(1996) 11 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : IT Case No. 28 of 1991

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

VED PARKASH NARESH KUMAR. — RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (1997) 142 CTR 79

Hon'ble Judges : Ashok Bhan, J

Bench : Division Bench

Judgement

ASHOK BHAN, J. :

This petition has been filed under s. 256(2) of the IT Act, 1961 (hereinafter referred to as "the Act") for issuance of a mandamus directing the Tribunal, Delhi Bench, New Delhi (hereinafter referred to as the Tribunal) to refer the following question of law along with the statement of case to this Court for its opinion :

"Whether on the facts and in the circumstances of the case, the learned Tribunal is right in law in holding that sales-tax in respect of sales effected in the last month of the accounting year in which it had fallen due but was payable in the subsequent month could not be disallowed under s. 43B which is in clear violation of the provisions of s. 43B ?"

2. Assessee is a partnership firm which carries on Ahrat business manufacture and sale of gram dal and deals in other foodgrains articles. During the year 1983-84 relevant to asst. yr. 1984-85 in question, assessees firm collected sales-tax amounting to Rs. 1,96,379 and paid Rs. 1,84,859 to the Government. An amount of Rs. 63,122 was carried over to the next year. It did not claim any expenses on account of sales-tax and no amount was debited to the P&L a/c. This amount was statutorily payable under the Sales-tax Act and was paid in the next accounting year. ITO added it as the assessees income and did not accept the assessees claim that it was taxed on 51,602 during the asst. yr. 1983-84 and

that the amount should be deleted from the amount of Rs. 63,122.

In appeal the order of the ITO was confirmed by the AAC by relying upon the decision of the Supreme Court in the case of Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal,

Assessee filed further appeal before the Tribunal which was accepted. Relying upon a decision of the Tribunal, Hyderabad, it was held that sales-tax in respect of sales effected in the last month of the accounting year and which had fallen due but was payable in the subsequent months could not be disallowed under s. 43B of the Act. Reliance was also placed on certain other decisions of different Tribunals in the country.

Against the order of the Tribunal allowing the appeal filed by the assessee, Revenue filed a petition under s. 256(1) of the Act for making a reference of the question of law claimed by the Revenue to this Court along with the statement of the case which was rejected and thereafter the present petition under s. 256(2) of the Act was filed.

3. Mr. R. P. Sawhney, Senior Advocate, appearing for the Department has argued that deduction for payment of tax could only be allowed on actual payment in view of the introduction of s. 43B by Finance Act, 1983 w.e.f. 1st April, 1984 i.e. for and from the asst. yr. 1984-85 and, therefore, the Tribunal has erred in disallowing the question claimed by the Revenue. Interpretation of a provision of the statute invariably gives rise to a question of law. Moreover, there is no direct decision either of the Supreme Court of India or of this Court on the point involved in this case. The question of law does arise from the order of the Tribunal.

4. Accordingly we direct the Tribunal to refer the aforesaid question of law along with the statement of the case to this Court for its opinion.