(2006) 12 AHC CK 0011

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Jaiswal Trading Co. RESPONDENT

Date of Decision : 07-12-2006

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

Citation : (2006) 12 AHC CK 0011

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Income Tax Appellate Tribunal, Allahabad has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), for opinion to this Court:

Whether, on the facts and circumstances of the case, the Hon''ble ITAT was justified in deleting the disallowance of Rs. 1,22,687 made by assessing officer as per provisions of Section 43 B read with Explanation 2 of the Income Tax Act, 1961?

Whether first proviso to Section 43B, inserted Finance Act, 1987 with effect from 1-4-1988 has got a retrospective effect or not?

2. The reference relates to year 1986-87.

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

In this case, the return of income for assessment year 1986-87 was filed on 29-8-1986 (sic). The assessment was completed u/s 143 (1) on 7-11-1986 on total income of Rs. 92,540. Subsequently, assessment was reframed u/s 143(3)/148 at Rs. 2,15.230 on 26-3-1989 adding a sum of Rs. 1,22,687 shown as outstanding sales-tax liability in the Balance Sheet for the year as per provision of Section 43B. 4. Being aggrieved by this order, the assessee filed appeal before the learned Commissioner (Appeals), Allahabad. The learned

Commissioner (Appeals), Allahabad confirmed the addition of Rs. 1,22,687. While deciding the appeal, the learned Commissioner (Appeals) has observed that in view of the Explanation to Section 43B of the Income Tax Act, which was inserted by the Finance Act, 1987 with effect from 1-4-1988, the same was applicable for assessment year 1988-89 and onwards, cannot be given retrospective effect in view of ratio of decision of Hon''ble Allahabad High Court in the case of COMMISSIONER OF Income Tax Vs. NITRO PHOSPHETIC FERTILIZER., wherein Their Lordships held that unless it is provided in the Statute itself or in the statement of object and reasons, it cannot be said that any provision had retrospective operation. It was further observed by learned Commissioner (Appeals) that Finance Act, 1989 has added Explanation 2 below Section 43B with retrospective effect from 1-4-1984 in which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law. In view of this amendment even if the sales-tax liability has been paid on 30-4-1988 in accordance with rule 41 of UP Sales-tax Rules, the addition has to be made as sales-tax liability was not paid in the year of account.

5. In the second appeal filed by the assessee, the ITAT vide their order dated 19-5-1995 has allowed the appeal filed by the assessee following their decision in case of Prakash Cables (IT Appeal Nos. 1300 to 1302 of1991, on 11-2-1992).

6. We have heard Shri R.K. Upadhyay, learned Standing Counsel for the revenue and Shri Pawan Shree Agrawal, learned Counsel appearing for the respondent-assessee.

7. We find that the questions of law in the present reference are squarely covered by the decision of the Apex Court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, , wherein the Apex Court has held that first proviso to Section 43B inserted by Finance Act, 1987 with effect from 1-4-1988, has no retrospective operation. Further we find that in the present case, the amount of sales tax realised by the respondent-assessee during the last month of the previous year relates to the assessment year in question was paid on 30-4-1988, that is, within the stipulated period under the provisions of Section 41 of the U.P. Sales Tax Rules. Thus, the principles laid down in the case of Allied Motors (P.) Ltd. (supra) are fully applicable.

8. We, accordingly, answer both the questions of law referred to us in the affirmative, that is, in favour of the assessee and against the revenue.

9. There shall be no order as to costs.

