

(2002) 01 RAJ CK 0006

In the Rajasthan High Court

Case No : IT Ref. AppIn. No. 24 of 1985 and 21 of 1995 31 January 2002 A.Y. 1987-88

Commissioner of Income Tax

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Income Tax Act, 1961 — Section 43B

Citation : (2002) 175 CTR 170

Hon'ble Judges : Y.R. Meena, J;A.C. Goyal, J

Bench : Full Bench

Advocate : J.K. Singhi, for the Revenue and Mahendra Gargia, for the Assessee, for the Appellant;

Judgement

By the court

On an application filed u/s 256(1) of the Income Tax Act, the Tribunal has referred the following questions for the opinion of this court :

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition made u/s 43B notwithstanding the fact that the assessee did not make the payment of outstanding sales-tax liability during the previous year relevant to the assessment year 1987-88 ?"

2. The assessee is a registered firm and had claimed liability on account of sales-tax amounting to Rs. 85,788, which was disallowed by the assessing officer on the ground that the payment, was made after the close of the accounting year. The relevant assessment year is 1987-88. In appeal, the Commissioner (Appeals) has upheld this disallowance. In appeal before the Tribunal, the Tribunal has allowed the claim of the assessee following the decision COMMISSIONER OF INCOME TAX Vs. BIMAL MRISHNA SIL and BROS., Mr. Gargia, learned counsel for the assessee submits that now the issue has been concluded by the Apex Court that if the liability of sale-tax has not been paid

before the due date but paid as provided in proviso to section 43B of the Act, which clarifies that if the amount of sales-tax has been paid after submission of returns but within the grace period allowed under the relevant provisions of the sales-tax, the deduction u/s 43B cannot be denied.

3. In *Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi*, their lordships have considered the Explanation to provision (sic-proviso) of section 43B, which provides that if the amount has been paid within 30 days of the end of the quarter though beyond the accounting year, the deduction cannot be disallowed after this Explanation is inserted and Explanation has retrospective effect.

At page 684 of the aforesaid judgment, their Lordships have considered the amendment and its effect holding that this amendment will have a retrospective effect, which reads as under :

"While interpreting section 43B without the first proviso, some of the High Courts, in order to prevent undue hardship to the assessee, had taken the view that section 43B would not be attracted unless the sum payable by the assessee by way of tax, duty, cess or fee was payable in the same accounting year. If the tax was payable in the next accounting year, section 43B would not be attracted. This was done in order to prevent any undue hardship to assessees such as the ones before us. The memorandum of reasons takes note of the combined effect of section 43B and the first proviso inserted by the Finance Act, 1987. After referring to the fact that the first proviso now removes the hardship caused to such taxpayers, it explains the insertion of Explanation 2 as being for the purpose of removing any ambiguity about the term "any sum payable" under clause (a) of section 43B. This Explanation is made retrospective. The memorandum seems to proceed on the basis that section 43B read with the proviso takes care of the hardship situation and hence Explanation 2 can be inserted with retrospective effect to make clear the ambit of section 43B(a). Therefore, section 43B(a), the first proviso to section 43B and Explanation 2 have to be read together as giving effect to the true intention of section 43B. If Explanation 2 is retrospective the first proviso will have to be so construed. Read in this light also, the proviso has to be read into section 43B from its inception along with Explanation 2."

Following the view taken by their lordships in the case of *Allied Motors (P) Ltd.* (supra) no interference is called for in the order of the Tribunal.

In the result, we answer the question in affirmative i.e., in favour of the assessee and against the revenue.

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