(1991) 09 CAL CK 0037

In the Calcutta High Court

Case No : Income-tax Reference No. 68 of 1991

Commissioner of Income Tax APPELLANT

Vs

Vinar Systems Pvt. Ltd. RESPONDENT

Date of Decision : 16-09-1991

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

Citation : (1993) 203 ITR 756

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

Bench : Division Bench

Advocate : B.K. Bagchi and Sunil Mukherjee, for the Appellant;

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, for the assessment year 1984-85, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case and on a proper interpretation of the provisions of Section 43B of the Income Tax Act, 1961, read with Explanation 2 thereof which was made effective from April 1, 1984, the Tribunal was correct in law in holding that since the Central sales tax and West Bengal sales tax amounting in total to Rs. 5,04,316 were paid within the statutory due dates for payment as per the respective Sales Tax Act, the same should be deducted even though they were not paid within the previous year maintained by the assessee?"

2. The brief facts of the case are that, on examination of the books of account, the Assessing Officer found that the Central sales tax and local sales tax collected remained unpaid till the end of the previous year in respect of the head office and branch offices. He, accordingly, disallowed Rs. 3,40,054 on account of Central sales tax collected but remained unpaid. Similarly, the Assessing Officer disallowed Rs. 2,01,933 on account of local sales tax collected but remained unpaid till the end of the previous year in respect of the head office and the

branch offices.

3. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) and argued that the sales tax collections and payment thereof were not part of the assessee''s profit and loss account since a separate sales tax account was maintained in the books of account and the unpaid balances were taken to the next year under the head "Sundry creditors". It was further argued that the sales tax collected was paid as per the relevant provisions of the Sales Tax Acts of the concerned States. The amounts disallowed by the Assessing Officer were sales tax collected in the last quarter of the accounting year due to which it remained unpaid on the last date of the year. Therefore, the provisions of Section 43B of the Income Tax Act, 1961, were not attracted. The Commissioner of Income Tax (Appeals), following the decision of the Tribunal, ''B'' Bench, Calcutta, in the case of India Automobiles (1960) Ltd. v. ITO in Income Tax Application No. 12 of 1987 dated October 18, 1987, allowed the assessee''s claim and deleted the addition made by the Income Tax Officer.

4. On appeal to the Tribunal, it was argued that the Commissioner of Income Tax (Appeals) was not justified in deleting the addition made by the Assessing Officer in view of Explanation 2 to Section 43B of the Income Tax Act, 1961, inserted by the Finance Act, 1989, with retrospective effect from April 1, 1984. It was argued that the aforesaid Explanation has statutory force and, in view of the above, the order of the Commissioner of Income Tax (Appeals) may be reversed and that of the Income Tax Officer be restored. On the other hand, the assessee''s counsel strongly supported the order of the Commissioner of Income Tax (Appeals) and submitted that the issue has been considered at length by the Tribunal, Ahmedabad Bench, in the case of ITO v. K. S. Lokhandwala [1989] 31 ITD 305. The Commissioner of Income Tax (Appeals) was perfectly justified in deleting the addition made by the Income Tax Officer. The Tribunal considered the issue in the light of the arguments advanced by both sides. It was found that there was no dispute as regards the fact that the Central sales tax and local sales tax disallowed by the Income Tax Officer were collected in respect of the assessee''s head office and various branches and that such collections relate to the last quarter of the year due to which no payment could be made before the end of the accounting year. The Tribunal also found from the paper book filed by the assessee''s counsel that sales tax was paid on various dates in July and the first week of August, 1983. It was also not disputed that the payments were made within the statutory due dates as per the Sales Tax Acts of the various States. The Tribunal, therefore, found that the issue was squarely covered by the decision of the Tribunal, Ahmedabad Bench, in the case of ITO v. K. S. Lokhandwala [1989] 31 ITD 305. Following the aforesaid decision, the Tribunal found no merit in the Revenue''s appeal. However, the Tribunal found that out of the total amount disallowed by the Income Tax Officer of Rs. 5,41,987, the assessee paid only Rs. 5,04,316 leaving a balance of Rs. 37,671. As a result, the disallowance to the extent of Rs. 37,671 was restored and, in respect of the remaining amount, the order of the Commissioner of Income Tax (Appeals) was

confirmed.

5. An identical question was considered by a Division Bench of this court in the case of Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, in Income Tax Reference No. 104 of 1980, where the judgment was delivered on December 20, 1990. Following the said decision, we answer the question in this reference in the affirmative, and in favour of the assessee.

6. There will be no order as to costs.

Shyamal Kumar Sen, J.

7. I agree.

