
(1992) 07 CAL CK 0042
In the Calcutta High Court
Case No : IT Reference No. 260 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Indus Services Ltd.

RESPONDENT

Date of Decision : 20-07-1992

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 43B

Citation : (1993) 71 TAXMAN 260

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the income tax Act, 1961 ("the Act") for the assessment year 1984-85 the following questions of law have been referred to this Court:

1. Whether, on the facts and in the circumstances of the case and on a correct interpretation of section 43B of the income tax Act, 1961 the Tribunal was justified in law in holding that the first proviso to section 43B introduced by the Finance Act, 1987 with effect from 1-4-1988 would be applicable to the assessment year 1984-85 also?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the order of the Commissioner (Appeals) and directing the Assessing Officer to examine the question of payment of sales-tax and allow the same in accordance with the principles laid down in the case of ITO v. K.S. Lokhandwala [1989] 31 ITD 305 of the Tribunal, Ahmedabad Bench?

Shortly stated, the facts leading to this reference are that the assessment year involved in the case of the assessee, Indus Services Ltd., is 1984-85. The Assessing Officer considered the following amounts under the provisions of section 43B of the Act, since the same remained unpaid at the close of the relevant accounting year:

Rs.

(i)Central sales-tax

1,36,194

(ii)West Bengal sales-tax

4,196

Accordingly, the above amounts were added back to the total income.

On appeal by the assessee, the Commissioner (Appeals) confirmed the above addition made by the Assessing Officer for violation of the provisions of section 43B although the assessee contended that the impugned amounts represented sales-tax collected for the last quarter payable within 30 days from the end of the accounting period and that the amounts were duly paid in time. The Commissioner (Appeals) decided the issue according to the ratio of the Supreme Court judgment in the case of Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal,

2. Being aggrieved, the assessee filed a second appeal before the Tribunal. The Tribunal set aside the order of the Commissioner (Appeals) and directed the Assessing Officer to examine the question of payment of sales-tax and allow the same in accordance with the principles laid down in the case of ITO v. K.S. Lokhandwak [1989] 31 ITD 305 of ITAT, Ahmedabad Bench.

3. It is not in dispute that these questions are now concluded by the decision of this Court in the case of Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, . Following the said decision we answer the first question in the affirmative. So far as the second question is concerned, we answer by saying that the Assessing Officer shall examine the question of payment of sales tax and allow the same in accordance with the principles laid down by this Court in the aforesaid decision. There will be no order as to costs.

Sen, J.

I agree.