

(2004) 12 AHC CK 0201

Allahabad High Court

Case No: Income-tax Reference No. 135 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Durgesh Oil Mills

RESPONDENT

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**Date of Decision:** Dec. 6, 2004**Acts Referred:**

- Income Tax Act, 1961 - Section 43B

**Citation:** (2005) 273 ITR 305**Hon'ble Judges:** R.K. Agarwal, J; P. Krishna, J**Bench:** Division Bench**Advocate:** A.N. Mahajan, for the Appellant; None appeared, for the Respondent**Final Decision:** Dismissed

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### Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for the opinion to this court :

"Whether, on the facts and in the circumstances of the case, the hon"ble Tribunal was legally right in deleting the addition of Rs. 13,543 made by the Income Tax Officer u/s 43B of the Income Tax Act, 1961?"

2. The reference relates to the assessment year 1984-85. The respondent-assessee is a registered firm. It had shown a sum of Rs. 13,543 as payable in sales tax and as well as duty account. The Income Tax Officer applying the provisions of Section 43B of the Act disallowed the aforesaid amount on the ground that it has not been paid over to the Government. In appeal, the Appellate Assistant Commissioner relying upon a Board Circular No. 372 dated December 8, 1983 (see [Kaka Ba and Kala Budh Public Charitable Trust Vs. Commissioner of Income Tax, Gujarat-I and Others](#)), had allowed the claim of the respondent-assessee on the ground that the said amount represented the collections made in the month of March which was payable in the month of April. The order has been upheld by the Tribunal.

3. We have heard Shri A. N. Mahajan, learned counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee. It is not in dispute that the collections made in the month of March are towards the statutory duty during the month of March, 1984, which was to be paid over to the Government in the month of April in accordance with the relevant statutory rules. The Board Circular No. 372 dated December 8, 1983 (see [Kaka Ba and Kala Budh Public Charitable Trust Vs. Commissioner of Income Tax, Gujarat-I and Others](#)), provides that in respect of the amounts which are collected in the month of March on the last date of the end of the financial year, i.e., March 31, 1984, and has to be paid over in the next financial year, such amount cannot be disallowed u/s 43B of the Act. It is well settled that the circular issued by the Central Board of Direct Taxes is binding on the authorities.

4. In view of the aforesaid discussion, we answer the question of law referred to us in the affirmative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.