

(2006) 09 P&H CK 0340

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Reference No. 94 of 1996

Commissioner of Income Tax,
Ludhiana

APPELLANT

Vs

Avery Cycle Inds. (P.) Ltd.

RESPONDENT

Date of Decision: Sept. 5, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 139(1), 36(1)(va), 43B, 43B(a)

Hon'ble Judges: Rajesh Bindal, J; A.K. Goel, J

Bench: Division Bench

Judgement

1. Following question of law has been referred for opinion of this Court by the income tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 29-8-1995, in respect of assessment year 1987-88:-

Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in holding that the liability of Rs. 94,759 is allowable if the payment is made before the due date prescribed u/s 139(1) and that 1st proviso to section 43B has retrospective application though it came into being with effect from 1-4-1988?

In the course of assessment, the Assessing Officer disallowed the claim of the assessee on account of sales tax/CST and PF shown in the books of account as payable on the ground that the assessee had not actually paid the said amount before the due date prescribed u/s 139(1) of the income tax Act, 1961 ("the Act") and that first proviso to section 43B of the Act was not retrospective, which came into force with effect from 1-4-1988.

2. The CIT(A) affirmed the view taken by the Assessing Officer. However, on further appeal, the Tribunal reversed the said view and held that the proviso in question was retrospective and was applicable to assessment years 1984-85 onwards. Matter was remanded to the Assessing Officer to determine whether payments had been

made before the due date as specified in Explanation to section 36(1) (va) of the Act. We find that the matter is covered by judgment of the Hon"ble Supreme Court in Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, in favour of the assessee and against the revenue. In the said judgment, after referring to circumstances in which section 43B of the Act was enacted, i.e., to take care of the situation where taxpayers did not discharge their statutory liability, the Hon"ble Supreme Court referred to circumstances which led to subsequent amendment, i.e., hardship to the taxpayers who had discharged their liability but were prevented from claiming legitimate deduction, which was not intended by the said provision. The amendment by Finance Act of 1987 was, thus, held to be remedial in nature. Reference was also made to departmental Circular No. 550, dated 1-1-1990 (see [1990] 182 ITR (St.) 114, 123) . The amendment was held to be retrospective being curative and declaratory. It was observed :-

... Therefore, section 43B(a) , the first proviso to section 43B and Explanation 2 have to be read together as giving effect to the true intention of section 43B. If Explanation 2 is retrospective, the first proviso will have to be so construed. Read in this light also, the proviso has to be read into section 43B from its inception along with Explanation 2. (p. 685)

Following the above view, we decide the question against the revenue and in favour of the assessee.