(2003) 11 RAJ CK 0033

In the Rajasthan High Court

Case No : IT Appeal No. 8 of 2003

Commissioner of Income Tax APPELLANT

Vs

Udaipur Distillery Co. Ltd. RESPONDENT

Date of Decision : 18-11-2003

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

Citation : (2004) 187 CTR 377

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Advocate : Sundeep Bhandawant, for the Appellant; N.M. Ranka, R.K. Yadav and Rajesh Joshi, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal u/s 260A of the IT Act, 1961, is directed against the order of the Tribunal, Jodhpur Bench, Jodhpur, dt. 26th Aug., 2002 and relates to asst. yr. 1986-87.

2. The following substantial questions of law were framed at the time of admission which arise for consideration in this appeal:

"1. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in deleting the addition of Rs. 3,19,208 by holding that unpaid amount of bottling fee, on furnishing of bank guarantee has to be treated as actual payment and accordingly the deduction in respect of the same cannot be denied u/s 43B of the IT Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal is correct in holding that since the words "cess or fee" have been inserted w.e.f. 1st April, 1989, the amended provisions are relevant for the asst. yr. 1989-90 onwards and not prior thereto?"

3. As the questions suggest they relate to applicability of the provisions of

Section 43B of the IT Act to the amount payable as bottling fees by the assessee under the Rajasthan Excise Act for availing the privilege of dealing in potable liquor, The issue has been subject-matter for consideration in CIT v. Udaipar Distillery Co. Ltd- relating to very same respondent in IT Appeal No. 8 of 2002 which relates to asst. yr. 1988-89, a period, which fell before the amendment was effected in Section 43B of the IT Act, 1961. The D.B. held as under :

"From the aforesaid discussions, conclusion rs irresistible that bottling fee was charged from the respondent-assessee by way of consideration for parting with its exclusive privilege to bottle liquor, whether as part of manufacturing process or for facilitating its sale, it does not alter its character from price charged by the State for parting with its exclusive privilege of bottling potable liquor as one of the manifestations to deal in potable liquor to a charge by way of "Fee" as an impost as a facet of taxation as defined in Article 336(28). Consequently if the assessee maintains his book of account as per mercantile system, he is entitled to claim deduction of such expenses incurred by him by way of bottling fee for the accounting period when it becomes payable to the State Government as consideration. Such liability is allowable deduction as an expenditure in the year in which it is incurred even if actual payment is deferred, Section 43B is not attracted in such case."

4. In view of the aforesaid decision the liability towards payment of bottling fees under the Rajasthan Excise Act was held to be outside the purview of Section 43B as it cannot be either tax or duty or cess or fee as an impost part of the taxation scheme levied by the State in exercise of its sovereign power of levying tax.

It was held in that case that prior to this amendment w.e.f. 1st April, 1989, for preceding asst, yr. 1988-89, even if the bottling fee is held to be falling within the ambit of Section 43B after the amendment as a fee it could not be with in the ambit of Section 43B before its amendment. The Court concluded as under :

"In view thereof for the additional reason also for asst. yr. 1988-89, liability incurred by assessee towards payment of bottling fee under the Rajasthan Excise Act, 1950, r/w Rule 69 of the Rajasthan Excise Rules does not attract provisions of Section 43B and, therefore, liability was allowable as deduction for assessment year in question accounts being maintained on mercantile basis "

5. In view of the aforesaid, we do not find any merit in this appeal and the same is hereby dismissed. No orders as to costs.