

(1992) 08 CAL CK 0015

Calcutta High Court

Case No: IT Reference No. 244 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Indian Chain (P.) Ltd.

RESPONDENT

Date of Decision: Aug. 17, 1992

Acts Referred:

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

Citation: (1993) 70 TAXMAN 612

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 three questions of law have been referred to this Court. We have reframed the third question. The questions are as follows:

1. Whether, on the facts and in the circumstances of the case and on a correct interpretation of the first proviso to section 43B of the income tax Act, 1961 introduced by the Finance Act, 1987 with effect from 1st April, 1988 the Tribunal was justified in law in holding that the said first proviso would be applicable for the assessment year 1984-85 also?
2. Whether, on the facts and in the circumstances of the case and particularly in view of the Explanation 2 below section 43B of the Income- tax Act, 1961, the Tribunal was justified in law in holding that the claim of deduction of the contribution to the provident fund, etc., which were not paid within the previous year but were paid within the time allowed under the relevant laws, cannot be disallowed u/s 43B of the Income- tax Act, 1961?
3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the Assessing Officer to re-examine and decide the issue

of disallowance u/s 43B of the income tax Act, 1961?

Shortly stated, the facts are as under:

The assessee, Indian Chain (P.) Ltd. is a private limited company and the assessment year involved is 1984-85. In the course of assessment proceedings, the Assessing Officer examined the profit and loss account of the assessee and found that the assessee had claimed deduction for Rs. 70,006, the details of which are as hereunder:

- (i) Provident Fund for June 1989 (Employer's) 11,515
- (ii) Administrative charges on P.F. 532
- (iii) Insurance Fund 719
- (iv) Administrative charges on insurance Fund 144
- (v) E.S.I. Contribution - May & June 1983 (Employer's) 3,619 3,520
- (vi) Labour Welfare Fund contribution (Employer's) 258
- (vii) Turnover tax for 1982-83 49,699 70,006

2. The Assessing Officer applied the provisions of section 43B of the Act and disallowed the same.

3. The assessee appealed to the Commissioner (Appeals) and contended that the claim of the assessee should have been allowed as the assessee had paid within the statutory period. The Commissioner (Appeals) accepted the arguments of the assessee for turnover tax for the assessment year 1982- 83 and allowed a relief of Rs. 49,699 being turnover tax for 1982-83 and disallowed the balance as was disallowed by the Assessing Officer, Both the assessee and the revenue went to the Tribunal. Tribunal disposed of the appeals, *inter alia*, observing as follows:

However, in the present case, the questions whether the payments shown as outstanding related to last quarter and were not paid as per relevant statutory provision and before the due date for furnishing the return of income is required to be examined. Therefore, we set aside the orders of the lower authorities on this point and direct the Assessing Officer to re-examine the case in the light of our observations made above guided by the principles laid down in the case of K.S. Lokhandwala (*supra*). The matter is, accordingly, restored to the file of the Assessing Officer.

4. 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 all the three questions in the affirmative and in favour of the assessee.

5. We, however, make it quite clear that the Assessing Officer shall proceed to determine the question of allowability in the light of the decision in Sri Jagannath Steel Corpn. "s case (supra). There will be no order as to costs.

Sen, J. -

I agree.