(2003) 05 GAU CK 0053

In the Gauhati High Court

Case No : Income-tax Appeal No. 13 of 2001

Commissioner of Income Tax APPELLANT

Vs

India Carbon Ltd. RESPONDENT

Date of Decision : 22-05-2003

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

Citation : (2003) 262 ITR 327 : (2003) 132 STC 295

Hon'ble Judges : P.P. Naolekar, C.J;I.A. Ansari, J

Bench : Division Bench

Advocate : U. Bhuyan, for the Appellant; A.K. Saraf and Sunil K. Agarwal, for the Respondent

Judgement

P.P. Naolekar, C.J.—This appeal was admitted on the following question of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in upholding the Commissioner of Income Tax (Appeals) decision ignoring the fact that the Central sales tax and State sales tax collected by the assessee in the course of its business form part of the trading or business receipt ?"

2. In the following facts and circumstances of the case, admittedly, the asses-see collected Central sales tax of Rs. 1,11,62,787 and State sales tax of Rs. 5,648 during the assessment year 1989-90. The amount was not deposited with the respective authorities till the date the return was submitted. The assessee has not claimed any deduction of the amounts of the Central sales tax and the State sales tax collected by him u/s 43B of the Income Tax Act, 1961.

3. The Assessing Officer by his order dated October 30, 1991, has directed addition of the amount of Rs. 1, 11,68,436 holding that the assessee''s claim that Section 43B is not applicable is not accepted and the amount collected by the assessee shall be treated as a trading receipt. Aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals),

Guwahati. The Commissioner (Appeals) has upheld the contention raised by the assessee and held that the question of disallowing the amount in question does not arise as the assessee has not claimed any deduction u/s 43B. Aggrieved by the said order, the Revenue filed a second appeal before the Income Tax Appellate Tribunal. The Tribunal was of the view that the issue in question was covered by the decision rendered by the High Court in the assessee''s own case reported in India Carbon Ltd. Vs. Inspecting Assistant Commissioner of Income Tax and Another, which has been confirmed by the Supreme Court by its order dated August 23, 1996, arising out of S. L. P. No. 13038 of 1994. A copy of the order of the apex court has been produced before us by counsel for the assessee. The special leave appeal was dismissed by the Supreme Court on the ground that the High Court has considered the question of applicability of Section 43B, the High Court has not expressed any opinion on the question whether the said amounts should be included in the income of the assessee or not and it has left that question open as it was not mooted before it. In the present case also whether the Central sales tax and the State sales tax collected would form part of the assessee''s income being the trading receipt was not the question considered by any of the authorities. The question which was considered by the court below is whether Section 43B is attracted in the facts of the present case and thus it is clear that neither of the authorities has considered the case whether the tax collected is an income of the assessee being the trading receipt.

4. On the facts found, we are satisfied that Section 43B of the Income Tax Act is not attracted at all when the assessee has not claimed any deduction of the amounts collected by it as the Central sales tax and the State sales tax.

5. The appeal stands disposed of.

