(2004) 12 AHC CK 0176

In the Allahabad High Court

Case No : Income-tax Reference No. 17 of 1990

Commissioner of Income Tax APPELLANT

Vs

Krishna Satya Narain RESPONDENT

Date of Decision : 21-12-2004

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

Citation : (2005) 277 ITR 354

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Shambhoo Chopra, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following question 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 in the circumstances of the case, the Tribunal was correct in law in holding that the provisions of Section 43B were not applicable in respect of sales tax liability of Rs. 10,272 ?"

2. The reference relates to the assessment year 1984-85. The accounting period of the respondent firm ended on Diwali, 1983. In the last quarter of the accounting period the respondent had collected sales tax from the customers amounting to Rs. 10,272 but the same had not been deposited in the treasury during the accounting period in question. However, it was paid in accordance with the provisions of the U. P. Sales Tax Rules within the prescribed period in the next accounting year. The Income Tax Officer added the said sum of Rs. 10,272 in terms of Section 43B of the Act. The Commissioner of Income Tax (Appeals), however, allowed the claim which order has been upheld by the Tribunal.

3. We have heard Sri Shambhoo Chopra; learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee.

4. It is not in dispute that the amount of Rs. 10,272 which the respondent had collected towards sales tax in the last quarter of the accounting period had been paid over to the Sales Tax Department within the prescribed period in the next accounting year. In this view of the matter it cannot be said that the amount has not been paid over to the Sales Tax Department and the provisions of Section 43B of the Act would not be attracted.

5. In view of the foregoing discussions, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.