(1991) 12 CAL CK 0017

In the Calcutta High Court

Case No : IT Ref. No. 108 of 1991

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

RAMKUMAR RAJENDRA KUMAR. — RESPONDENT

Date of Decision : 02-12-1991

Acts Referred:
Income Tax Act, 1961 — Section 43B

Citation : (1993) 113 CTR 275 : (1993) 70 TAXMAN 162

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Full Bench

Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 256(1) of the IT Act, 196 for the asst. yr. 1985-86 the following questions have been referred to this Court :

"1. Whether, on the facts and in the circumstances of the case and on a correct interpretation of s. 43B of the IT Act, 1961, the Tribunal was justified in law in holding that the first proviso to s. 43B of the said Act introduced by the Finance Act, 1987 w.e.f. 1st April, 1988 would be applicable to the asst. yr. 1985-86 ?"

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the deletion of Rs. 88,409 (W.B. Sales-tax) and Rs. 37,057 (Central Sales-tax) added by the Assessing Officer under s. 43B of the IT Act, 1961 ?"

2. Shortly stated the facts are that the relevant previous year of the assessee ended on Ram Navami 2041 corresponding to 30th March, 1985. The assessee, therefore, was required to submit its return of income for the asst. yr. 1985-86 under reference under s. 139(1) of the Act by 30th July, 1985. In the return filed by the assessee the Assessing Officer found outstanding liabilities as under :

(i) West Bengal Sales-tax Rs. 88,409

(ii) Central Sales Tax Rs. 37,057

The above outstanding liabilities were disallowed by the Assessing Officer under s. 43B of the IT Act, 1961.

3. The assessee being aggrieved, came up in appeal before the CIT (A). The CIT (A) found that the above liabilities were cleared by the assessee within the time stipulated in the relevant provisions of the Sales-tax Act and hence he held that provisions of s. 43B could not be invoked in the instant case. For the above view the CIT(A) relied on certain decision of the Tribunal. He accordingly deleted the disallowance.

4. The Department came up in appeal before the Tribunal and the Tribunal following the decision of the Ahmedabad Bench in the case of (1989) 31 ITD 305 held that since the liabilities of sales-tax were duly paid before the due date of furnishing of return of the relevant previous year, the proviso to s. 43B was applicable and the liabilities could not be disallowed. Viewed thus, the Tribunal dismissed the Departmental appeal.

5. None appears for the respondent. Mr. Mitra has submitted that this question is now concluded by the decision of this Court in Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, . Following the said decision we answer both the questions in the affirmative and in favour of the assessee.

There will be no order as to costs.

SHYAMAL KUMAR SEN, J. :

I agree.

