(1992) 01 AHC CK 0113

In the Allahabad High Court

Case No : IT Reference No. 155 of 1979

Spool Corpn. Co. (India) APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:
Income Tax Act, 1961 — Section 147(a), 147(b), 256(1), 41, 41(1)

Citation : (1993) 66 TAXMAN 183

Hon'ble Judges : M. Katju, J;A.N. Varma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Katju, J.—This is a reference which has come up to this Court in pursuance of a reference order u/s 256(1) of the income tax Act, 1961 (''the Act'') made by the Tribunal, Allahabad. The facts of the case are in a narrow compass. The assessee had claimed deduction of sales tax for the relevant assessment year, which was allowed. Subsequently it was discovered that in fact the assessee had been exempted from sales tax by the sales tax authorities. As such, the ITO invoked section 147(a) of the Act and added the amount which had been earlier deducted by invoking section 41(1) of the Act. The assessee appealed against the order of the ITO but the appeal was dismissed. The second appeal to the Tribunal also met with the same fate. On an application u/s 256(1), following questions have been referred to us:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the reopening of the assessment u/s 147(a) of the income tax Act, 1961, was justified?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of sub-section (1) of section 41 applied to sales tax of Rs. 29,060 which were claimed and allowed as a deduction in the assessments for the relevant assessment years and in respect of which the claim

of exemption was accepted by the sales tax authorities during the previous year relevant to the assessment year 1969-70 and on this ground upholding the addition of this amount in the assessee''s total income?

2. The present reference relates to only assessment year 1969-70. In connection with this assessment year exemption from sales tax had been granted by the sales tax authorities on 25-3-1969, i.e., even before the assessment year started. As such, the assessee was well aware that he was exempt from sales tax but yet he suppressed this information from the ITO and obtained a deduction towards sales tax liability. This was a clear case of deliberate failure to disclose his correct income and, as such, section 147(a) was rightly invoked by the ITO. Shri Arun Tandon appearing for the assessee argued that it was a case of section 147(b) and not section 147(a). We are unable to agree to this submission. As mentioned above, the assessee deliberately concealed the facts that he had been exempted from sales tax by the order of the sales tax authorities dated 25-3-1969. This was, therefore, a case falling within the scope of section 147(a).

3. Section 41(1) provides:

Profits chargeable to tax. - (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount, obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

In view of this provision the income tax authorities rightly added the amount which had earlier been deducted towards sales tax liability. In view of the above, we answer the questions in the affirmative, in favour of the revenue and against the assessee. The revenue will be entitled to its costs which we assess at Rs. 250.

