(2005) 04 AHC CK 0019

In the Allahabad High Court

Case No : IT Ref. No. 15 of 1995

Commissioner of Income Tax APPELLANT

Vs

Uptron Powertronics Ltd. RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 256(1), 43B

Citation : (2006) 204 CTR 420

Hon'ble Judges : Rajes Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Shambhu Chopra, for the Appellant; None, for the Respondent

Judgement

1. The Tribunal, Delhi, has referred the following question of law u/s 256(1) of the IT Act, 1961, hereinafter referred to as "the Act", for opinion to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in confirming the order of the CIT (A) by deleting the addition of Rs. 645047 made u/s 43B of the IT Act, 1961?

2. The present reference relates to the asst. yr. 1985-86.

Briefly stated, the facts giving rise to the present reference are as follows:

The respondent-assessee has been assessed to Income Tax in the status of a company. Its accounting period ended on 31st Dec, 1984. It is engaged in manufacture of power plant, float rectifiers, battery chargers, switching cubicles, microwave power plants, mobile rectifiers, inverters float charges, air compressors, etc. It filed its return on 28th June, 1985, declaring income of Rs 1060259. Thereafter a revised return declaring income at Rs. 974933 was filed on account of claim of expenses relating to the financial year ending on 31st Dec, 1984 which has been debited to the accounts of subsequent assessment years. The AO completed the assessment u/s 143(3) of the Act and computed the assessee''s total income at Rs. 1649120. While doing so, the AO made an addition of Rs. 645037 by disallowance u/s 43B of the Act. The aforesaid amount of Rs. 645037 comprises the following items:

As per tax audit report 14,151 ESIC 6,790 PF payable 16,702 Central sales-tax payable 4,64,802 EFPF payable 2,566 Local sales-tax payable 43,125 Surcharge payable on local sales-tax 154 __________ 5,48,290 _________

3. According to the respondent-assessee, cheques of Rs. 89,689, Rs. 638 and Rs. 19,000 on account of Central sales-tax, local sales-tax and gratuity payments, respectively, were issued for payment but the same were not presented as on 31st Dec, 1984, i.e., which was the last date of the accounting period of the respondent-assessee. Since these payments were not made as on the date of closing of accounts, they were treated as unpaid amounts and were not allowed, as according to the AO mere issuing of cheques does not amount to actual payment thereof. He had also issued a show-cause notice calling upon the respondent-assessee to show cause as to why the sales-tax may not be disallowed u/s 43B of the Act. The respondent-assessee submitted its explanation in which it was mentioned that unpaid liability for sales-tax collected from the customers does not fall under the purview of Section 43B of the Act. As per accounting practice adopted by the respondent-assessee, sales-tax collected from the customers is credited to a separate account and all the payments to Sales-tax Department are debited to this account and no such amount under this head is charged to P&L a/c. According to the respondent-assessee, Section 43B is attracted only on those statutory payments which have been charged to P&L a/c and for which deduction has been claimed but the amount remains unpaid at the end of the financial year. The AO did not accept the explanation offered by the respondent-assessee and treated the entire unpaid amount as income by taking resort to Section 43B of the Act. The AO was of the view that even though the amount was not claimed as deduction in the P&L a/c, such collections represent the trading receipt and the method of accounting does not make any difference. Feeling aggrieved, the respondent-assessee preferred an appeal before the CIT (A). The CIT(A) allowed the appeal and has directed that a sum of Rs. 5,93,088 + Rs. 19,000, which has been paid during the statutory period after verification should be allowed as deduction. The order of CIT (A) has been upheld by the Tribunal.

4. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee.

5. It may be mentioned here that even though the amount mentioned in the question of law referred to was Rs. 645047 but the real amount involved in the present reference is only Rs. 612088. In view of the findings recorded by the CIT (A), which has been affirmed by the Tribunal that the amount in question had been paid over to the Government Departments within the statutory period even though it fell under subsequent assessment year, the principle laid down by the apex Court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, is fully applicable to the facts of the present case. We answer the question

referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue with the observation that the amount of Rs. 6,45,088 be reduced as Rs. 6,12,088, However, there shall be no order as to costs.

