(2011) 08 MP CK 0024

In the Madhya Pradesh High Court

Case No : T.R. No. 1 of 2011

Kishan Automobile (M/s) APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

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

Citation : (2011) ILR (MP) 2625 : (2011) 5 MPHT 177 : (2011) 203 TAXMAN 30

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

Krishn Kumar Lahoti, J.—The Order of the Court was delivered by :-This is a reference by the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur in R.A.No. 13/Jab/1992, by which following question has been referred for the opinion of this Court:-

Whether on the facts and in the circumstances of the case and in the light of the provisions of Sec. 43-B of the Income Tax Act, 1961, as existed, originally and after amendment, the Tribunal was justified in sustaining the addition of Rs. 51,918/- on account of sales tax liability?

2. Learned counsel appearing for petitioner submitted that to give effect to the provisions as contained in section 43B, first proviso was inserted w.e.f. 1989, but it was curative in nature and has to be given retrospective effect. Section 43B(a) of the Income Tax Act, 1961 was inserted to meet out various difficulties. He has placed reliance to the Apex Court judgment in Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, and WHIRLPOOL OF INDIA LTD. Vs. COMMISSIONER OF INCOME TAX, and submitted that this reference may be answered in favour of the assessee.

3. Shri Sanjay Lal, learned counsel appearing for Department opposed the contention and submitted that the aforesaid proviso has been inserted by Finance Act, 1988 w.e.f. 1.4.1989, so it is prospective in nature and until and

unless a specific provision is made that it is retrospective, it is to be treated prospective.

4. To appreciate rival contention of the parties, the relevant facts of the present case deserves to be stated, which are:-

5. The present case relates to the assessment year 1984-85, accounting year ending on 31.3.1984. The petitioner firm in that accounting year made a provision of Rs. 51,918/- for the payment of sales tax liability pertaining to period of February-March 1984. This tax, an amount of Rs. 51,123/-, was paid on 31.5.1984. In the relevant year the last date of filing of Income Tax return was 30.6.1984. The petitioner herein claimed aforesaid deduction in the assessment year 1984-85. The assessing officer by interpreting section 43B held that without actual payment, no provision can be made for payment of sales tax and no deduction in that regard could have been allowed unless actually paid within the accounting year. The assessing officer had made addition in income of Rs. 51,918/-. Against such an order, the assessee preferred an appeal before the CIT(A) and also before the Income Tax Appellate Tribunal, but remained unsuccessful. Thereafter an application was filed by the assessee u/s 256(1) of the Act for referring the aforesaid question for the opinion of this Court and now this matter is before us for our opinion.

6. The controversy involved in this case is squarely covered by the judgment of Apex Court in Allied Motors (P) Ltd. (supra). A similar question was before the Apex Court. The Apex Court held that section 43B of the Act was inserted w.e.f. 1.4.1984 to discourage tax payers, who did not discharge their statutory liability of payment of excise duty, employer''s contribution towards provident fund etc., for long period of time, but had claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. After insertion of section 43B of the Act, even if the assessee had regularly adopted the mercantile system of accounting, the amount of tax payable by the assessee could be deducted only in the year in which the sum was actually paid and not in the year in which the assessee incurred the liability to pay that tax. However, an assessee who had collected sales tax in the last quarter of the accounting year and deposited it in the treasury within the statutory period falling in the next accounting year, was not entitled to claim any deduction for it. This was not intended by section 43B. To avoid this kind of unexpected outcome of section 43B, the first proviso v/as added in section 43B by the Finance Act of 1988. The proviso makes it clear that the section will not apply in relation to any sum which is actually paid by the assessee in the next accounting year, if it is paid on or before the due date for furnishing the return of income in respect of the previous year, in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with the return. The Apex Court considered this question on page no. 682 and 683 of the report, held that the view of Delhi High Court by which it was held that the proviso was prospective in nature was not

approved, while the view of other High Courts namely, Calcutta, Gujarat, Karnataka, Orissa, Gauhati, Rajasthan, Andhra Pradesh, Patna and Kerala that the proviso must be given prospective effect was approved by the Apex Court. It was therefore held that the aforesaid proviso was inserted to give effect to the provisions as contained in section 43B of the Act and was retrospective in nature.

7. The same view has been reiterated by the Apex Court in Whirlpool of India Ltd. (supra).

8. In view of the settled position of law by the Apex Court, the question referred to this Court is answered thus:-

In the light of proviso of section 43B of the Income Tax Act, 1961, as existed originally and after amendment and insertion of proviso, the Tribunal was not justified in sustaining the addition of Rs. 51,918/- on account of sales tax liability, which was actually paid by the assessee within the statutory period and before the due date of filing of return for the aforesaid year.

9. Office to communicate our answer to the Tribunal.