

(1996) 04 KL CK 0022

In the High Court Of Kerala

Case No : Income-tax Reference No. 23 of 1992

Damodar Electronics and Controls

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 145, 43B

Citation : (1996) 134 CTR 398 : (1997) 224 ITR 228

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Premjit Nagendran, K.V. Narayanan and Sathish Moorthy, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

G. Sivarajan, J.—This is a reference at the instance of the assessee u/s 256(1) of the Income Tax Act, 1961. The following three questions were referred to this court for its decision :

" 1. Whether, on the facts and circumstances of the case, the Tribunal is justified in holding that the amount of sales tax remaining unpaid on March 51, 1986, could be disallowed under the provisions of Section 43B of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that sales tax collectible, being a part of the assessee's trading receipts, also forms part of the revenue account and liable to tax ?

3. Whether, the Tribunal was justified in holding that the Commissioner of Income Tax (Appeals) could not have adjudicated on the claim of the assessee, ignoring the amendment to Section 43B made with retrospective effect ? "

2. The assessee is engaged in the business of manufacture and sale of T. V. sets, components, etc. The assessment year concerned is 1986-87, the relevant accounting period ended on March 31, 1986. In the accounts for the year 1986-87, the assessee made a provision for sales tax to the tune of Rs. 9,34,174.56 representing the sales tax liability under the Kerala General Sales

Tax, Act, the Tamil Nadu General Sales Tax Act and the Bombay Sales Tax Act due for the month of March, 1986, and payable on or before April 20, 1986. According to the assessee, they had paid the said sum on or before the due date, i.e., April 20, 1986. The assessee had not credited the said sales tax collection to the trading account nor did they debit the said amount for tax liability. The assessing authority proposed to treat the said amount as a trading receipt and to disallow the claim for deduction of the said amount by applying the provisions of Section 43B of the Act. Notwithstanding the objections raised, the assessing authority completed the assessment as proposed.

3. Being aggrieved, the assessee took up the matter in appeal before the Commissioner of Income Tax (Appeals)-I, Cochin, who, by his order dated August 29, 1989, confirmed the said addition. The assessee took up the matter in second appeal before the Income Tax Appellate Tribunal, Cochin Bench, Ernakulam. The Appellate Tribunal also confirmed the said addition. It is against this order of the Income Tax Appellate Tribunal that the assessee has sought reference of the three questions set out in paragraph 1 of the judgment.

4. Though three questions have been referred to this court for its decision, question No. 1 alone requires to be considered. The third question, according to us, is a facet of question No. 1 itself and the second question is covered by the decision of the Supreme Court in *Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax, West Bengal*, and other decisions.

5. Coming to question No. 1 the question for consideration is whether the Tribunal is justified in holding that the amount of sales tax remaining unpaid on March 31, 1986, could be allowed under the provisions of Section 43B of the Income Tax Act, 1961. Section 43B of the Income Tax Act, 1961, was inserted by the Finance Act, 1983, with effect from April 1, 1984. In respect of the items set out in the four clauses of the said section, it virtually supersedes the provisions of Section 145 and provides that deduction shall be allowed only on the basis of actual payment, irrespective of the method of accounting adopted by the assessee. So, from the assessment year 1984-85, even in the case of an assessee, who is following the mercantile system of accounting, a liability which had accrued during the accounting period relevant to the assessment year in question is not liable to be deducted in the computation of the profits of the assessee unless the provisions of Section 43B of the Act are complied with. As already stated, the assessment year with which we are concerned in this case is 1986-87. Therefore, the provisions of Section 43B of the Act are squarely applicable to the present case.

6. Though the assessee has taken so many contentions, the main contention pressed before us is that the sales tax liability relates to the period March, 1986, that the due date for payment of the said amount is only April 20, 1986, that the assessee had paid the said amount on or before the due date and, therefore, the first proviso to Section 43B of the Act entitles the assessee for deduction of the said amount in the computation of income liable to tax under the Income Tax

Act. As a step in aid of the said submission, learned counsel for the assessee submitted that the first proviso to Section 43B is a procedural provision and, therefore, even though it has been given effect to only from April 1, 1988, it applies to all pending assessments and since the assessment was pending on the date of incorporation of the first proviso to Section 43B (the assessment was completed only on March 9, 1989, as could be seen from annexure "A"), the said provision applied and, therefore, the assessee is entitled to deduction of the entire sum of Rs. 9,34,174.56. The assessing authority has not considered the said contention of the assessee. But the first appellate authority, it is seen, has rejected the said contention of the assessee holding that the first proviso to Section 43B is not procedural in nature. The first proviso to Section 43B provides that nothing contained in Section 43B shall apply in relation to any sum referred to in Clause (a) or Clause (c) or Clause (d) which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under Sub-section (1) of Section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

7. As already stated, the assessee's contention throughout is that they had paid the sales tax liability which has been incurred during the accounting period on or before the due date, i. e., April 20, 1986. So, if the first proviso to Section 43B is applicable, according to the assessee, the said amount cannot be disallowed in the computation of income for the purpose of assessment. So also the assessee had contended that Explanation 2 to Section 43B introduced by the Finance Act, 1989, with effect from April 1, 1984, cannot be applied to the assessment year in question. Though the first appellate authority has considered both the contentions, it is seen that the Income Tax Appellate Tribunal did not consider the said contentions. What the Appellate Tribunal has said is that the Commissioner of Income Tax (Appeals) while considering the appeals filed by the assessee was bound to take note of the amendment made subsequently with retrospective effect and in the light of the said amendment, the assessing authority was justified in disallowing the sales tax collections in the assessment in question. The Appellate Tribunal has not considered the two contentions raised by the assessee mentioned supra independently, with reference to the facts and figures. The scope and applicability of the amendments effected by the Direct Tax Laws (Amendment) Act, 1987, the Finance Act, 1988, and the Finance Act, 1989, have to be considered in the matter of computation of income in relation to the sales tax collections made during the accounting period, but not paid within the said period. According to us, the contentions of the assessee with reference to the first proviso to Section 43B and Explanation 2 thereto have to be considered by the Tribunal with reference to the amendments mentioned hereinabove. For considering the said amendments, it is also necessary that the contention that the assessee had paid the sales tax liability which had been incurred during the previous year within the due date for payment of the same or at any rate, before the due date for filing the return under subsection (1) of Section 139 of the

Income Tax Act has to be considered.

8. Learned counsel for the assessee submitted before us that the Gujarat High Court in Commissioner of Income Tax Vs. Chandulal Venichand, , the Orissa High Court in Commissioner of Income Tax Vs. Pyarilal Kasam Manji and Co., , the Karnataka High Court in Chief Commissioner (Administration) Vs. Sanjay Sales Syndicate, and the Patna High Court in Jamshedpur Motor Accessories Stores Vs. Union of India (UOI) and Others, have taken the view that the proviso to Section 43B of the Income Tax Act, 1961, incorporated by the Finance Act, 1987, with effect from April 1, 1988, relates back to the date when Section 43B came into operation, i. e., from April 1, 1984, and, therefore, the said proviso applied to the facts of the case. In view of the course which we are adopting, we do not think it necessary to express any opinion with reference to the submissions made on either side.

9. In these circumstances, we decline to answer the first question. We set aside the order of the Income Tax Appellate Tribunal, Cochin Bench, passed in I. T. A. No. 643/(Coch) of 1989 dated March 16, 1990, and direct the Tribunal to consider the matter afresh in the light of the above observations and in accordance with law.

10. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench.