

**(1992) 01 CAL CK 0016**

**Calcutta High Court**

**Case No:** IT Reference No. 215 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Bengal Tea and Industries Ltd.

RESPONDENT

**Date of Decision:** Jan. 27, 1992

**Acts Referred:**

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

**Hon'ble Judges:** Shyamal Kumar Sen, J; Ajit K. Sengupta, J

**Bench:** Division Bench

### **Judgement**

Ajit K. Sengupta, J.

In this reference u/s 256(1) of the income tax Act, 1961 ("the Act") for the assessment year 1984-85, the only question which was raised before the Tribunal was whether sales tax collected and deposited within due date in the following year amounting to Rs. 55,981 shall come within section 43B of the Act. Another item was also involved amounting to Rs. 2,21,887 regarding sales tax collected but not paid within the accounting year. The Tribunal held as follows:

However, it would not be out of sight to mention here that these payments are made by the assessee-company within the prescribed time limits under the respective provisions of law. We have held that the payments collected in the last quarter or last month of the accounting year are not expected to be paid to the respective authorities during that period. They were required to pay after the expiry of the last month and within the prescribed time limit as per the statutory provisions. The Commissioner (Appeals) found that all these payments were made within the statutory period as prescribed by the respective provisions and, therefore, it would be incorrect to say that those payments are allowable. Regarding sales tax we have changed our view by following the decision of the Ahmedabad Bench of the Tribunal though we are very much inclined to accept the amendment to section 43B. However, the decision of the Ahmedabad Bench of the Tribunal has thrown light to reconsider our view and accordingly we now have considered to

accept the assessee's contention to allow such deduction as long as the payments are made within the prescribed time limit in accordance with the respective statutory provisions.

The Tribunal accepted the assessee's contention. On this fact 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 deleting the additions of Rs. 55,981 from the tea division and Rs. 2,21,887 from textile division on account of non-payment of collection of sales-tax during the last quarter of the accounting year and payment within the prescribed time limit under the sales tax Act is allowable or not ?

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

2. Leave is given to file Vakalatnama within two weeks. There will be no order as to costs.

Shyamal Kumar Sen, J.

I agree.