disposing of the said appeal, the Commissioner of I.T. (Appeals) has taken note of Circular No. 496 dated 29.5.1987 issued by the Central Board of Direct Taxes and Gujarat Ordinance No. 1 of 1988 dated 24/3/88 and on the basis of the said

circular, the C.I.T. (Appeals) has allowed the appeal of the assessee. Thereafter, in appeal filed by the Revenue before the Tribunal, a view was taken by the Tribunal on the basis of the circular issued by the Central Board of Direct Taxes as well as the resolutions of the State Government as referred to above, that the requirement of getting exemption from the mischief of Section 43B in respect of Sales Tax Deferment Scheme of the Gujarat Government are satisfied. The Tribunal, therefore, held that the amount of Rs. 2,05,607/- of differed Sales Tax is not caught by mischief of Section 43B of the Act.

4. Being aggrieved by the aforesaid decision of the Tribunal, the Revenue has come in reference before this Court and the above question was referred for the opinion of this Court.

5. Heard Mr. Tanvish Bhatt, Ld. Standing Counsel appearing for the applicant-revenue. Nobody appears on behalf of the respondent assessee though the notice was duly served. At the time of hearing of his reference, our attention is drawn to the decision of the Honourable Supreme Court in the case of Commissioner of Income Tax Vs. Gujarat Polycrete Pvt. Ltd., wherein it is held that the Central Board of Direct Taxes Circular dated September 25, 1987 would apply only if a State would have amended its Sales Tax to provide that the Sales Tax that was differed by an incentive scheme framed by it would be treated as actually paid, so as to meet the requirements of Section 43B of the Income Tax Act, 1961. It was further held on the basis of the facts of that case that notice had not been taken of the Gujarat Sales Tax Act, 1969 to ascertain whether or not there was such an amendment. The Honourable Supreme Court thereafter has taken the view that the question whether the Appellate Tribunal was right in law and facts in directing the Assessing Officer to allow the claim of the assessee in respect of unpaid sales tax if the same was covered by the specific scheme of the Gujarat Government whereby the deferred payment scheme was converted into interest free loan particularly when the provisions of Section 43B are retrospective in operation was a question of law which had to be referred. Mr. Bhatt has therefore urged that the matter may be remanded to the Tribunal to ascertain as to whether any amendment is made by the State Government in Gujarat Sales Tax Act, 1969.

Here, in the present case, as already observed hereinabove, the Gujarat Government has passed a resolution bearing No. INC/1087/143-1 dated 21.3.1988 and the said resolution was made operative from 1.4.1983. The period involved in the present assessment is therefore covered by the said resolution. The benefit is given vide Circular dated 25.9.87 wherein the Board has made it clear that if the Sales Tax due to the Government is converted as a loan which may be repaid by the assessee subsequently by installments, the Department shall see that the Sales tax due as actually paid for all purposes is available to the assessee. The combined reading of this circular of CBTD as well as the resolution issued by the State Government would make it clear that the assessee is entitled to relief and benefit given u/s 43B can be claimed by the assessee.

6. It is required to be noted here that subsequently, the State Government has made an amendment in the Gujarat Sales Tax Act and second proviso to Section 47(4) of the Act was inserted by Gujarat V. of 1988 w.e.f. 24.3.88 which reads as under:-

"Provided further that notwithstanding anything contained in this Act or in the Rules made there under but subject to such conditions as the State Government or the Commissioner may by general or special Order specify, where a dealer to whom incentives by way of determent of sales tax or purchase tax or both have been granted by virtue of an Eligibility certificate granted by the Commissioner of Industries, Gujarat State or any officer authorised by him in this behalf and where a loan liability equal to the amount of any such tax payable by such dealer has been raised by the Gujarat Industrial Investment Corporation Limited or the Gujarat State Financial Corporation Limited, then such tax shall be deemed, in the public interest, to have been paid.

7. Since the resolution issued by the State Government earlier was made effective from 1983, the assessee''s case was covered by the said resolution and amendment made thereafter on 24.3.1988 is clarificatory in nature. We are, therefore, of the view that the Tribunal was right in deleting the addition made by the Income Tax Officer invoking the provision of Section 43B in respect of unpaid Sales Tax liability.

8. We, therefore, answer this question in the affirmative i.e. in favour of the assessee and against the Revenue. This Reference is accordingly disposed of with no Order as to costs.

