(2010) 07 P&H CK 0238

In the Punjab And Haryana At Chandigarh

Case No : IT Ret. No. 61 of 1996 (Assessment year 1984-85)

Commissioner of Income Tax APPELLANT

Vs

Rajdhani Wine Traders RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Finance Act, 1987 — Section 139, 139(1)
Income Tax Act, 1961 — Section 154, 256(1), 43B

Citation : (2011) 196 TAXMAN 396

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—In this reference filed u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), at the instance of the revenue, pertaining to the assessment year 1984-85, the following question of law has been referred for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the learned Commissioner(Appeals) that unpaid sales-tax liability for the last quarter of the accounting period cannot be disallowed u/s 43B by invoking the provision of Section 154 of the Income Tax Act ?

2. The aforesaid question has come to be referred in the following background:

The assessing officer vide order dated 7-4-1988 passed u/s 154 of the Act enhanced the income of the Assessee by a sum of Rs. 1,03,683 which represented the unpaid sales-tax liability, u/s 43B, on the ground that the unpaid sales-tax was a trading receipt as settled by a number of judicial enunciations. The assessing officer was further of the view that it was only due to accounting system followed by the Assessee that the amount of sales-tax collected from the purchasers was not taken into account in the trading account and was credited to a separate account under the head Sales-tax account. The payment was made from that account and the amount left outstanding on the last day of the accounting period was taken to the balance sheet as the amount payable. The assessing officer, therefore, held that the system of accounting adopted by the Assessee could not alter the nature of the sales-tax. The assessing officer, however, rejected the stand of the Assessee that since two interpretations were possible, Section 154 of the Act was not applicable.

3. The Assessee carried appeal. It was contended on behalf of the Assessee that matter did not fall within the scope of Section 154 of the Act as the non-inclusion of the amount in question at the time of filing original assessment could not be said to be a mistake apparent from the record. The Assessee further submitted that a sum of Rs. 62,000 was paid by cheque on 30-4-1984 to the sales-tax authorities whereas further amount of Rs. 41,692 was paid in cash on 14-5-1984, i.e. the entire amount which represented the sales-tax liability for the last quarter, was discharged within the time allowed under the sales-tax law. In support of its submission, reliance was placed on Srikakollu Subba Rao and Co. and Others Vs. Union of India and Others, .

4. The Commissioner (Appeals) observed that various Benches of the Tribunal had held that the liability of the last quarter could not be added back by applying the provisions of Section 43B because that liability did not become payable on the last date of the quarter. On the basis thereof, it was held that the issue which was controversial and debatable could not be said to be covered within the scope of Section 154. The appeal was consequently accepted and the addition of the sales-tax liability made by the assessing officer was deleted.

5. The revenue preferred appeal before the Tribunal, Delhi Bench B. The Tribunal put its seal of affirmation to the view taken by the Commissioner (Appeals). This is how the Tribunal has referred the aforesaid question to this Court for its opinion.

6. No one has appeared to argue the matter on behalf of the revenue. From the perusal of the order passed by the Tribunal, the stand of the revenue which is discernible is that the sales-tax liability was to be allowed as deduction only in the year in which it was actually paid and since in the present case the liability had not been discharged by the Assessee in the previous year relevant to the assessment year under consideration, the unpaid sales-tax was to be treated as trading receipt. Reliance was placed by the Departmental Representative before the Tribunal on two decisions of Delhi High Court in Sanghi Motors v. Union of India (1991) 187 ITR 703 (Del) and Escorts Ltd. v. Union of India (1991) 189 ITR 81 (Del).

7. It may be noticed that the decision in Escorts Ltd.s case (supra) was the subject-matter of appeal before the Apex Court. While deciding the appeal along with some other appeals the Apex Court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, , reversed the decision in Escorts Ltd.s case

(supra) and overruled the decision in Sanghi Motorss case (supra). It was held that the proviso which was inserted by the Finance Act of 1987, with effect from 1-4-1988, provided that any sum which was actually paid by the Assessee after the accounting year but before the due date for submission of the return under Sub-section (1) of Section 139 of the Act shall be admissible as expenditure in the previous year in which liability to pay such sum was incurred, in case the evidence for such payment was furnished by the Assessee along with the return, and was to be treated as retrospective in operation and applicable from the date of insertion of Section 43B of the Act. The Apex Court observed as under:

This view has been accepted by a number of High Courts. In the case of Commissioner of Income Tax Vs. Chandulal Venichand, , the Gujarat High Court has held that the first proviso to Section 43B is retrospective and sales-tax for the last quarter paid before the filing of the return for the assessment year is deductible. This decision deals with assessment year 1984-85. The Calcutta High Court in the case of Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, , has taken a similar view holding that the statutory liability for sales-tax actually discharged after the expiry of the accounting year in compliance with the relevant statute is entitled to deduction u/s 43B. The High Court has held the amendment to be clarificatory and, therefore, retrospective. The Gujarat High Court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High Court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores Vs. Union of India (UOI) and Others, . It has held the amendment inserting first proviso to be retrospective. The SLP from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to Section 43B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of Statutory Interpretation, 4th Edition, p. 291, It is well-settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. In fact, the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained.

In view of the above, the sales-tax liabilities discharged by the Assessee for the last quarter before the filing of the return could not be disallowed u/s 43B of the Act.

8. The answer to the question referred to above is to be against the revenue as per Section 154 of the Act as well. The issue being a debatable one in view of divergence of opinion between various High Courts as it was only the Delhi High Court which had adjudicated in favour of the revenue whereas view of the Gujarat High Court in Commissioner of Income Tax Vs. Chandulal Venichand, , Calcutta High Court in Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, and Patna High Court in Jamshedpur Motor Accessories Stores Vs. Union of India (UOI) and Others, is contrary to the decision taken by the Delhi

High Court, the provisions of Section 154 of the Act could not be resorted to.

9. In view of the above, we answer the question referred to above in favour of the Assessee and against the revenue.

