(2006) 08 AHC CK 0322

In the Allahabad High Court

Case No : IT Reference No. 121 of 1993

Commissioner of Income Tax, Meerut — APPELLANT

Vs

J.J. Enterprises — RESPONDENT

Date of Decision : 30-08-2006

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

Citation : (2006) 08 AHC CK 0322

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Tribunal has referred the following question of law u/s 256(1) of the income tax Act, 1961 for opinion of this Court:- Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was legally correct to confirm the order of the teamed CIT (Appeals) deleting the addition of Rs. 73,289 made u/s 43B of the Act?

The reference relates to the year 1986-87.

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

2. The assessee in this case is a registered firm in whose assessment for e assessment year 1986-87 in respect of which the previous year ended on 31-3-1986 there appeared under the head ''current liabilities'' in the balance sheet the following unpaid amounts (wrongly totalled):-

Central S.T. payable:

Rs.25,433

Addl. UP S.T. Payable:

Rs.2,698

income tax TDS :

Rs.42,682

Provident Fund (Employer''s share) :

Rs.1,882

Family Pension (-do-):

Rs.415

Rs.73,289

3. The Assessing Officer by applying the provisions of section 43B of the Act proceeded to add the aforesaid aggregate amount of Rs. 73,289 to the returned income.

4. Being aggrieved, the assessee came up in appeal before the Commissioner of income tax (Appeals) and before whom it was contended that none of the aforesaid amounts had been claimed in the profit and loss account. It was also stated that the amount of Sales tax became statutorily payable only in the succeeding month which fell in the subsequent assessment year and the amount in fact had been so paid. As regards T.D.S. On account of income tax the date on which it was paid, i.e., 17-5-1986 was intimated with the further submission that it did not fall within the purview of section 43B of the act. The dates on which the amounts pertaining to provident fund and family pension had been paid were also intimated to the Commissioner of income tax (Appeals). The submission, in other words, was that since the amounts had been paid in accordance with the provisions contemplated by the respective laws there was no justification in making the impugned addition.

5. The Commissioner of income tax (Appeals) after considering the aforesaid facts and taking note of the payments having been made subsequently proceeded to hold the view that the addition was not called for. He deleted the same.

6. Being aggrieved with the order passed by the Commissioner of Income tax (Appeals), the Revenue came up in appeal before the Tribunal, which after hearing both the parties, confirmed the order of the Commissioner of income tax (Appeals). It took note of the judgment of the Hon''ble Patna High Court in the case of Jamshedpur Motor Accessories Stores Vs. Union of India (UOI) and Others, , as also the decision of the Orissa High Court in the case of CIT v. Pyarilal Kasam Manji & Co. [1992] 106 Taxation 392, which were in favour of the assessee and two decisions of Hon''ble Delhi High Court which were against the assessee these being Sanghi Motors v. Union of India [1991] 187 TTR 703 and Escorts Ltd. Vs. Union of India and others, . The Tribunal, however, chose to adopt the view which was favourable to the assessee following the decision of the Hon''ble Supreme Court in the case of The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., .

7. We have heard Sri R.K. Upadhyaya, learned Standing Counsel for the Revenue

and Sri S.D. Singh, learned counsel appearing for the respondent-assessee.

8. It has come on record that the amount of sales tax which was realised by the respondent-assessee during the last month of the previous year relating to the assessment year in question was paid by it during the succeeding month which fell of the previous year and was relevant to the next subsequent year and, therefore, the principle laid down by the Apex Court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, is applicable. We, accordingly answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.