

(2007) 02 P&H CK 0035
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax	Vs	APPELLANT
Raj and San Deeps Ltd.		RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Income Tax Act, 1961 — Section 43B

Citation : (2007) 293 ITR 12

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

Rajesh Bindal, J.—The following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as, "the Tribunal"), that arises out of its order dated February 18, 1993, in I. T. A. No. 1853/Chandi/92 for the assessment year 1989-90:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition made u/s 43B on account of advance excise duty paid which was neither debited to the profit and loss account nor sales account or made part of the purchase price?

2. Briefly the facts, as noticed by the Tribunal in the statement of case, are that the assessee had claimed deduction of Rs. 1,68,582 on account of excise duly allegedly paid in advance. The expense claimed on that account was disallowed by the assessing officer and he treated the same to be an advance payment which was not covered u/s 43B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). In appeal, the Commissioner (Appeals) (hereinafter referred to as "the Commissioner (Appeals)"), found addition of Rs. 1,06,390 out of the total amount of Rs. 1,68,582 disallowed by the assessing officer which had already been confirmed during the assessment year 1988-89. He accordingly deleted that amount from the addition of Rs. 1,68,582 for the assessment year 1989-90 and confirmed the addition of the balance amount of Rs. 61,992. In further appeal before the Tribunal, the entire addition was delete. It was found by the

Tribunal that excise duty under the provisions of the Central Excise Rules, 1944, became payable as soon as the goods were manufactured and the assessee was under the statutory obligation to keep that much amount in account with the Collector of Customs, known as "account-current". It is only at the time of removal of goods, a debit entry has to be made in the account. Otherwise, excise duty had become payable the moment excisable goods were manufactured. The duty so deposited in the "account-current" was irrevocable in nature and not refundable to the assessee. Since the amount was paid as excise duty by the assessee in the "account-current" on account of goods manufactured during the year in question, the same was held to be expenses which could not be disallowed.

3. We have heard Shri S. K. Garg Narwana, learned Counsel for the revenue and Shri Rohit Sud, learned Counsel for the assessee.

4. The only contention raised by learned Counsel for the revenue is that since the goods in question were not removed from the premises of the assessee during the year in question, the duty amount would be considered to have been paid in advance and accordingly the assessee was not entitled to deduction thereof during the year in question as the expense was to relate to the year in which the goods were removed from the factory. Any advance payment of taxes, which do not relate to the assessment year in question, is not a permissible deduction.

5. On the other hand, learned Counsel for the assessee submitted that the assessee was statutorily required to deposit the duty the moment goods were manufactured and was under obligation to keep amount to the extent of duty as calculated on the goods so manufactured in the "account-current". The assessee was not entitled to refund of the amount once deposited in the "account-current", however, debit entry was made at the time of removal of goods from the factory. He has relied upon the judgment of the Gauhati High Court in *India Carbon Ltd. Vs. Inspecting Assistant Commissioner of Income Tax and Another*, .

6. Having heard learned Counsel for the parties, we find the contention raised by learned Counsel for the revenue to be totally misconceived. Once it is found as a fact by the Tribunal that duty as per the statutory provisions became payable, the moment goods were manufactured then the assessee was under obligation to deposit that much amount in the "account-1 current" and the amount so deposited in the "account-current" being non-refundable, there was no reason for the revenue to deny the benefit of) deduction in the year in question when the goods were manufactured and the amount was deposited in the "account-current". The expense would certainly relate to the year in which the goods were manufactured and the amount was deposited, which cannot possibly be treated as an advance.

7. Accordingly, the question referred is answered against the revenue and in favour of the assessee.

8. Reference is disposed of accordingly.