

**(1992) 08 CAL CK 0004****Calcutta High Court****Case No:** IT Reference No. 257 of 1991

Commissioner of Income Tax

APPELLANT

Vs

D.A. Mehra Steels (P.) Ltd.

RESPONDENT

**Date of Decision:** Aug. 3, 1992**Acts Referred:**

- Income Tax Act, 1961 - Section 256, 43B

**Citation:** (1993) 70 TAXMAN 610**Hon'ble Judges:** Shyamal Kumar Sen, J; Ajit K. Sengupta, J**Bench:** Division Bench**Advocate:** Sunil Mitra, for the Appellant; R.N. Dutta, for the Respondent

### **Judgement**

Ajit K. Sengupta, J.

In this reference u/s 256 of the income tax Act, 1961 ("the Act") for the assessment year 1984-85 the following question of law has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the first proviso to section 43B of the income tax Act, 1961 introduced by the Finance Act, 1987 with effect from 1st April, 1988 would apply to the assessment year 1984-85 and in that view deleting the disallowance of Rs. 19,893 made u/s 43B of the said Act?.

Shortly stated, the facts are that the assessee is a limited company. The Assessing Officer found that the assessee claimed deduction of Rs. 34,245 for central sales-tax, professional tax, etc. These amounts were not paid during the year under reference and, consequently, he disallowed the claim of the assessee. The details of the claim are as follows :

	Rs.
"Central Sales-tax	:
	18,010

W.B. Sales-tax	:	368
Professional-tax	:	34
Provident Fund	:	1,481
Madras Sales-tax	:	8.053
Maharastra Sales-tax	:	6,299
		34.245"

2. On appeal, the Commissioner (Appeals) confirmed the disallowance made by the Assessing Officer.

3. The counsel for the assessee relying on (1989) 31 ITD 305 urged that the payment of Rs. 19,893 had been made on or before the due date and, therefore, the claim of the assessee to the extent of Rs. 19,893 should be allowed. The departmental representative referred to the provisions of section 43B of the Act (since amended and supported the order of the Commissioner (Appeals).

4. The Tribunal concluded the matter as hereunder :

The assessee had made the following payments in the subsequent year :

	Date	Amount
		Rs.
"Central Sales-tax	4-4-1984	18,010
West Bengal Sales-tax	4-4-1984	368
Professional-tax	31-6-1984	34
Provident Fund	26-4-1984	1,481
		19,893

Therefore, the case of the assessee is covered by the decision in K.S. Lokhandwala. Following the aforesaid decision of the Tribunal, the payment of Rs. 19,893 is allowed.

It is not in dispute that this question is now concluded by the decision of this Court in the case of Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation, Following the said decision we answer the question in this reference in the affirmative and in favour of the assessee.

There will be no order as to costs.

Sen, J. -

I agree.